HOUSE BILL 11

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(PRE-FILED)

By: **The Speaker (Department of Legislative Services - Code Revision)**
Requested: July 1, 2001
Introduced and read first time: January 9, 2002
Assigned to: Judiciary

Committee Report: Favorable
House action: Adopted
Read second time: February 12, 2002

CHAPTER 26

AN ACT concerning

Criminal Law

FOR the purpose of adding a new article to the Annotated Code of Maryland, to be designated and known as the "Criminal Law Article", to revise, restate, and recodify the laws of the State relating to criminal law; revising, restating, and recodifying certain provisions relating to consignment of agricultural products and other goods, humane slaughter of livestock, disposition of certain materials and returnable containers, use of organizational insignia, operation of junkyards and automobile recycling facilities, powers of child welfare organizations, citations for certain alcoholic beverages violations, certain alcoholic beverages violations and crimes, debt adjustment, false advertising, required reports of certain injuries, misuse of certain food containers, operation of certain vessels and related boating provisions, real estate settlements, fortune telling, and local animal control; 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 a delayed effective date for certain provisions of this Act; and generally relating to Maryland criminal laws.

BY repealing
Article 27 - Crimes and Punishments
Section 2 and the subheading "Abduction"; 2A and the subheading "Accessory After the Fact"; 3 and the subheading "Adultery"; 4 and the subheading "Appropriating Property by Bailee"; 5 through 11 and the subheading "Arson and Burning"; 12 through 12A-7 and the subheading "Assault"; 18 and 19 and the subheading "Bigamy"; 20 and the subheading "Blasphemy"; 21 and the subheading "Boating"; 22 through 27 and the subheading "Bribery; Obstructing Justice"; 27A through 27C and the subheading "Bulletproof Body Armor"; 28 through 35B and the subheading "Burglary

and Related Offenses"; 35C and 35D and the subheading "Abuse of Children or Vulnerable Adults"; 35E and the subheading "Child Selling"; 36 and the subheading "Carrying or Wearing Weapon"; 36A and the subheading "Carrying Deadly Weapons on Public School Property"; 36A-1 and the subheading "Disarming a Law Enforcement Officer"; 36B, 36D, 36E(l), 36F(c) through (g), (i), and (k), 36G, and 36H; 36H-1 through 36H-6 and 36K; 38 through 40 and the subheading "Conspiracy"; 40A and the subheading "Clove Cigarettes - Sales Prohibited"; 40B and the subheading "Code Grabbing"; 41 and 41A and the subheading "Contraceptives - Sale by Vending Machines"; 44 through 58 and the subheading "Counterfeiting and Forgery"; 59 through 70E and the subheading "Cruelty to Animals"; 79A and the subheading "Debt Adjustment"; 80 and the subheading "Defaulters"; 81 through 87 and the subheading "Desecration of the National or State Flag"; 111 through 118 and the subheading "Destroying, Injuring, etc., Property Maliciously"; 120A and the subheading "Grocery Carts"; 120B and the subheading "Food Packages or Containers"; 121 and 122 and the subheading "Disturbing the Public Peace and Disorderly Conduct"; 123 and 124 and the subheading "Harassment and Stalking"; 125 1/2 and the subheading "Interference in Athletic Events"; 125A and the subheading "Emergency Communications - Interference"; 126 through 135 and the subheading "Embezzling Property and Writings"; 136 through 139 and the subheading "Escape and Contraband in Places of Confinement"; 139A through 139D and the subheading "Destructive Devices"; 140 through 144 and the subheading "Bad Checks"; 145 and 146 and the subheading "Credit Card Offenses"; 150 through 151C and the subheading "False Statements"; 152 and 153 and the subheading "Female Sitters"; 156 and the subheading "Fire - False Alarms"; 156A through 156C and the subheading "Burglary and Robbery False Alarm"; 158A and the subheading "Fortune-Telling"; 159 and the subheading "Fraud - Beer"; 163 and the subheading "Fraud - Breach of Trust, Bills of Lading, Elevator or Warehouse Receipts"; 170 through 172 and the subheading "Fraud - Conversion by Factors of Consigned Goods"; 173 and the subheading "Fraud - Conversion of Money or Securities"; 174 and the subheading "Fraud - Corporate Misrepresentation"; 181 through 189 and the subheading "Fraud - False Insignia"; 191A and the subheading "Fraud - Unlawful Use of Food Commodities Donated by the United States"; 192 and the subheading "Fraud - Upon Gas Companies"; 194 and the subheading "Fraud - Upon Electric Companies, and Damaging, Interfering or Tampering With the Property of Such Companies"; 194A and the subheading "Fraud - Telecommunication Service Providers"; 194B and the subheading "Fraud - Upon Cable Television Companies"; 195 and 198 and the subheading "Fraud - False Advertisements"; 199 and the subheading "Fraud - Use of Simulated Court Process"; 200 and the subheading "Fraud - Transfers"; 206 and 207 and the subheading "Fraud - By Hirers"; 208 and the subheading "Fraud - Unlawful Subleasing of Motor Vehicles"; 211 and the subheading "Fraud - Livestock"; 214 and the subheading "Fraud - By Mortgagors, etc., of Personal Property"; 214B and the subheading "Fraud -

Representation by Public Defender"; 215 and the subheading "Fraud - Rehypothecation of Personal Securities"; 216 and the subheading "Fraud - Special Partnership"; 229 and the subheading "Fraud - Neglect to Deliver Draft, etc., for Merchandise Stored"; 230 and the subheading "Fraud - Wood Alcohol"; 230A and the subheading "Fraud - Welfare"; 230B through 230H and the subheading "Fraud - State Health Plans"; 231 and the subheading "Fraud - Personal Identifying Information"; 233A and the subheading "Fraud - Misrepresentations in Fund-Raising Campaigns"; 233B and the subheading "Fraud - Horse Races"; 233C and the subheading "Fraud - Pari-Mutuel Tickets"; 233D and the subheading "Fraud - Pyramid Promotional Schemes"; 233E and the subheading "Age Identification Cards and Documents"; 236 through 264A and the subheading "Gaming"; 264B and 264C and the subheading "Slot Machines"; 265 and the subheading "Removal of Human Remains from Burial Sites"; 267 and the subheading "Graveyard Desecration"; 267A and the subheading "Trading in Human Remains and Associated Funerary Objects"; 268E through 268G and the subheading "Harboring"; 268H and the subheading "Hazing"; 277 through 305 and the subheading "Health - Controlled Dangerous Substances"; 322 and 323 and the subheading "Health - Venereal Disease Remedies"; 333A through 333D and the subheading "Humane Slaughter of Livestock"; 334 and the subheading "Iceboxes"; 335 and the subheading "Incest"; 335A and the subheading "Indecent Exposure"; 336 and 336A and the subheading "Injuries - Reports of"; 336B and the subheading "Key Regulations - State Department of General Services"; 337 and 338 and the subheading "Kidnapping"; 339 and the subheading "Knives - Switchblades"; 340 through 345 and the subheading "Theft"; 348A and 349 and the subheading "Larceny - Livestock, Boats, or Vehicle"; 353 and the subheading "Laser Pointers"; 354 and the subheading "Letters - Wrongfully Opening"; 356 through 371A and the subheading "Lotteries"; 372 through 383 and the subheading "Machine Guns"; 387 through 388C and the subheading "Manslaughter"; 389 and the subheading "Manufactured Articles"; 399 and the subheading "Minors - Care and Protection of"; 399A and the subheading "Miscellaneous Alcoholic Beverages Offenses"; 400 through 403A and the subheading "Alcoholic Beverages Offenses and Misrepresentation of Age"; 404 through 406 and the subheading "Minors - Sale of Cigars and Tobacco to"; 407 through 414A and the subheading "Murder"; 415 and the subheading "Homicide - Prosecution"; 416 and the subheading "Assisted Suicide"; 416A through 416G and the subheading "Nudity and Sexual Displays"; 417 through 425 and the subheading "Obscene Matter"; 426 through 431 and the subheading "Prostitution and Related Crimes"; 434 and the subheading "Passenger Boats"; 435 through 439 and the subheading "Perjury"; 450 and 451 and the subheading "Poison - Attempting to"; 453 through 460 and the subheading "Railroads"; 461 through 465 and the subheading "Sexual Offenses"; 465A and the subheading "Real Estate Settlements"; 467A and the subheading "Recorded Material - Unauthorized Copies"; 468 and the subheading "Litter Control Law"; 469 and the subheading "Junkyards, etc."; 470A and

the subheading "Religious and Ethnic Crimes"; 471 through 480A and the subheading "Returnable Containers and Marked Articles of Linen Suppliers"; 482 through 484 and the subheading "Rivers, Harbors, Etc."; 486 through 488 and the subheading "Robbery"; 535 through 541 and the subheading "Sabotage and Related Crimes"; 553 and 554 and the subheading "Sodomy"; 555A through 555C and the subheading "Telephone and Electronic Mail Misuse"; 556 through 557B and the subheading "Telegraphs and Telephones"; 558 through 560 and the subheading "Thieves and Pickpockets"; 561 through 563 and the subheading "Threats and Threatening Letters"; 576 through 579B and the subheading "Trespass"; 580A and the subheading "Picketing of Dwelling Places"; 582 and the subheading "Vessels - Displaying of Number, Name, Etc."; 583 and the subheading "Video Tape Distributors"; 610, 612, and 616 and the subheading "Indictments"; 626, 627, 643, 643B, and 644A and the subheading "Sentence and Punishment"; and 760 through 763 and the subheading "Influencing or Intimidating Victims and Witnesses"
Annotated Code of Maryland
(1996 Replacement Volume and 2001 Supplement)

BY repealing
Article - Agriculture
Section 4-123.1
Annotated Code of Maryland
(1999 Replacement Volume and 2001 Supplement)

BY repealing
Article - Commercial Law
Section 11-904; 14-1401 through 14-1405, inclusive, and the subtitle "Subtitle 14. Credit Card Number Protection Act"
Annotated Code of Maryland
(2000 Replacement Volume and 2001 Supplement)

BY repealing
Article - Family Law
Section 5-503
Annotated Code of Maryland
(1999 Replacement Volume and 2001 Supplement)

BY adding
New Article - Criminal Law
Section 1-101 through 14-103, inclusive, and the various titles
Annotated Code of Maryland

BY repealing and reenacting, with amendments,
Article - Criminal Law
Section 13-2430 and 13-2435
Annotated Code of Maryland

(As enacted by Section 2 of this Act)

BY repealing and reenacting, with amendments,
Article 1 - Rules of Interpretation
Section 25
Annotated Code of Maryland
(2001 Replacement Volume)

BY adding to
Article 1 - Rules of Interpretation
Section 33
Annotated Code of Maryland
(2001 Replacement Volume)

BY adding to
Article 2B - Alcoholic Beverages
Section 18-104; 22-101 through 22-108 to be under the new subtitle "Subtitle 1. General Provisions"; 22-201 to be under the new subtitle "Subtitle 2. Beverage Misrepresentation"; both to be under the new title "Title 22. Alcoholic Beverage Crimes"
Annotated Code of Maryland
(2001 Replacement Volume)

BY adding to
Article 24 - Political Subdivisions - Miscellaneous Provisions
Section 11-509(e) and 11-512 through 11-514
Annotated Code of Maryland
(2001 Replacement Volume)

BY adding to
Article - Agriculture
Section 1-301 through 1-306 to be under the amended title "Title 1. Definitions; General Provisions" and the new subtitle "Subtitle 3. Consignment of Farm Products"; 3-701 to be under the new subtitle "Subtitle 7. Enclosed Livestock"; 4-123.1; and 12-104
Annotated Code of Maryland
(1999 Replacement Volume and 2001 Supplement)

BY repealing and reenacting, without amendments,
Article - Agriculture
Section 12-101 through 12-103
Annotated Code of Maryland

(1999 Replacement Volume and 2001 Supplement)

BY adding to
Article - Business Regulation

Section 11-1002 and 11-1003 to be under the amended subtitle "Subtitle 10. Prohibited Acts"; 19-201 through 19-207 to be under the new subtitle "Subtitle 2. Organizational Insignia"; and 19-301 through 19-307 to be under the new subtitle "Subtitle 3. Returnable Containers and Returnable Textiles"
Annotated Code of Maryland
(1998 Replacement Volume and 2001 Supplement)

BY adding to
Article - Commercial Law
Section 11-810; 14-1316 and 14-1317; and 14-2901 through 14-2903, inclusive, to be under the new subtitle "Subtitle 29. False Advertising and Related Crimes"
Annotated Code of Maryland
(2000 Replacement Volume and 2001 Supplement)

BY adding to
Article - Environment
Section 5-10A-01 through 5-10A-03 to be under the new subtitle "Subtitle 10A. Junkyards and Related Facilities"
Annotated Code of Maryland
(1996 Replacement Volume and 2001 Supplement)

BY adding to
Article - Family Law
Section 5-503
Annotated Code of Maryland
(1999 Replacement Volume and 2001 Supplement)

BY adding to
Article - Health - General
Section 8-901 and 8-902 to be under the new subtitle "Subtitle 9. Drug and Alcohol Grants Program and Fund"; 20-701 through 20-703 to be under the new subtitle "Subtitle 7. Injury Reports"; and 21-259.1
Annotated Code of Maryland
(2000 Replacement Volume and 2001 Supplement)

BY adding to
Article - Natural Resources
Section 8-713.1, 8-724.1, 8-725.5, 8-725.6, 8-726.1, 8-738.1, and 8-740.1
Annotated Code of Maryland
(2000 Replacement Volume and 2001 Supplement)

BY adding to

Article - Real Property
Section 14-127
Annotated Code of Maryland
(1996 Replacement Volume and 2001 Supplement)

BY adding to
The Public Local Laws of Caroline County
Section 109
Article 6 - Public Local Laws of Maryland
(1996 Edition and 2000 Supplement, as amended)

BY adding to
The Public Local Laws of Carroll County
Section 4-103
Article 7 - Public Local Laws of Maryland
(2000 Edition and August 2001 Supplement, as amended)

BY adding to
The Public Local Laws of Frederick County
Section 1-5-26
Article 11 - Public Local Laws of Maryland
(1979 Edition and March 2001 Supplement, as amended)

BY adding to
The Public Local Laws of Talbot County
Section 8A-1
Article 21 - Public Local Laws of Maryland
(1977 Edition and July 1990 Supplement, as amended)

BY adding to
The Public Local Laws of Washington County
Section 1-108(e) and 1-704
Article 22 - Public Local Laws of Maryland
(1991 Edition and December 1997 Supplement, as amended by Chapter 248 of the Acts of the General Assembly of 1998)

BY repealing and reenacting, with amendments, and transferring to the Session Laws
Article 27 - Crimes and Punishments
Section 281(i) and 302(a) through (c), inclusive
Annotated Code of Maryland
(1996 Replacement Volume and 2001 Supplement)

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 2 and the subheading "Abduction"; 2A and the subheading "Accessory After the Fact"; 3 and the subheading "Adultery"; 4 and the subheading "Appropriating Property by Bailee"; 5 through 11 and the subheading "Arson and Burning"; 12 through 12A-7 and the subheading "Assault"; 18 and 19 and the subheading "Bigamy"; 20 and the subheading "Blasphemy"; 21 and the subheading "Boating"; 22 through 27 and the subheading "Bribery; Obstructing Justice"; 27A through 27C and the subheading "Bulletproof Body Armor"; 28 through 35B and the subheading "Burglary and Related Offenses"; 35C and 35D and the subheading "Abuse of Children or Vulnerable Adults"; 35E and the subheading "Child Selling"; 36 and the subheading "Carrying or Wearing Weapon"; 36A and the subheading "Carrying Deadly Weapons on Public School Property"; 36A-1 and the subheading "Disarming a Law Enforcement Officer"; 36B, 36D, 36E(l), 36F(c) through (g), (i), and (k), 36G, and 36H; 36H-1 through 36H-6 and 36K; 38 through 40 and the subheading "Conspiracy"; 40A and the subheading "Clove Cigarettes - Sales Prohibited"; 40B and the subheading "Code Grabbing"; 41 and 41A and the subheading "Contraceptives - Sale by Vending Machines"; 44 through 58 and the subheading "Counterfeiting and Forgery"; 59 through 70E and the subheading "Cruelty to Animals"; 79A and the subheading "Debt Adjustment"; 80 and the subheading "Defaulters"; 81 through 87 and the subheading "Desecration of the National or State Flag"; 111 through 118 and the subheading "Destroying, Injuring, etc., Property Maliciously"; 120A and the subheading "Grocery Carts"; 120B and the subheading "Food Packages or Containers"; 121 and 122 and the subheading "Disturbing the Public Peace and Disorderly Conduct"; 123 and 124 and the subheading "Harassment and Stalking"; 125 1/2 and the subheading "Interference in Athletic Events"; 125A and the subheading "Emergency Communications - Interference"; 126 through 135 and the subheading "Embezzling Property and Writings"; 136 through 139 and the subheading "Escape and Contraband in Places of Confinement"; 139A through 139D and the subheading "Destructive Devices"; 140 through 144 and the subheading "Bad Checks"; 145 and 146 and the subheading "Credit Card Offenses"; 150 through 151C and the subheading "False Statements"; 152 and 153 and the subheading "Female Sitters"; 156 and the subheading "Fire - False Alarms"; 156A through 156C and the subheading "Burglary and Robbery False Alarm"; 158A and the subheading "Fortune-Telling"; 159 and the subheading "Fraud - Beer"; 163 and the subheading "Fraud - Breach of Trust, Bills of Lading, Elevator or Warehouse Receipts"; 170 through 172 and the subheading "Fraud - Conversion by Factors of Consigned Goods"; 173 and the subheading "Fraud - Conversion of Money or Securities"; 174 and the subheading "Fraud - Corporate Misrepresentation"; 181 through 189 and the subheading "Fraud - False Insignia"; 191A and the subheading "Fraud - Unlawful Use of Food Commodities Donated by the United States"; 192 and the subheading "Fraud - Upon Gas Companies"; 194 and the subheading "Fraud - Upon Electric Companies, and Damaging, Interfering or Tampering With the Property of Such Companies"; 194A and the subheading "Fraud - Telecommunication Service Providers"; 194B and the subheading "Fraud - Upon Cable Television Companies";

195 and 198 and the subheading "Fraud - False Advertisements"; 199 and the subheading "Fraud - Use of Simulated Court Process"; 200 and the subheading "Fraud - Transfers"; 206 and 207 and the subheading "Fraud - By Hirers"; 208 and the subheading "Fraud - Unlawful Subleasing of Motor Vehicles"; 211 and the subheading "Fraud - Livestock"; 214 and the subheading "Fraud - By Mortgagors, etc., of Personal Property"; 214B and the subheading "Fraud - Representation by Public Defender"; 215 and the subheading "Fraud - Rehypothecation of Personal Securities"; 216 and the subheading "Fraud - Special Partnership"; 229 and the subheading "Fraud - Neglect to Deliver Draft, etc., for Merchandise Stored"; 230 and the subheading "Fraud - Wood Alcohol"; 230A and the subheading "Fraud - Welfare"; 230B through 230H and the subheading "Fraud - State Health Plans"; 231 and the subheading "Fraud - Personal Identifying Information"; 233A and the subheading "Fraud - Misrepresentations in Fund-Raising Campaigns"; 233B and the subheading "Fraud - Horse Races"; 233C and the subheading "Fraud - Pari-Mutuel Tickets"; 233D and the subheading "Fraud - Pyramid Promotional Schemes"; 233E and the subheading "Age Identification Cards and Documents"; 236 through 264A and the subheading "Gaming"; 264B and 264C and the subheading "Slot Machines"; 265 and the subheading "Removal of Human Remains from Burial Sites"; 267 and the subheading "Graveyard Desecration"; 267A and the subheading "Trading in Human Remains and Associated Funerary Objects"; 268E through 268G and the subheading "Harboring"; 268H and the subheading "Hazing"; 277 through 305 and the subheading "Health - Controlled Dangerous Substances"; 322 and 323 and the subheading "Health - Venereal Disease Remedies"; 333A through 333D and the subheading "Humane Slaughter of Livestock"; 334 and the subheading "Iceboxes"; 335 and the subheading "Incest"; 335A and the subheading "Indecent Exposure"; 336 and 336A and the subheading "Injuries - Reports of"; 336B and the subheading "Key Regulations - State Department of General Services"; 337 and 338 and the subheading "Kidnapping"; 339 and the subheading "Knives - Switchblades"; 340 through 345 and the subheading "Theft"; 348A and 349 and the subheading "Larceny - Livestock, Boats, or Vehicle"; 353 and the subheading "Laser Pointers"; 354 and the subheading "Letters - Wrongfully Opening"; 356 through 371A and the subheading "Lotteries"; 372 through 383 and the subheading "Machine Guns"; 387 through 388C and the subheading "Manslaughter"; 389 and the subheading "Manufactured Articles"; 399 and the subheading "Minors - Care and Protection of"; 399A and the subheading "Miscellaneous Alcoholic Beverages Offenses"; 400 through 403A and the subheading "Alcoholic Beverages Offenses and Misrepresentation of Age"; 404 through 406 and the subheading "Minors - Sale of Cigars and Tobacco to"; 407 through 414A and the subheading "Murder"; 415 and the subheading "Homicide - Prosecution"; 416 and the subheading "Assisted Suicide"; 416A through 416G and the subheading "Nudity and Sexual Displays"; 417 through 425 and the subheading "Obscene Matter"; 426 through 431 and the subheading "Prostitution and Related Crimes"; 434 and the subheading "Passenger Boats"; 435 through 439 and the subheading "Perjury"; 450 and 451 and the subheading "Poison - Attempting to"; 453 through 460 and the subheading "Railroads"; 461 through 465 and the subheading "Sexual Offenses"; 465A and the subheading "Real Estate Settlements"; 467A and the subheading "Recorded Material - Unauthorized Copies"; 468 and the subheading "Litter Control Law"; 469 and the subheading "Junkyards, etc."; 470A and the subheading "Religious and Ethnic Crimes"; 471 through 480A and the subheading

"Returnable Containers and Marked Articles of Linen Suppliers"; 482 through 484 and the subheading "Rivers, Harbors, Etc."; 486 through 488 and the subheading "Robbery"; 535 through 541 and the subheading "Sabotage and Related Crimes"; 553 and 554 and the subheading "Sodomy"; 555A through 555C and the subheading "Telephone and Electronic Mail Misuse"; 556 through 557B and the subheading "Telegraphs and Telephones"; 558 through 560 and the subheading "Thieves and Pickpockets"; 561 through 563 and the subheading "Threats and Threatening Letters"; 576 through 579B and the subheading "Trespass"; 580A and the subheading "Picketing of Dwelling Places"; 582 and the subheading "Vessels - Displaying of Number, Name, Etc."; 583 and the subheading "Video Tape Distributors"; 610, 612, and 616 and the subheading "Indictments"; 626, 627, 643, 643B, and 644A and the subheading "Sentence and Punishment"; and 760 through 763 and the subheading "Influencing or Intimidating Victims and Witnesses"

Article - Agriculture
Section 4-123.1

Article - Commercial Law
Section 11-904; 14-1401 through 14-1405, inclusive, and the subtitle "Subtitle 14. Credit Card Number Protection Act"

Article - Family Law
Section 5-503

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

ARTICLE - CRIMINAL LAW

TITLE 1. 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) CORRECTIONAL FACILITY.

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

REVISOR'S NOTE: This subsection is new language substituted for the second sentence of former Art. 27, § 643B(a).

(C) COUNTERFEIT.

"COUNTERFEIT" MEANS TO FORGE, COUNTERFEIT, MATERIALLY ALTER, OR FALSELY MAKE.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the terms "forge", "materially alter", and "falsely make" and their grammatical variations throughout this article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the use of the defined term "counterfeit" to cover the activities known to the common law as "forgery", "counterfeiting", "material alteration", and "false making" includes both altering a genuine document or object to make it false, and creating a new false document or object. The Committee chose "counterfeit" rather than "forge" as the all-encompassing term because the former term was the more inclusive term at common law.

(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". Because the word "unreasonable" in that section has been interpreted in various ways, the Criminal Law Article Review Committee decided that an explicit definition of "county" should be included in this article.

(E) INMATE.

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

REVISOR'S NOTE: This subsection is new language added for consistency with the Correctional Services Article.

(F) 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 for consistency with the Correctional Services Article.

(G) MINOR.

"MINOR" MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, §§ 416A(b) and 419A(a).

Article 1, § 24(b)(2) provides that "minor", "as it pertains to legal age and capacity", refers to individuals under the age of 18 years. Because the term "minor" is used in this article to refer both to potential criminal defendants and to potential victims, the reference to "legal age and capacity" may inappropriately limit the application of a criminal statute that uses the term. The Criminal Law Article Review Committee decided that an explicit definition of "minor" should be included in this article. Therefore, former Art. 27, §§ 416A(b) and 419A(a) are revised in this subsection to apply throughout this article, even though Art. 27, § 416A(b) formerly applied only to those provisions now in Title 11, Subtitle 1 of this article and Art. 27, § 419A(a) formerly applied only to those provisions now in Title 11, Subtitle 2 of this article.

(H) PERSON.

"PERSON" MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP, PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, §§ 277(r), 417(2), and 468(c)(3), and the third sentence of § 372.

The former provisions are revised in this subsection to apply throughout this article for clarity, even though Art. 27, § 372 formerly only applied to those provisions now in Title 4, Subtitle 4 of this article, Art. 27, § 277(r) formerly applied only to those provisions now in Title 5 of this article, Art. 27, § 417(2) formerly applied only to those provisions now in Title 11, Subtitle 2 of this article, and Art. 27, § 468(c)(3) formerly applied only to those provisions now in § 10-110 of this article.

The term "person" defined in this subsection does not conform to the standard definition of "person" in other revised articles of the Code. The standard definition in other revised articles includes a "receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind". Unlike many other revised articles that primarily concern civil and regulatory matters, this article specifically imposes criminal liability on a "person" who contravenes its provisions. The criminal law generally does not impose criminal liability on a person acting purely in the capacity of an agent, unless the person may otherwise be charged as a principal or accessory to a crime. The Criminal Law Article Review Committee noted

that there was no basis in the former law to support extending criminal liability to a person acting in such a capacity for all crimes included in this article. Thus, the Committee determined that only those persons included in the term "person" as formerly defined in Article 27 should be included in that term as defined in this article. No substantive change is intended.

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 units, 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).

The former reference to any other "legal" entity is deleted as surplusage.

The former references to a "limited liability company" and an "unincorporated" association are deleted as included in the comprehensive reference to any other "entity".

(I) 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 standard language added to provide an express definition of the term "state" in the revised articles of the Code. *See, e.g.*, IN § 1-101(kk), PUC § 1-101(ff), and CS § 1-101(n).

(J) 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 for consistency with the Correctional Services Article.

SUBTITLE 2. INCHOATE CRIMES.

1-201. LIMITATION ON PUNISHMENT FOR ATTEMPT.

THE PUNISHMENT OF A PERSON WHO IS CONVICTED OF AN ATTEMPT TO COMMIT A CRIME MAY NOT EXCEED THE MAXIMUM PUNISHMENT FOR THE CRIME ATTEMPTED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 644A.

The references to a "punishment" are substituted for the former references to a "sentence" for consistency with § 1-202 of this subtitle and former Art. 27, § 290, which limited the maximum punishments for attempt and conspiracy to commit a controlled dangerous substance crime.

Defined term: "Person" § 1-101

1-202. CONSPIRACY -- LIMITATION ON PUNISHMENT.

THE PUNISHMENT OF A PERSON WHO IS CONVICTED OF CONSPIRACY MAY NOT EXCEED THE MAXIMUM PUNISHMENT FOR THE CRIME THAT THE PERSON CONSPIRED TO COMMIT.

REVISOR'S NOTE: This section formerly was Art. 27, § 38.

The only changes are in style.

Defined term: "Person" § 1-101

1-203. SAME -- CHARGING DOCUMENT.

AN INDICTMENT OR WARRANT FOR CONSPIRACY IS SUFFICIENT IF IT SUBSTANTIALLY STATES:

"(NAME OF DEFENDANT) AND (NAME OF CO-CONSPIRATOR) ON (DATE) IN (COUNTY) UNLAWFULLY CONSPIRED TOGETHER TO MURDER (NAME OF VICTIM) (OR OTHER OBJECT OF CONSPIRACY), 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, § 40.

It is restated in standard language for clarity and consistency within this article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that it is unclear whether the reference to conspiring to "murder" constitutes a substantive requirement for the use of this statutory pleading for the crime of "conspiracy to murder", or is merely an illustration of how to state a crime involving an intended victim when using this form.

GENERAL REVISOR'S NOTE TO SUBTITLE

Former Art. 27, § 290, which limited the maximum punishment for attempt or conspiracy to violate Title 5 of this article, "Controlled Dangerous Substances, Prescriptions, and Other Substances", is deleted as included in the limitations on attempt and conspiracy in §§ 1-201 and 1-202 of this subtitle, respectively.

SUBTITLE 3. ACCESSORY AFTER THE FACT.

1-301. ACCESSORY AFTER THE FACT.

UNLESS OTHERWISE PROVIDED BY LAW, A PERSON WHO IS CONVICTED OF BEING AN ACCESSORY AFTER THE FACT TO A FELONY IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO THE LESSER OF:

(1) IMPRISONMENT NOT EXCEEDING 5 YEARS; OR

(2) A PENALTY NOT EXCEEDING THE MAXIMUM PENALTY PROVIDED BY LAW FOR COMMITTING THE UNDERLYING FELONY.

REVISOR'S NOTE: This section formerly was Art. 27, § 2A.

In item (2) of this section, the reference to the "underlying felony" is substituted for the former reference to the "crime" for clarity.

No other changes are made.

Defined term: "Person" § 1-101

SUBTITLE 4. MISCELLANEOUS PROVISIONS.

1-401. PROOF OF INTENT -- FRAUD, THEFT, AND RELATED CRIMES.

IN A TRIAL FOR COUNTERFEITING, ISSUING, DISPOSING OF, PASSING, ALTERING, STEALING, EMBEZZLING, OR DESTROYING ANY KIND OF INSTRUMENT, OR 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: This section is new language derived without substantive change from former Art. 27, § 612.

The reference to "counterfeiting" is substituted for the former reference to "forging" for consistency within this article.

The reference to "issuing" is substituted for the former reference to "uttering" for consistency with Title 8 of this article.

The former reference to "putting off" an instrument is deleted as included in the references to "issuing" and "passing" an instrument. The crime of "putting off" at common law refers to uttering or passing, generally in the context of currency and related instruments. *See, e.g., U.S. v. Marigold*, 50 U.S. 560 (9 How.) (1850).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that "obtaining property by false pretenses" is no longer a separate crime in Maryland, but is a form of theft under Title 7,

Subtitle 1 of this article. *See* § 7-102(a)(5) of this article. Similarly, "embezzling" and "destroying" wills and instruments are revised as forms of fraud under Title 8, Subtitle 7 of this article. The General Assembly may wish to clarify this provision and § 4-108 of the Criminal Procedure Article, both derived from former Art. 27, § 612, to address these matters.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

TITLE 2. HOMICIDE.

SUBTITLE 1. 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 added as the standard introductory language of a definition section.

(B) IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

"IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE" MEANS IMPRISONMENT FOR THE NATURAL LIFE OF AN INMATE UNDER THE CUSTODY OF A CORRECTIONAL FACILITY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, §§ 412(f)(2) and 413(e)(4).

The former references to the "Patuxent Institution" are deleted as included in the comprehensive reference to a "correctional facility".

Defined terms: "Correctional facility" § 1-101

"Inmate" § 1-101

(C) VESSEL.

(1) "VESSEL" MEANS ANY WATERCRAFT THAT IS USED OR IS CAPABLE OF BEING USED AS A MEANS OF TRANSPORTATION ON WATER OR ICE.

(2) "VESSEL" DOES NOT INCLUDE A SEAPLANE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 388C.

2-102. ELIMINATION OF YEAR AND A DAY RULE.

A PROSECUTION MAY BE INSTITUTED FOR MURDER, MANSLAUGHTER, OR UNLAWFUL HOMICIDE, WHETHER AT COMMON LAW OR UNDER THIS TITLE,

REGARDLESS OF THE TIME THAT HAS ELAPSED BETWEEN THE ACT OR OMISSION THAT CAUSED THE DEATH OF THE VICTIM AND THE VICTIM'S DEATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 415.

The reference to "this title" is substituted for the former reference to "Article 27, §§ 407 through 411, § 387, § 388, or § 388A" to reflect the reorganization of the former statutory provisions on murder, manslaughter, and the several types of homicide by vehicle or vessel in this title.

The reference to "unlawful homicide" is added to reflect the application of this section to the various types of homicide by motor vehicle or vessel under Subtitle 5 of this title, all derived from former Art. 27, § 388A.

This section applies only prospectively and may not be applied to any crime committed before October 1, 1996. *See* § 3, Ch. 360, Acts of 1996.

SUBTITLE 2. MURDER AND MANSLAUGHTER.

2-201. MURDER IN THE FIRST DEGREE.

(A) IN GENERAL.

A MURDER IS IN THE FIRST DEGREE IF IT IS:

(1) A DELIBERATE, PREMEDITATED, AND WILLFUL KILLING;

(2) COMMITTED BY LYING IN WAIT;

(3) COMMITTED BY POISON; OR

(4) COMMITTED IN THE PERPETRATION OF OR AN ATTEMPT TO PERPETRATE:

(I) ARSON IN THE FIRST DEGREE;

(II) BURNING A BARN, STABLE, TOBACCO HOUSE, WAREHOUSE, OR OTHER OUTBUILDING THAT:

1. IS NOT PARCEL TO A DWELLING; AND

2. CONTAINS CATTLE, GOODS, WARES, MERCHANDISE, HORSES, GRAIN, HAY, OR TOBACCO;

(III) BURGLARY IN THE FIRST, SECOND, OR THIRD DEGREE;

(IV) CARJACKING OR ARMED CARJACKING;

(V) ESCAPE IN THE FIRST DEGREE FROM A STATE CORRECTIONAL FACILITY OR A LOCAL CORRECTIONAL FACILITY;

(VI) KIDNAPPING UNDER § 3-502 OR § 3-503(A)(2) OF THIS ARTICLE;

(VII) MAYHEM;

(VIII) RAPE;

(IX) ROBBERY UNDER § 3-402 OR § 3-403 OF THIS ARTICLE;

(X) SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE;

(XI) SODOMY; OR

(XII) A VIOLATION OF § 4-503 OF THIS ARTICLE CONCERNING DESTRUCTIVE DEVICES.

(B) PENALTY.

(1) A PERSON WHO COMMITS A MURDER IN THE FIRST DEGREE IS GUILTY OF A FELONY AND ON CONVICTION SHALL BE SENTENCED TO:

(I) DEATH;

(II) IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE; OR

(III) IMPRISONMENT FOR LIFE.

(2) UNLESS A SENTENCE OF DEATH IS IMPOSED IN COMPLIANCE WITH § 2-202 OF THIS SUBTITLE AND SUBTITLE 3 OF THIS TITLE, OR A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE IS IMPOSED IN COMPLIANCE WITH § 2-203 OF THIS SUBTITLE AND § 2-304 OF THIS TITLE, THE SENTENCE SHALL BE IMPRISONMENT FOR LIFE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 407 through 410, the first sentence of § 412(b), and, as it related to imprisonment for life, the second sentence of § 412(b).

In subsection (a)(4)(ii) of this section, the reference to an "outbuilding" is substituted for the former archaic reference to an "outhouse" for clarity.

As to the use of the phrase "parcel to" in subsection (a)(4)(ii)1 of this section, *see* Revisor's Note to § 6-101(b) of this article.

In subsection (a)(4)(viii) of this section, the former reference to rape "in any degree" is deleted as surplusage.

In subsection (b)(1) of this section, the phrase "guilty of a felony" is added

for clarity and consistency within this article. Murder is one of the original felonies at common law. The statutory distinction between the degrees of murder is only for purposes of imposition of penalties, not for altering the elements of the crime of murder at common law. *See Gladden v. State*, 273 Md. 383 (1974).

In subsection (b)(2) of this section, the references to "§ 2-202 of this subtitle and Subtitle 3 of this title" and "§ 2-203 of this subtitle and § 2-304 of this title" are substituted for the former reference to "subsection (g) of [former Art. 27, § 412]" to reflect the reorganization of material relating to the imposition of sentences of death and of imprisonment for life without the possibility of parole.

For specific provisions on sentencing procedures in capital cases, *see* Md. Rule 4-343.

Defined terms: "Imprisonment for life without the possibility of parole" § 2-101

"Local correctional facility" § 1-101

"Person" § 1-101

"State correctional facility" § 1-101

2-202. SAME -- SENTENCE OF DEATH.

(A) REQUIREMENT FOR IMPOSITION.

A DEFENDANT FOUND GUILTY OF MURDER IN THE FIRST DEGREE MAY BE SENTENCED TO DEATH ONLY IF:

(1) AT LEAST 30 DAYS BEFORE TRIAL, THE STATE GAVE WRITTEN NOTICE TO THE DEFENDANT OF:

(I) THE STATE'S INTENTION TO SEEK A SENTENCE OF DEATH; AND

(II) EACH AGGRAVATING CIRCUMSTANCE ON WHICH THE STATE INTENDS TO RELY;

(2) (I) WITH RESPECT TO § 2-303(G) OF THIS TITLE, EXCEPT FOR § 2-303(G)(1)(I) AND (VII) OF THIS TITLE, THE DEFENDANT WAS A PRINCIPAL IN THE FIRST DEGREE; OR

(II) WITH RESPECT TO § 2-303(G)(1)(I) OF THIS TITLE, A LAW ENFORCEMENT OFFICER, AS DEFINED IN § 2-303(A) OF THIS TITLE, WAS MURDERED AND THE DEFENDANT WAS:

1. A PRINCIPAL IN THE FIRST DEGREE; OR

2. A PRINCIPAL IN THE SECOND DEGREE WHO:

A. WILLFULLY, DELIBERATELY, AND WITH PREMEDITATION INTENDED THE DEATH OF THE LAW ENFORCEMENT OFFICER;

B. WAS A MAJOR PARTICIPANT IN THE MURDER; AND

C. WAS ACTUALLY PRESENT AT THE TIME AND PLACE OF THE MURDER; AND

(3) THE SENTENCE OF DEATH IS IMPOSED IN ACCORDANCE WITH § 2-303 OF THIS TITLE.

(B) LIMITATIONS.

(1) IN THIS SUBSECTION, A DEFENDANT IS "MENTALLY RETARDED" IF:

(I) THE DEFENDANT HAD SIGNIFICANTLY BELOW AVERAGE INTELLECTUAL FUNCTIONING, AS SHOWN BY AN INTELLIGENCE QUOTIENT OF 70 OR BELOW ON AN INDIVIDUALLY ADMINISTERED INTELLIGENCE QUOTIENT TEST AND AN IMPAIRMENT IN ADAPTIVE BEHAVIOR; AND

(II) THE MENTAL RETARDATION WAS MANIFESTED BEFORE THE AGE OF 22 YEARS.

(2) A DEFENDANT MAY NOT BE SENTENCED TO DEATH, BUT SHALL BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE SUBJECT TO THE REQUIREMENTS OF § 2-203(1) OF THIS SUBTITLE OR IMPRISONMENT FOR LIFE, IF THE DEFENDANT:

(I) WAS UNDER THE AGE OF 18 YEARS AT THE TIME OF THE MURDER; OR

(II) PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT AT THE TIME OF THE MURDER THE DEFENDANT WAS MENTALLY RETARDED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 413(e)(1) and 412(f)(1) and (3), (g)(1), and, as it related to limitations on sentencing to death, the second sentence of (b).

Subsection (a)(2) of this section is revised as a substantive provision based on the definitions of "defendant" and "person" in former Art. 27, § 413(e)(1) that limited who might receive a death sentence.

Defined term: "Imprisonment for life without the possibility of parole" § 2-101

2-203. SAME -- SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

A DEFENDANT FOUND GUILTY OF MURDER IN THE FIRST DEGREE MAY BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE ONLY IF:

(1) AT LEAST 30 DAYS BEFORE TRIAL, THE STATE GAVE WRITTEN NOTICE TO THE DEFENDANT OF THE STATE'S INTENTION TO SEEK A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE; AND

(2) THE SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE IS IMPOSED IN ACCORDANCE WITH § 2-304 OF THIS TITLE.

REVISOR'S NOTE: All but item (2) of this section is new language derived without substantive change from former Art. 27, § 412(g)(2), and, as it related to limitations on sentencing to life imprisonment without parole, the second sentence of (b).

Item (2) of this section is new language added for clarity and consistency with § 2-202(a)(3) of this subtitle.

Defined term: "Imprisonment for life without the possibility of parole" § 2-101

2-204. MURDER IN THE SECOND DEGREE.

(A) IN GENERAL.

A MURDER THAT IS NOT IN THE FIRST DEGREE UNDER § 2-201 OF THIS SUBTITLE IS IN THE SECOND DEGREE.

(B) PENALTY.

A PERSON WHO COMMITS A MURDER IN THE SECOND DEGREE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 411 and 412(d).

In subsection (a) of this section, the reference to a "murder that is not in the first degree under § 2-201 of this subtitle" is substituted for the former reference to "[a]ll other kinds of murder" for clarity.

In subsection (b) of this section, the phrase "guilty of a felony" is added for clarity and consistency within this article. Murder is one of the original felonies at common law; the statutory division of the crime into two degrees does not alter the felonious character of the crime or its common-law status. *See Newton v. State*, 280 Md. 260 (1977).

Defined term: "Person" § 1-101

2-205. ATTEMPT TO COMMIT MURDER IN THE FIRST DEGREE.

A PERSON WHO ATTEMPTS TO COMMIT MURDER IN THE FIRST DEGREE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING LIFE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 411A(b).

Defined term: "Person" § 1-101

2-206. ATTEMPT TO COMMIT MURDER IN THE SECOND DEGREE.

A PERSON WHO ATTEMPTS TO COMMIT MURDER IN THE SECOND DEGREE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 411A(a).

Defined term: "Person" § 1-101

2-207. MANSLAUGHTER.

(A) PENALTY.

A PERSON WHO COMMITS MANSLAUGHTER IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

(1) IMPRISONMENT NOT EXCEEDING 10 YEARS; OR

(2) IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $500 OR BOTH.

(B) SPOUSAL ADULTERY NOT A MITIGATING FACTOR.

THE DISCOVERY OF ONE'S SPOUSE ENGAGED IN SEXUAL INTERCOURSE WITH ANOTHER DOES NOT CONSTITUTE LEGALLY ADEQUATE PROVOCATION FOR THE PURPOSE OF MITIGATING A KILLING FROM THE CRIME OF MURDER TO VOLUNTARY MANSLAUGHTER EVEN THOUGH THE KILLING WAS PROVOKED BY THAT DISCOVERY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 387 and 387A.

In subsection (a) of this section, the phrase "guilty of a felony" is added for clarity and consistency with other penalty provisions throughout the revised articles of the Code. Manslaughter of all types is a felony at common law in Maryland. *See, e.g., State v. Gibson*, 4 Md. App. 236 (1968), *aff'd*, 254 Md. 399 (1969); *Forbes v. State*, 324 Md. 335 (1991).

Also in subsection (a) of this section, the former phrase "in the discretion of the court" is deleted as implicit in setting a maximum penalty.

In subsection (a)(1) of this section, the former reference to a person being subject to imprisonment "in the penitentiary" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular

facility. *See* CS § 9-103.

In subsection (a)(2) of this section, the defined term "local correctional facility" is substituted for the former term "jail" for consistency with the Correctional Services Article.

In subsection (b) of this section, the phrase "even though" the killing was provoked is substituted for the former reference to "when" the killing was provoked for clarity. The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the discovery of one's spouse engaged in sexual intercourse also does not constitute legally adequate provocation for mitigating a killing from murder to manslaughter when the killing is provoked by anything other than that discovery.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the distinction between the general term of imprisonment available for a manslaughter conviction under subsection (a)(1) of this section and the term for imprisonment in a local correctional facility under subsection (a)(2) of this section is substantial, perhaps reflecting an implicit distinction between sentencing for voluntary and involuntary manslaughter. Generally, distinctions between imprisonment in a State or local correctional facility have been eliminated in light of CS §§ 9-104 and 9-105, which govern the place of custody based on the length of imprisonment imposed. The General Assembly may wish to clarify which situations warrant sentencing to a longer term in a State correctional facility or for a shorter term to a local correctional facility.

Defined terms: "Local correctional facility" § 1-101

"Person" § 1-101

2-208. MURDER AND MANSLAUGHTER -- CHARGING DOCUMENT.

(A) CONTENTS.

AN INDICTMENT FOR MURDER OR MANSLAUGHTER IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) FELONIOUSLY (WILLFULLY AND WITH DELIBERATELY PREMEDITATED MALICE) KILLED (AND MURDERED) (NAME OF VICTIM) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) MANNER OR MEANS OF DEATH.

AN INDICTMENT FOR MURDER OR MANSLAUGHTER, OR FOR BEING AN ACCESSORY TO MURDER OR MANSLAUGHTER, NEED NOT SET FORTH THE MANNER OR MEANS OF DEATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616.

In subsection (a) of this section, the former word "aforethought" is deleted as implicit in the reference to "malice" as a prerequisite to one form of murder. *See Ross v. State*, 308 Md. 337 (1987).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that on its face this section only applies to an "indictment" for murder, and not to any other charging document for murder, such as a criminal information.

Defined term: "County" § 1-101

2-209. MANSLAUGHTER BY VEHICLE OR VESSEL.

(A) "VEHICLE" DEFINED.

IN THIS SECTION, "VEHICLE" INCLUDES A MOTOR VEHICLE, STREETCAR, LOCOMOTIVE, ENGINE, AND TRAIN.

(B) PROHIBITED.

A PERSON MAY NOT CAUSE THE DEATH OF ANOTHER AS A RESULT OF THE PERSON'S DRIVING, OPERATING, OR CONTROLLING A VEHICLE OR VESSEL IN A GROSSLY NEGLIGENT MANNER.

(C) NAME OF CRIME.

A VIOLATION OF THIS SECTION IS MANSLAUGHTER BY VEHICLE OR VESSEL.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(E) CHARGING DOCUMENT.

(1) AN INDICTMENT OR OTHER CHARGING DOCUMENT FOR MANSLAUGHTER BY VEHICLE OR VESSEL IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) KILLED (NAME OF VICTIM) IN A GROSSLY NEGLIGENT MANNER AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(2) AN INDICTMENT OR OTHER CHARGING DOCUMENT FOR MANSLAUGHTER BY VEHICLE OR VESSEL NEED NOT SET FORTH THE MANNER OR MEANS OF DEATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 388.

In subsection (a) of this section, the former references to an "automobile" and a "car" are deleted in light of the broad reference to a "motor vehicle".

In subsection (b) of this section, the reference to "the person's" driving, operating, or controlling a vehicle or vessel is added for consistency with Subtitle 5 of this title.

In subsection (d) of this section, the former reference to a "jail or the house of correction" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

In subsection (e)(1) of this section, the phrase "against the peace, government, and dignity of the State" is added to comply with Md. Constitution Art. IV, § 13, which requires that an indictment "conclude, `against the peace, government and dignity of the State'".

Also in subsection (e)(1) of this section, the former reference to "unlawfully" killing is deleted as surplusage.

In subsection (e)(2) of this section, the reference to the manner "or" means of death is substituted for the former reference to the manner "and" means of death for consistency with § 2-208 of this subtitle.

Defined terms: "County" § 1-101

"Person" § 1-101

"Vessel" § 2-101

SUBTITLE 3. MURDER -- TRIAL AND SENTENCING.

2-301. INTENT TO SEEK DEATH PENALTY -- NOTICE TO COURT OF APPEALS.

(A) NOTICE REQUIRED.

THE STATE'S ATTORNEY SHALL FILE WITH THE CLERK OF THE COURT OF APPEALS A COPY OF EACH:

(1) NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH; AND

(2) WITHDRAWAL OF NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH.

(B) EFFECT OF FAILURE TO NOTIFY.

THE FAILURE OF A STATE'S ATTORNEY TO GIVE TIMELY NOTICE TO THE CLERK OF THE COURT OF APPEALS UNDER SUBSECTION (A)(1) OF THIS SECTION DOES NOT AFFECT THE VALIDITY OF A NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH THAT IS SERVED ON THE DEFENDANT IN A TIMELY MANNER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 412(c).

In subsection (a) of this section, the former phrase "[i]f a State's Attorney

files or withdraws a notice of intent to seek a sentence of death" is deleted as implicit in the references to "each" notice or withdrawal.

2-302. VERDICT.

WHEN A COURT OR JURY FINDS A PERSON GUILTY OF MURDER, THE COURT OR JURY SHALL STATE IN THE VERDICT WHETHER THE PERSON IS GUILTY OF MURDER IN THE FIRST DEGREE OR MURDER IN THE SECOND DEGREE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 412(a).

The phrase "that determined the person's guilt", which formerly modified "court or jury", is deleted as implicit.

Defined term: "Person" § 1-101

2-303. FIRST DEGREE MURDER -- SENTENCING PROCEDURE -- DEATH PENALTY.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "CORRECTIONAL FACILITY" HAS THE MEANING STATED IN § 1-101 OF THIS ARTICLE.

(II) "CORRECTIONAL FACILITY" INCLUDES:

1. AN INSTITUTION FOR THE CONFINEMENT OR DETENTION OF JUVENILES CHARGED WITH OR ADJUDICATED AS BEING DELINQUENT; AND

2. A HOSPITAL IN WHICH A PERSON IS CONFINED UNDER AN ORDER OF A COURT EXERCISING CRIMINAL JURISDICTION.

(3) (I) "LAW ENFORCEMENT OFFICER" MEANS A LAW ENFORCEMENT OFFICER AS DEFINED UNDER THE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS, ARTICLE 27, § 727 OF THE CODE.

(II) "LAW ENFORCEMENT OFFICER" INCLUDES:

1. A LAW ENFORCEMENT OFFICER OF A JURISDICTION OUTSIDE OF THE STATE;

2. AN OFFICER SERVING IN A PROBATIONARY STATUS;

3. A PAROLE AND PROBATION OFFICER; AND

4. A LAW ENFORCEMENT OFFICER WHILE PRIVATELY EMPLOYED AS A SECURITY OFFICER OR SPECIAL POLICE OFFICER UNDER ARTICLE 41, §§ 4-901 THROUGH 4-913 OF THE CODE IF THE LAW ENFORCEMENT OFFICER IS

WEARING THE UNIFORM WORN WHILE ACTING IN AN OFFICIAL CAPACITY OR IS DISPLAYING PROMINENTLY THE OFFICER'S OFFICIAL BADGE OR OTHER INSIGNIA OF OFFICE.

(B) IMPOSITION OF DEATH PENALTY -- SENTENCING PROCEEDING.

IF THE STATE GAVE NOTICE UNDER § 2-202(A)(1) OF THIS TITLE, A SEPARATE SENTENCING PROCEEDING SHALL BE HELD AS SOON AS PRACTICABLE AFTER A DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST DEGREE TO DETERMINE WHETHER THE DEFENDANT SHALL BE SENTENCED TO DEATH.

(C) SAME -- DETERMINATION BY COURT OR JURY.

THE SENTENCING PROCEEDING UNDER SUBSECTION (B) OF THIS SECTION SHALL BE CONDUCTED:

(1) BEFORE THE JURY THAT DETERMINED THE DEFENDANT'S GUILT;

(2) BEFORE A JURY IMPANELED FOR PURPOSES OF THE PROCEEDING IF:

(I) THE DEFENDANT WAS CONVICTED BASED ON A GUILTY PLEA;

(II) THE DEFENDANT WAS CONVICTED AFTER A TRIAL BY A COURT SITTING WITHOUT A JURY;

(III) THE COURT, FOR GOOD CAUSE, DISCHARGED THE JURY THAT CONVICTED THE DEFENDANT; OR

(IV) A COURT OF COMPETENT JURISDICTION REMANDED THE CASE FOR RESENTENCING FOLLOWING A REVIEW OF THE ORIGINAL SENTENCE OF DEATH; OR

(3) BEFORE THE COURT, IF THE DEFENDANT WAIVES A JURY SENTENCING PROCEEDING.

(D) JURY COMPOSITION -- ALTERNATE JURORS.

(1) A JUDGE SHALL APPOINT AT LEAST TWO ALTERNATE JURORS WHEN IMPANELING A JURY FOR ANY PROCEEDING:

(I) IN WHICH THE DEFENDANT IS BEING TRIED FOR A CRIME FOR WHICH THE DEATH PENALTY MAY BE IMPOSED; OR

(II) THAT IS HELD UNDER THIS SECTION.

(2) THE ALTERNATE JURORS SHALL BE RETAINED THROUGHOUT THE PROCEEDINGS UNDER ANY RESTRICTIONS THAT THE JUDGE IMPOSES.

(3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, IF A JUROR DIES, IS DISQUALIFIED, BECOMES INCAPACITATED, OR IS DISCHARGED FOR ANY OTHER REASON BEFORE THE JURY BEGINS ITS DELIBERATIONS ON SENTENCING, AN

ALTERNATE JUROR BECOMES A JUROR IN THE ORDER SELECTED, AND SERVES IN ALL RESPECTS AS A JUROR SELECTED ON THE REGULAR TRIAL PANEL.

(4) AN ALTERNATE JUROR MAY NOT REPLACE A JUROR WHO IS DISCHARGED DURING THE ACTUAL DELIBERATIONS OF THE JURY ON THE GUILT OR INNOCENCE OF THE DEFENDANT OR ON SENTENCING.

(E) EVIDENCE; OPPORTUNITY FOR ARGUMENTS.

(1) THE FOLLOWING TYPE OF EVIDENCE IS ADMISSIBLE IN A SENTENCING PROCEEDING:

(I) EVIDENCE RELATING TO A MITIGATING CIRCUMSTANCE THAT IS LISTED UNDER SUBSECTION (H) OF THIS SECTION;

(II) EVIDENCE RELATING TO AN AGGRAVATING CIRCUMSTANCE:

1. THAT IS LISTED UNDER SUBSECTION (G) OF THIS SECTION; AND

2. OF WHICH THE STATE PROVIDED NOTICE UNDER § 2-202(A)(1)(II) OF THIS SUBTITLE;

(III) EVIDENCE OF A PRIOR CRIMINAL CONVICTION, GUILTY PLEA, PLEA OF NOLO CONTENDERE, OR THE ABSENCE OF ANY PRIOR CONVICTIONS OR PLEAS, TO THE SAME EXTENT THAT THE EVIDENCE WOULD BE ADMISSIBLE IN OTHER SENTENCING PROCEDURES;

(IV) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ANY PRESENTENCE INVESTIGATION REPORT; AND

(V) ANY OTHER EVIDENCE THE COURT FINDS TO HAVE PROBATIVE VALUE AND RELEVANCE TO SENTENCING, IF THE DEFENDANT HAS A FAIR OPPORTUNITY TO REBUT ANY STATEMENT.

(2) A RECOMMENDATION IN A PRESENTENCE INVESTIGATION REPORT AS TO A SENTENCE IS NOT ADMISSIBLE IN A SENTENCING PROCEEDING.

(3) THE STATE AND THE DEFENDANT OR COUNSEL FOR THE DEFENDANT MAY PRESENT ARGUMENT FOR OR AGAINST THE SENTENCE OF DEATH.

(F) JURY INSTRUCTIONS.

(1) AFTER THE EVIDENCE IS PRESENTED TO THE JURY IN THE SENTENCING PROCEEDING, THE COURT SHALL:

(I) GIVE ANY APPROPRIATE INSTRUCTIONS ALLOWED BY LAW; AND

(II) INSTRUCT THE JURY AS TO:

1. THE FINDINGS THAT THE JURY MUST MAKE TO DETERMINE WHETHER THE DEFENDANT SHALL BE SENTENCED TO DEATH, IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE, OR IMPRISONMENT FOR LIFE; AND

2. THE BURDEN OF PROOF APPLICABLE TO THE FINDINGS UNDER SUBSECTION (G)(2) OR (I)(1) AND (2) OF THIS SECTION.

(2) THE COURT MAY NOT INSTRUCT THE JURY THAT THE JURY IS TO ASSUME THAT A SENTENCE OF LIFE IMPRISONMENT IS FOR THE NATURAL LIFE OF THE DEFENDANT.

(G) CONSIDERATION OF AGGRAVATING CIRCUMSTANCES.

(1) IN DETERMINING A SENTENCE UNDER SUBSECTION (B) OF THIS SECTION, THE COURT OR JURY FIRST SHALL CONSIDER WHETHER ANY OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES EXISTS BEYOND A REASONABLE DOUBT:

(I) ONE OR MORE PERSONS COMMITTED THE MURDER OF A LAW ENFORCEMENT OFFICER WHILE THE OFFICER WAS PERFORMING THE OFFICER'S DUTIES;

(II) THE DEFENDANT COMMITTED THE MURDER WHILE CONFINED IN A CORRECTIONAL FACILITY;

(III) THE DEFENDANT COMMITTED THE MURDER IN FURTHERANCE OF AN ESCAPE FROM, AN ATTEMPT TO ESCAPE FROM, OR AN ATTEMPT TO EVADE LAWFUL ARREST, CUSTODY, OR DETENTION BY:

1. A GUARD OR OFFICER OF A CORRECTIONAL FACILITY; OR

2. A LAW ENFORCEMENT OFFICER;

(IV) THE VICTIM WAS TAKEN OR ATTEMPTED TO BE TAKEN IN THE COURSE OF AN ABDUCTION, KIDNAPPING, OR AN ATTEMPT TO ABDUCT OR KIDNAP;

(V) THE VICTIM WAS A CHILD ABDUCTED IN VIOLATION OF § 3-503(A)(1) OF THIS ARTICLE;

(VI) THE DEFENDANT COMMITTED THE MURDER UNDER AN AGREEMENT OR CONTRACT FOR REMUNERATION OR PROMISE OF REMUNERATION TO COMMIT THE MURDER;

(VII) THE DEFENDANT EMPLOYED OR ENGAGED ANOTHER TO COMMIT THE MURDER AND THE MURDER WAS COMMITTED UNDER AN AGREEMENT OR CONTRACT FOR REMUNERATION OR PROMISE OF REMUNERATION;

(VIII) THE DEFENDANT COMMITTED THE MURDER WHILE UNDER A SENTENCE OF DEATH OR IMPRISONMENT FOR LIFE;

(IX) THE DEFENDANT COMMITTED MORE THAN ONE MURDER IN THE FIRST DEGREE ARISING OUT OF THE SAME INCIDENT; OR

(X) THE DEFENDANT COMMITTED THE MURDER WHILE COMMITTING, OR ATTEMPTING TO COMMIT:

1. ARSON IN THE FIRST DEGREE;

2. CARJACKING OR ARMED CARJACKING;

3. RAPE IN THE FIRST DEGREE;

4. ROBBERY UNDER § 3-402 OR § 3-403 OF THIS ARTICLE; OR

5. SEXUAL OFFENSE IN THE FIRST DEGREE.

(2) IF THE COURT OR JURY DOES NOT FIND THAT ONE OR MORE OF THE AGGRAVATING CIRCUMSTANCES EXIST BEYOND A REASONABLE DOUBT:

(I) IT SHALL STATE THAT CONCLUSION IN WRITING; AND

(II) A DEATH SENTENCE MAY NOT BE IMPOSED.

(H) CONSIDERATION OF MITIGATING CIRCUMSTANCES.

(1) IN THIS SUBSECTION, "CRIME OF VIOLENCE" MEANS:

(I) ABDUCTION;

(II) ARSON IN THE FIRST DEGREE;

(III) CARJACKING OR ARMED CARJACKING;

(IV) ESCAPE IN THE FIRST DEGREE;

(V) KIDNAPPING;

(VI) MAYHEM;

(VII) MURDER;

(VIII) RAPE IN THE FIRST OR SECOND DEGREE;

(IX) ROBBERY UNDER § 3-402 OR § 3-403 OF THIS ARTICLE;

(X) SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE;

(XI) MANSLAUGHTER OTHER THAN INVOLUNTARY MANSLAUGHTER;

(XII) AN ATTEMPT TO COMMIT ANY CRIME LISTED IN ITEMS (I) THROUGH (XI) OF THIS PARAGRAPH; OR

(XIII) THE USE OF A HANDGUN IN THE COMMISSION OF A FELONY OR OTHER CRIME OF VIOLENCE.

(2) IF THE COURT OR JURY FINDS BEYOND A REASONABLE DOUBT THAT ONE OR MORE OF THE AGGRAVATING CIRCUMSTANCES UNDER SUBSECTION (G) OF THIS SECTION EXIST, IT THEN SHALL CONSIDER WHETHER ANY OF THE FOLLOWING MITIGATING CIRCUMSTANCES EXISTS BASED ON A PREPONDERANCE OF THE EVIDENCE:

(I) THE DEFENDANT PREVIOUSLY HAS NOT:

1. BEEN FOUND GUILTY OF A CRIME OF VIOLENCE;

2. ENTERED A GUILTY PLEA OR A PLEA OF NOLO CONTENDERE TO A CHARGE OF A CRIME OF VIOLENCE; OR

3. RECEIVED PROBATION BEFORE JUDGMENT FOR A CRIME OF VIOLENCE;

(II) THE VICTIM WAS A PARTICIPANT IN THE CONDUCT OF THE DEFENDANT OR CONSENTED TO THE ACT THAT CAUSED THE VICTIM'S DEATH;

(III) THE DEFENDANT ACTED UNDER SUBSTANTIAL DURESS, DOMINATION, OR PROVOCATION OF ANOTHER, BUT NOT SO SUBSTANTIAL AS TO CONSTITUTE A COMPLETE DEFENSE TO THE PROSECUTION;

(IV) THE MURDER WAS COMMITTED WHILE THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF THE DEFENDANT'S CONDUCT OR TO CONFORM THAT CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED DUE TO EMOTIONAL DISTURBANCE, MENTAL DISORDER, OR MENTAL INCAPACITY;

(V) THE DEFENDANT WAS OF A YOUTHFUL AGE AT THE TIME OF THE MURDER;

(VI) THE ACT OF THE DEFENDANT WAS NOT THE SOLE PROXIMATE CAUSE OF THE VICTIM'S DEATH;

(VII) IT IS UNLIKELY THAT THE DEFENDANT WILL ENGAGE IN FURTHER CRIMINAL ACTIVITY THAT WOULD BE A CONTINUING THREAT TO SOCIETY; OR

(VIII) ANY OTHER FACT THAT THE COURT OR JURY SPECIFICALLY SETS FORTH IN WRITING AS A MITIGATING CIRCUMSTANCE IN THE CASE.

(I) FINDINGS; DOCUMENTATION OF DECISION.

(1) IF THE COURT OR JURY FINDS THAT ONE OR MORE OF THE MITIGATING CIRCUMSTANCES UNDER SUBSECTION (H) OF THIS SECTION EXISTS, IT SHALL DETERMINE BY A PREPONDERANCE OF THE EVIDENCE WHETHER THE

AGGRAVATING CIRCUMSTANCES UNDER SUBSECTION (G) OF THIS SECTION OUTWEIGH THE MITIGATING CIRCUMSTANCES.

(2) IF THE COURT OR JURY FINDS THAT THE AGGRAVATING CIRCUMSTANCES:

(I) OUTWEIGH THE MITIGATING CIRCUMSTANCES, A DEATH SENTENCE SHALL BE IMPOSED; OR

(II) DO NOT OUTWEIGH THE MITIGATING CIRCUMSTANCES, A DEATH SENTENCE MAY NOT BE IMPOSED.

(3) IF THE DETERMINATION IS BY A JURY, A DECISION TO IMPOSE A DEATH SENTENCE MUST BE UNANIMOUS AND SHALL BE SIGNED BY THE JURY FOREPERSON.

(4) A COURT OR JURY SHALL PUT ITS DETERMINATION IN WRITING AND SHALL STATE SPECIFICALLY:

(I) EACH AGGRAVATING CIRCUMSTANCE FOUND;

(II) EACH MITIGATING CIRCUMSTANCE FOUND;

(III) WHETHER ANY AGGRAVATING CIRCUMSTANCES FOUND UNDER SUBSECTION (G) OF THIS SECTION OUTWEIGH THE MITIGATING CIRCUMSTANCES FOUND UNDER SUBSECTION (H) OF THIS SECTION;

(IV) WHETHER THE AGGRAVATING CIRCUMSTANCES FOUND UNDER SUBSECTION (G) OF THIS SECTION DO NOT OUTWEIGH THE MITIGATING CIRCUMSTANCES FOUND UNDER SUBSECTION (H) OF THIS SECTION; AND

(V) THE SENTENCE DETERMINED UNDER SUBSECTION (G)(2) OF THIS SECTION OR PARAGRAPHS (1) AND (2) OF THIS SUBSECTION.

(J) SENTENCING.

(1) IF A JURY DETERMINES THAT A DEATH SENTENCE SHALL BE IMPOSED UNDER THE PROVISIONS OF THIS SECTION, THE COURT SHALL IMPOSE A DEATH SENTENCE.

(2) IF, WITHIN A REASONABLE TIME, THE JURY IS UNABLE TO AGREE AS TO WHETHER A DEATH SENTENCE SHALL BE IMPOSED, THE COURT MAY NOT IMPOSE A DEATH SENTENCE.

(3) IF THE SENTENCING PROCEEDING IS CONDUCTED BEFORE A COURT WITHOUT A JURY, THE COURT SHALL DETERMINE WHETHER A DEATH SENTENCE SHALL BE IMPOSED UNDER THE PROVISIONS OF THIS SECTION.

(4) IF THE COURT OR JURY DETERMINES THAT A DEATH SENTENCE MAY NOT BE IMPOSED AND THE STATE GAVE NOTICE UNDER § 2-203(1) OF THIS TITLE, A

DETERMINATION SHALL BE MADE CONCERNING IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER § 2-304 OF THIS SUBTITLE.

(5) IF THE COURT OR JURY DETERMINES THAT A DEATH SENTENCE MAY NOT BE IMPOSED AND IF THE STATE DID NOT GIVE NOTICE UNDER § 2-203(1) OF THIS TITLE, THE COURT SHALL IMPOSE A SENTENCE OF IMPRISONMENT FOR LIFE.

(K) CERTIFICATION OF PROCEEDINGS.

(1) IMMEDIATELY AFTER THE IMPOSITION OF A DEATH SENTENCE:

(I) THE CLERK OF THE COURT IN WHICH SENTENCE IS IMPOSED, IF DIFFERENT FROM THE COURT WHERE THE INDICTMENT OR INFORMATION WAS FILED, SHALL CERTIFY THE PROCEEDINGS TO THE CLERK OF THE COURT WHERE THE INDICTMENT OR INFORMATION WAS FILED; AND

(II) THE CLERK OF THE COURT WHERE THE INDICTMENT OR INFORMATION WAS FILED SHALL COPY THE DOCKET ENTRIES IN THE INMATE'S CASE, SIGN THE COPIES, AND DELIVER THEM TO THE GOVERNOR.

(2) THE DOCKET ENTRIES SHALL SHOW FULLY THE SENTENCE OF THE COURT AND THE DATE THAT THE SENTENCE WAS ENTERED.

(L) METHOD OF IMPOSING DEATH SENTENCE.

IF THE DEFENDANT IS SENTENCED TO DEATH, THE COURT BEFORE WHICH THE DEFENDANT IS TRIED AND CONVICTED SHALL SENTENCE THE DEFENDANT TO DEATH BY INTRAVENOUS ADMINISTRATION OF A LETHAL QUANTITY OF AN ULTRASHORT-ACTING BARBITURATE OR OTHER SIMILAR DRUG IN COMBINATION WITH A CHEMICAL PARALYTIC AGENT.

REVISOR'S NOTE: All but subsection (a)(2)(i) of this section is new language derived without substantive change from former Art. 27, §§ 413A, 414A, 627, and 413(a) through (d), the introductory language of (e), (e)(2) and (3), (f) through (j), (k)(1) through (4), and (m).

Subsection (a)(2)(i) of this section is new language substituted for the former reference to an "institution for the detention or confinement of persons charged with or convicted of a crime, including Patuxent Institution" in former Art. 27, § 413(e)(2) for clarity.

Subsection (a)(2)(ii) of this section is revised to incorporate the remainder of former Art. 27, § 413(e)(2) to the extent not covered by the defined term "correctional facility".

In subsection (a)(1) of this section, the former qualification, "unless a contrary meaning is clearly intended from the context in which the term appears", is deleted as an unnecessary statement of a standard rule of statutory construction that applies to all definitions.

In subsection (a)(3)(i) of this section, the reference to the "Law Enforcement Officers' Bill of Rights" is added for clarity.

In subsection (a)(3)(ii) through (v) of this section, the former reference to the defined terms "as used in [former § 413(d)]" is deleted as surplusage.

In subsection (b) of this section, the cross-reference to former Art. 27, § 412(b) is narrowed to incorporate only the portion of that provision pertaining to death sentences now § 2-202(a)(1) of this title. A similar change is made in subsection (e)(1)(ii)2 of this section.

Also in subsection (b) of this section, the phrase "after a defendant is found guilty of murder in the first degree" is substituted for the former phrase "after the trial has been completed" to reflect that the sentencing proceeding could follow a guilty plea.

In subsection (d)(2) of this section, the former reference to "regulations" is deleted in light of the broad reference to "restrictions" and to avoid inconsistent use of the term "regulations" as defined in the Administrative Procedure Act and as used throughout the revised articles of the Code. *See* General Revisor's Note to article.

In subsection (g)(1)(vi) and (vii) of this section, the references to a killing "under" an agreement or contract are substituted for the former references to a killing "pursuant to" an agreement or contract for clarity.

In subsection (h)(2)(i) of this section, the reference to "probation before judgment" is substituted for the former reference to "probation on stay of entry of judgment" for brevity.

In subsection (h)(2)(v) of this section, the specific reference to "murder" is substituted for the former reference to the "crime" for clarity.

In subsection (i)(3) of this section, the phrase "to impose a death sentence" is added for clarity.

In subsection (l) of this section, the former phrase "on conviction," is deleted as implicit in the reference to being "sentenced".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (g)(1)(viii) of this section, although committing a murder while under a sentence of "death" or "imprisonment for life" is an aggravating circumstance for considering the death penalty, committing a murder while under a sentence of "imprisonment for life without the possibility of parole", a defined term, is not specifically included as an aggravating circumstance. The General Assembly may wish to address this apparent omission.

Defined terms: "Correctional facility" § 1-101

"Imprisonment for life without the possibility of parole" § 2-101

"Inmate" § 1-101

"Person" § 1-101

2-304. SAME -- SENTENCING PROCEDURE IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(A) IN GENERAL.

(1) IF THE STATE GAVE NOTICE UNDER § 2-203(1) OF THIS TITLE, BUT DID NOT GIVE NOTICE OF INTENT TO SEEK THE DEATH PENALTY UNDER § 2-202(A)(1) OF THIS TITLE, THE COURT SHALL CONDUCT A SEPARATE SENTENCING PROCEEDING AS SOON AS PRACTICABLE AFTER THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST DEGREE TO DETERMINE WHETHER THE DEFENDANT SHALL BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE OR TO IMPRISONMENT FOR LIFE.

(2) IF THE STATE GAVE NOTICE UNDER BOTH §§ 2-202(A)(1) AND 2-203(1) OF THIS TITLE, BUT THE COURT OR JURY DETERMINES THAT THE DEATH SENTENCE MAY NOT BE IMPOSED, THAT COURT OR JURY SHALL DETERMINE WHETHER THE DEFENDANT SHALL BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE OR TO IMPRISONMENT FOR LIFE.

(B) FINDINGS.

(1) A DETERMINATION BY A JURY TO IMPOSE A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE MUST BE UNANIMOUS.

(2) IF THE JURY FINDS THAT A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE SHALL BE IMPOSED, THE COURT SHALL IMPOSE A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(3) IF, WITHIN A REASONABLE TIME, THE JURY IS UNABLE TO AGREE TO IMPOSITION OF A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE, THE COURT SHALL IMPOSE A SENTENCE OF IMPRISONMENT FOR LIFE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 413(k)(5) through (8).

In subsection (a)(1) of this section, the phrase "after the defendant is found guilty of murder in the first degree" is substituted for the former phrase "after the trial has been completed" to reflect that the sentencing proceeding could follow a guilty plea.

In subsection (b)(3) of this section, the former phrase requiring the court to "dismiss the jury" is deleted as implicit.

Defined term: "Imprisonment for life without the possibility of parole" § 2-101

2-305. RULES GOVERNING SENTENCING PROCEEDINGS.

THE COURT OF APPEALS MAY ADOPT:

(1) RULES OF PROCEDURE TO GOVERN THE CONDUCT OF SENTENCING PROCEEDINGS UNDER §§ 2-303 AND 2-304 OF THIS SUBTITLE; AND

(2) FORMS FOR A COURT OR JURY TO USE IN MAKING WRITTEN FINDINGS AND SENTENCE DETERMINATIONS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 413(l).

For rules of procedure and forms used in capital cases, *see* Md. Rule 4-343.

SUBTITLE 4. SAME -- REVIEW BY COURT OF APPEALS.

2-401. PROCEDURE -- AUTOMATIC REVIEW.

(A) IN GENERAL.

(1) AFTER A DEATH SENTENCE IS IMPOSED AND THE JUDGMENT BECOMES FINAL, THE COURT OF APPEALS SHALL REVIEW THE SENTENCE ON THE RECORD.

(2) THE COURT OF APPEALS SHALL CONSOLIDATE AN APPEAL FROM THE VERDICT WITH THE SENTENCE REVIEW.

(B) TRIAL COURT RECORD.

THE CLERK OF THE TRIAL COURT SHALL SEND TO THE CLERK OF THE COURT OF APPEALS:

(1) THE ENTIRE RECORD AND THE TRANSCRIPT OF THE SENTENCING PROCEEDING WITHIN 10 DAYS AFTER RECEIVING THE TRANSCRIPT;

(2) THE DETERMINATION AND WRITTEN FINDINGS OF THE COURT OR JURY; AND

(3) A REPORT OF THE TRIAL COURT THAT:

(I) IS IN THE FORM OF A STANDARD QUESTIONNAIRE SUPPLIED BY THE COURT OF APPEALS; AND

(II) INCLUDES A RECOMMENDATION BY THE TRIAL COURT AS TO WHETHER THE DEATH SENTENCE IS JUSTIFIED.

(C) BRIEFS; ORAL ARGUMENTS.

THE DEFENDANT AND THE STATE MAY SUBMIT BRIEFS AND PRESENT ORAL ARGUMENTS TO THE COURT OF APPEALS WITHIN THE TIME ALLOWED BY THE COURT.

(D) CONSIDERATION BY COURT OF APPEALS.

(1) IN ADDITION TO ANY ERROR PROPERLY BEFORE THE COURT ON APPEAL, THE COURT OF APPEALS SHALL CONSIDER THE IMPOSITION OF THE DEATH SENTENCE.

(2) WITH REGARD TO THE DEATH SENTENCE, THE COURT OF APPEALS SHALL DETERMINE WHETHER:

(I) THE IMPOSITION OF THE DEATH SENTENCE WAS INFLUENCED BY PASSION, PREJUDICE, OR ANY OTHER ARBITRARY FACTOR;

(II) THE EVIDENCE SUPPORTS THE FINDING BY THE COURT OR JURY OF A STATUTORY AGGRAVATING CIRCUMSTANCE UNDER § 2-303(G) OF THIS TITLE; AND

(III) THE EVIDENCE SUPPORTS A FINDING BY THE COURT OR JURY THAT THE AGGRAVATING CIRCUMSTANCES OUTWEIGH THE MITIGATING CIRCUMSTANCES UNDER § 2-303(H) AND (I)(1) OF THIS SUBTITLE.

(3) IN ADDITION TO ITS REVIEW UNDER ANY DIRECT APPEAL, WITH REGARD TO THE DEATH SENTENCE, THE COURT OF APPEALS SHALL:

(I) AFFIRM THE DEATH SENTENCE;

(II) SET THE DEATH SENTENCE ASIDE AND REMAND THE CASE FOR A NEW SENTENCING PROCEEDING UNDER § 2-303 OF THIS TITLE; OR

(III) SET THE DEATH SENTENCE ASIDE AND REMAND THE CASE FOR MODIFICATION OF THE SENTENCE TO IMPRISONMENT FOR LIFE.

(E) RULES.

THE COURT OF APPEALS MAY ADOPT RULES OF PROCEDURE FOR THE EXPEDITED REVIEW OF DEATH SENTENCES UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 414.

In subsection (b)(1) of this section, the former reference to receipt of the transcript "by the trial court" is deleted as implicit in the requirement for the clerk "of the trial court" to send the record and transcript "after receiving" the transcript.

In subsection (b)(3)(i) of this section, the former reference to a questionnaire being "prepared [by the Court of Appeals]" is deleted as implicit in light of the reference to the questionnaire being "supplied" by

the Court.

In subsection (c) of this section, the reference to submitting briefs and presenting oral arguments "to the Court of Appeals" is added for clarity.

For specific provisions on automatic review of capital cases by the Court of Appeals, *see* Md. Rule 8-306.

SUBTITLE 5. HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED OR UNDER THE INFLUENCE.

2-501. "UNDER THE INFLUENCE OF ALCOHOL PER SE" DEFINED.

IN THIS SUBTITLE, "UNDER THE INFLUENCE OF ALCOHOL PER SE" MEANS AN ALCOHOL CONCENTRATION AT THE TIME OF TESTING OF 0.08 OR MORE AS MEASURED BY GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD OR GRAMS OF ALCOHOL PER 210 LITERS OF BREATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 388A(a)(1) and (2)(i).

The phrase "of alcohol" is added for consistency with the usage of the defined term in this subtitle.

2-502. CONVERSION OF ALCOHOL CONCENTRATION MEASUREMENT; PRESUMPTIONS AND EVIDENTIARY RULES.

(A) ALCOHOL CONCENTRATION MEASUREMENT.

FOR PURPOSES OF DETERMINING ALCOHOL CONCENTRATION UNDER THIS SUBTITLE, IF THE ALCOHOL CONCENTRATION IS MEASURED BY MILLIGRAMS OF ALCOHOL PER DECILITER OF BLOOD OR MILLIGRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD, A COURT SHALL CONVERT THE MEASUREMENT INTO GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD BY DIVIDING THE MEASUREMENT BY 1000.

(B) PRESUMPTIONS AND EVIDENTIARY RULES.

THE PRESUMPTIONS AND EVIDENTIARY RULES OF §§ 10-302, 10-306, 10-307, AND 10-308 OF THE COURTS ARTICLE APPLY TO A PERSON CHARGED UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 388A(a)(2)(ii) and (3).

In subsection (b) of this section, the references to CJ §§ 10-302, 10-306, and 10-308 are added for consistency within this article.

Also in subsection (b) of this section, the former defined term "impaired by alcohol" and the reference to it "ha[ving] the meaning indicated in ... §

10-307 of the Courts Article" are deleted as implicit in the presumptions and evidentiary rules of CJ §§ 10-302, 10-306, 10-307, and 10-308 and because CJ § 10-307 does not define the term "impaired by alcohol". Similarly, in subsection (b) of this section, the former reference to "§ 21-902(b) of the Transportation Article" is deleted as implicit in the reference to those "presumptions and evidentiary rules".

Defined term: "Person" § 1-101

2-503. HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR UNDER THE INFLUENCE OF ALCOHOL PER SE.

(A) PROHIBITED.

A PERSON MAY NOT CAUSE THE DEATH OF ANOTHER AS A RESULT OF THE PERSON'S NEGLIGENTLY DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE:

(1) UNDER THE INFLUENCE OF ALCOHOL; OR

(2) UNDER THE INFLUENCE OF ALCOHOL PER SE.

(B) NAME OF CRIME.

A VIOLATION OF THIS SECTION IS:

(1) HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL; OR

(2) HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL PER SE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS 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, § 388A(b).

Subsections (a) and (b) of this section are revised to distinguish homicide by motor vehicle or vessel "while under the influence of alcohol" from homicide by motor vehicle or vessel "while under the influence of alcohol per se" for consistency with the parallel and distinct crimes of "driving while under the influence of alcohol" and "driving while under the influence of alcohol per se". *See* TR § 21-902(a); *Meanor v. State*, 364 Md. 511 (2001); *Janes v. State*, 350 Md. 284 (1998).

Defined terms: "Person" § 1-101

"Vessel" § 2-101

2-504. HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY ALCOHOL.

(A) PROHIBITED.

A PERSON MAY NOT CAUSE THE DEATH OF ANOTHER AS A RESULT OF THE PERSON'S NEGLIGENTLY DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY ALCOHOL.

(B) NAME OF CRIME.

A VIOLATION OF THIS SECTION IS HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY ALCOHOL.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS 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, § 388A(c).

Defined terms: "Person" § 1-101

"Vessel" § 2-101

2-505. HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY DRUGS.

(A) PROHIBITED.

A PERSON MAY NOT CAUSE THE DEATH OF ANOTHER PERSON AS A RESULT OF THE PERSON'S NEGLIGENTLY DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE THE PERSON IS SO FAR IMPAIRED BY A DRUG, A COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON CANNOT DRIVE, OPERATE, OR CONTROL A MOTOR VEHICLE OR VESSEL SAFELY.

(B) NAME OF CRIME.

A VIOLATION OF THIS SECTION IS HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY DRUGS.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(D) PROHIBITED DEFENSE.

IT IS NOT A DEFENSE TO A CHARGE OF VIOLATING THIS SECTION THAT THE PERSON IS OR WAS ENTITLED UNDER THE LAWS OF THIS STATE TO USE A DRUG,

COMBINATION OF DRUGS, OR COMBINATION OF ONE OR MORE DRUGS AND ALCOHOL, UNLESS THE PERSON WAS UNAWARE THAT THE DRUG, COMBINATION OF DRUGS, OR COMBINATION OF ONE OR MORE DRUGS AND ALCOHOL WOULD MAKE THE PERSON INCAPABLE OF DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL IN A SAFE MANNER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 388A(a)(4) and (d).

Defined terms: "Person" § 1-101

"Vessel" § 2-101

2-506. HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE.

(A) PROHIBITED.

A PERSON MAY NOT CAUSE THE DEATH OF ANOTHER AS A RESULT OF THE PERSON'S NEGLIGENTLY DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE THE PERSON IS IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, AS DEFINED IN § 5-101 OF THIS ARTICLE.

(B) NAME OF CRIME.

A VIOLATION OF THIS SECTION IS HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(D) EXCEPTION.

THIS SECTION DOES NOT APPLY TO A PERSON WHO IS ENTITLED TO USE THE CONTROLLED DANGEROUS SUBSTANCE UNDER THE LAWS OF THIS STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 388A(a)(5) and (e).

Defined terms: "Controlled dangerous substance" § 5-101

"Person" § 1-101

"Vessel" § 2-101

2-507. CHARGING DOCUMENTS.

(A) CONTENTS.

AN INDICTMENT, INFORMATION, OR OTHER CHARGING DOCUMENT FOR A CRIME UNDER THIS SUBTITLE IS SUFFICIENT IF IT SUBSTANTIALLY STATES:

(1) "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) COMMITTED HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL BY KILLING (NAME OF VICTIM) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.";

(2) "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) COMMITTED HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY ALCOHOL BY KILLING (NAME OF VICTIM) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.";

(3) "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) COMMITTED HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY DRUGS BY KILLING (NAME OF VICTIM) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE."; OR

(4) "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) COMMITTED HOMICIDE BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE BY KILLING (NAME OF VICTIM) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) MANNER OR MEANS OF DEATH.

AN INDICTMENT, INFORMATION, OR OTHER CHARGING DOCUMENT FOR A CRIME UNDER THIS SUBTITLE NEED NOT SET FORTH THE MANNER OR MEANS OF DEATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 388A(f).

In subsection (a) of this section, the reference to "[a]n indictment, information, or other charging document" is added for clarity and consistency within this section.

In subsection (a)(1) through (4) of this section, the references to "homicide by motor vehicle or vessel" while under the influence of alcohol, and while impaired by alcohol, drugs, and a controlled dangerous substance, respectively, are added for consistency with the names of the crimes provided in this subtitle.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that there is no specific charging document for "homicide by motor vehicle or vessel while under the influence of alcohol per se", as distinguished from "homicide by motor vehicle or vessel while under the influence of alcohol". *See* Revisor's Note to § 2-503 of this subtitle; *cf.* TR § 21-902(a).

Defined terms: "County" § 1-101

"Vessel" § 2-101

2-508. NOTIFICATION OF MOTOR VEHICLE ADMINISTRATION.

THE CLERK OF THE COURT SHALL NOTIFY THE MOTOR VEHICLE ADMINISTRATION OF EACH PERSON CONVICTED UNDER THIS SUBTITLE OF A CRIME INVOLVING A MOTOR VEHICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 388A(g).

Defined term: "Person" § 1-101

GENERAL REVISOR'S NOTE TO SUBTITLE

The caption of this subtitle, like those of all titles and subtitles of this article, is not intended to be restrictive or substantively to limit the contents of the subtitle.

TITLE 3. OTHER CRIMES AGAINST THE PERSON.

SUBTITLE 1. ASSISTED SUICIDE.

3-101. 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, § 416(a)(1).

(B) LICENSED HEALTH CARE PROFESSIONAL.

"LICENSED HEALTH CARE PROFESSIONAL" MEANS A DULY LICENSED OR CERTIFIED:

(1) PHYSICIAN;

(2) SURGEON;

(3) PODIATRIST;

(4) OSTEOPATH;

(5) OSTEOPATHIC PHYSICIAN;

(6) OSTEOPATHIC SURGEON;

(7) PHYSICIAN ASSISTANT;

(8) REGISTERED NURSE;

(9) LICENSED PRACTICAL NURSE;

(10) NURSE PRACTITIONER;

(11) DENTIST;

(12) PHARMACIST; OR

(13) EMERGENCY MEDICAL SERVICES PROVIDER, IN ACCORDANCE WITH § 13-516 OF THE EDUCATION ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 416(a)(2).

The reference to a "certified" practitioner is added to reflect that several of the types of practitioner listed in this subsection are "certified" rather than "licensed" - physician assistants, nurse practitioners, and two of the five types of emergency medical services providers: emergency medical technician - ambulance and emergency medical technician - basic.

In item (13) of this subsection, the reference to an emergency medical services provider licensed or certified "in accordance with" ED § 13-516 is substituted for the former reference to an emergency medical services provider "as defined in" this provision for clarity.

(C) SUICIDE.

"SUICIDE" MEANS THE ACT OR INSTANCE IN WHICH AN INDIVIDUAL INTENTIONALLY TAKES THE INDIVIDUAL'S OWN LIFE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 416(a)(3).

The references to "an individual" are added for clarity.

3-102. ASSISTING ANOTHER TO COMMIT OR ATTEMPT SUICIDE.

WITH THE PURPOSE OF ASSISTING ANOTHER INDIVIDUAL TO COMMIT OR ATTEMPT TO COMMIT SUICIDE, AN INDIVIDUAL MAY NOT:

(1) BY COERCION, DURESS, OR DECEPTION, KNOWINGLY CAUSE ANOTHER INDIVIDUAL TO COMMIT SUICIDE OR ATTEMPT TO COMMIT SUICIDE;

(2) KNOWINGLY PROVIDE THE PHYSICAL MEANS BY WHICH ANOTHER INDIVIDUAL COMMITS OR ATTEMPTS TO COMMIT SUICIDE WITH KNOWLEDGE OF THAT INDIVIDUAL'S INTENT TO USE THE PHYSICAL MEANS TO COMMIT SUICIDE; OR

(3) KNOWINGLY PARTICIPATE IN A PHYSICAL ACT BY WHICH ANOTHER INDIVIDUAL COMMITS OR ATTEMPTS TO COMMIT SUICIDE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 416(b).

Throughout this section, the references to an "individual" are substituted for the former references to a "person" for clarity, since only "natural" persons may commit suicide; other types of persons - corporations, partnerships, etc. - do not have the physical ability to commit suicide.

Defined term: "Suicide" § 3-101

3-103. EXCEPTIONS.

(A) PALLIATIVE CARE -- PAIN RELIEF.

A LICENSED HEALTH CARE PROFESSIONAL DOES NOT VIOLATE § 3-102 OF THIS SUBTITLE BY ADMINISTERING OR PRESCRIBING A PROCEDURE OR ADMINISTERING, PRESCRIBING, OR DISPENSING A MEDICATION TO RELIEVE PAIN, EVEN IF THE MEDICATION OR PROCEDURE MAY HASTEN DEATH OR INCREASE THE RISK OF DEATH, UNLESS THE LICENSED HEALTH CARE PROFESSIONAL KNOWINGLY ADMINISTERS OR PRESCRIBES THE PROCEDURE OR ADMINISTERS, PRESCRIBES, OR DISPENSES THE MEDICATION TO CAUSE DEATH.

(B) LIFE-SUSTAINING PROCEDURES.

A LICENSED HEALTH CARE PROFESSIONAL DOES NOT VIOLATE § 3-102 OF THIS SUBTITLE BY WITHHOLDING OR WITHDRAWING A MEDICALLY ADMINISTERED LIFE-SUSTAINING PROCEDURE:

(1) IN COMPLIANCE WITH TITLE 5, SUBTITLE 6 OF THE HEALTH - GENERAL ARTICLE; OR

(2) IN ACCORDANCE WITH REASONABLE MEDICAL PRACTICE.

(C) FAMILY CARE GIVER.

(1) UNLESS THE FAMILY MEMBER KNOWINGLY ADMINISTERS A PROCEDURE OR ADMINISTERS OR DISPENSES A MEDICATION TO CAUSE DEATH, A FAMILY MEMBER DOES NOT VIOLATE § 3-102 OF THIS SUBTITLE IF THE FAMILY MEMBER:

(I) IS A CARE GIVER FOR A PATIENT ENROLLED IN A LICENSED HOSPICE PROGRAM; AND

(II) ADMINISTERS THE PROCEDURE OR ADMINISTERS OR DISPENSES THE MEDICATION TO RELIEVE PAIN UNDER THE SUPERVISION OF A HEALTH CARE PROFESSIONAL.

(2) PARAGRAPH (1) OF THIS SUBSECTION APPLIES EVEN IF THE MEDICATION OR PROCEDURE HASTENS DEATH OR INCREASES THE RISK OF DEATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 416(c).

In subsection (a) of this section, the references to "administering or

prescribing a procedure or administering, prescribing, or dispensing a medication" are substituted for the former references to "administer[ing], prescrib[ing], or dispens[ing] medications or procedures" because a procedure cannot be "dispensed". Similarly, in subsection (c) of this section, the references to "administer[ing] [a] procedure or administer[ing] or dispens[ing] a medication" are substituted for the former reference to "administer[ing] or dispens[ing] medications or procedures".

In subsection (b) of this section, the former reference to "the Health Care Decisions Act" is deleted as included in the reference to "Title 5, Subtitle 6 of the Health - General Article".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the reference to a "health care professional" in subsection (c)(1)(ii) of this section, which describes the individual under whose supervision a family member may administer pain relief, omits the qualification "licensed" used elsewhere in this subtitle in the defined term "licensed health care professional". If the licensure of the health care professional in this situation is material, the General Assembly may wish to consider adding the word "licensed" to modify "health care professional" in this provision.

Defined term: "Licensed health care professional" § 3-101

3-104. PENALTY.

AN INDIVIDUAL WHO VIOLATES THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 416(d).

SUBTITLE 2. ASSAULT, RECKLESS ENDANGERMENT, AND RELATED CRIMES.

3-201. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 12(a).

The reference to this "subtitle" is substituted for the former reference to this "subheading" even though this subtitle is derived, in part, from material outside the former "Assault" subheading of Article 27 by this revision. The terms defined in this section are not used in provisions derived from outside the former "Assault" subheading. No substantive change is intended.

No other changes are made.

(B) ASSAULT.

"ASSAULT" MEANS THE CRIMES OF ASSAULT, BATTERY, AND ASSAULT AND BATTERY, WHICH RETAIN THEIR JUDICIALLY DETERMINED MEANINGS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 12(b).

The former introductory language "[e]xcept as otherwise provided in this subheading" is deleted as surplusage. There are no exceptions to the meaning of the defined term "[a]ssault" elsewhere in this subtitle.

The word "crimes" is substituted for the former word "offenses" for consistency within this article. *See* General Revisor's Note to article.

(C) SERIOUS PHYSICAL INJURY.

"SERIOUS PHYSICAL INJURY" MEANS PHYSICAL INJURY THAT:

(1) CREATES A SUBSTANTIAL RISK OF DEATH; OR

(2) CAUSES PERMANENT OR PROTRACTED SERIOUS:

(I) DISFIGUREMENT;

(II) LOSS OF THE FUNCTION OF ANY BODILY MEMBER OR ORGAN; OR

(III) IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER OR ORGAN.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 12(c).

3-202. ASSAULT IN THE FIRST DEGREE.

(A) PROHIBITED.

(1) A PERSON MAY NOT INTENTIONALLY CAUSE OR ATTEMPT TO CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER.

(2) A PERSON MAY NOT COMMIT AN ASSAULT WITH A FIREARM, INCLUDING:

(I) A HANDGUN, ANTIQUE FIREARM, RIFLE, SHOTGUN, SHORT-BARRELED SHOTGUN, OR SHORT-BARRELED RIFLE, AS THOSE TERMS ARE DEFINED IN § 4-201 OF THIS ARTICLE;

(II) AN ASSAULT PISTOL, AS DEFINED IN § 4-301 OF THIS ARTICLE;

(III) A MACHINE GUN, AS DEFINED IN § 4-401 OF THIS ARTICLE; AND

(IV) A REGULATED FIREARM, AS DEFINED IN ARTICLE 27, § 441 OF THE CODE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF ASSAULT IN THE FIRST DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 25 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 12A-1.

In subsection (a)(2)(i) of this section, the Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the terms "short-barreled shotgun" and "short-barreled rifle", as defined in § 4-201 of this article, are included in the term "handgun" as defined in the same section. It is unclear whether the terms "short-barreled shotgun" and "short-barreled rifle" as used in this section are redundant of the term "handgun", or differ in some way from those terms used in the definition of "handgun".

Defined terms: "Assault" § 3-201

"Person" § 1-101

"Serious physical injury" § 3-201

3-203. ASSAULT IN THE SECOND DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT COMMIT AN ASSAULT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF ASSAULT IN THE SECOND DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $2,500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 12A.

Defined terms: "Assault" § 3-201

"Person" § 1-101

3-204. RECKLESS ENDANGERMENT.

(A) PROHIBITED.

A PERSON MAY NOT RECKLESSLY:

(1) ENGAGE IN CONDUCT THAT CREATES A SUBSTANTIAL RISK OF DEATH OR SERIOUS PHYSICAL INJURY TO ANOTHER; OR

(2) DISCHARGE A FIREARM FROM A MOTOR VEHICLE IN A MANNER THAT CREATES A SUBSTANTIAL RISK OF DEATH OR SERIOUS PHYSICAL INJURY TO ANOTHER.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF RECKLESS ENDANGERMENT AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(C) EXCEPTIONS.

(1) SUBSECTION (A)(1) OF THIS SECTION DOES NOT APPLY TO CONDUCT INVOLVING:

(I) THE USE OF A MOTOR VEHICLE, AS DEFINED IN § 11-135 OF THE TRANSPORTATION ARTICLE; OR

(II) THE MANUFACTURE, PRODUCTION, OR SALE OF A PRODUCT OR COMMODITY.

(2) SUBSECTION (A)(2) OF THIS SECTION DOES NOT APPLY TO:

(I) A LAW ENFORCEMENT OFFICER OR SECURITY GUARD IN THE PERFORMANCE OF AN OFFICIAL DUTY; OR

(II) AN INDIVIDUAL ACTING IN DEFENSE OF A CRIME OF VIOLENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 12A-2(a) and (b).

Subsection (a) of this section is revised in standard language used to state a prohibition.

In subsection (c)(2) of this section, the former reference to "any conduct involving" a law enforcement officer or an individual acting in defense is deleted as surplusage.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the term "crime of violence" in subsection (c)(2)(ii) of this section is not defined. Several sections of the Annotated Code of Maryland define "crime of violence", including §§ 4-401 and 14-101 of this article and Art. 27, § 441 of the Code. The source material for this provision, Art. 27, § 12A-2(b)(2)(ii), was enacted as part of the "Maryland Gun Violence Act of 1996" (Ch. 561, Acts of 1996), which also enacted § 441, including its defined term "crime of violence". The General Assembly may wish to clarify which definition of "crime of violence" applies

to subsection (c)(2)(ii) of this section.

Defined terms: "Person" § 1-101

"Serious physical injury" § 3-201

3-205. PRISON EMPLOYEE -- CONTACT WITH BODILY FLUID.

(A) PROHIBITED.

AN INMATE MAY NOT MALICIOUSLY CAUSE OR ATTEMPT TO CAUSE AN EMPLOYEE OF A STATE CORRECTIONAL FACILITY, A LOCAL CORRECTIONAL FACILITY, OR A SHERIFF'S OFFICE, REGARDLESS OF EMPLOYMENT CAPACITY, TO COME INTO CONTACT WITH:

(1) SEMINAL FLUID, URINE, OR FECES; OR

(2) BLOOD, IF THE CONTACT WITH THE BLOOD IS NOT THE RESULT OF PHYSICAL INJURY RESULTING FROM PHYSICAL BODY CONTACT BETWEEN THE INMATE AND THE EMPLOYEE.

(B) PENALTY.

AN INMATE WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $2,500 OR BOTH.

(C) CONSECUTIVE SENTENCE.

A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE TO ANY SENTENCE THAT THE INMATE WAS SERVING AT THE TIME OF THE CRIME OR THAT HAD BEEN IMPOSED BUT WAS NOT YET BEING SERVED AT THE TIME OF SENTENCING.

(D) SUSPENSION OF SENTENCE PROHIBITED.

A SENTENCE IMPOSED UNDER THIS SECTION MAY NOT BE SUSPENDED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 12A-6(b), (c), and (d), and, as it related to the employees for which an inmate who causes prison employee contact with a bodily fluid may be charged, (a).

In subsection (a) of this section, the defined terms "State correctional facility" and "local correctional facility" are substituted for the former references to "the Division of Correction, the Patuxent Institution, [and] the Baltimore City Detention Center" and "any county jail, [or] detention center", respectively, for clarity and consistency throughout this article.

In subsection (c) of this section, the reference to a sentence that "the inmate was serving" is substituted for the former reference to a sentence that "was being served" for consistency with the Correctional Services

Article.

Also in subsection (c) of this section, the reference to the "crime" is substituted for the former reference to the "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Inmate" § 1-101

"Local correctional facility" § 1-101

"State correctional facility" § 1-101

3-206. CHARGING DOCUMENTS -- ASSAULT AND RECKLESS ENDANGERMENT.

(A) CONTENTS -- IN GENERAL.

AN INDICTMENT, INFORMATION, OTHER CHARGING DOCUMENT, OR WARRANT FOR A CRIME DESCRIBED IN § 3-202, § 3-203, § 3-204, OR § 3-205 OF THIS SUBTITLE IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) ASSAULTED (NAME OF VICTIM) IN THE ..... DEGREE OR (DESCRIBE OTHER VIOLATION) IN VIOLATION OF (SECTION VIOLATED) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) BILL OF PARTICULARS.

IF THE GENERAL FORM OF INDICTMENT OR INFORMATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS USED TO CHARGE A CRIME DESCRIBED IN § 3-202, § 3-203, § 3-204, OR § 3-205 OF THIS SUBTITLE IN A CASE IN THE CIRCUIT COURT, THE DEFENDANT, ON TIMELY DEMAND, IS ENTITLED TO A BILL OF PARTICULARS.

(C) ASSAULT IN THE FIRST DEGREE -- LESSER INCLUDED CRIME.

A CHARGE OF ASSAULT IN THE FIRST DEGREE ALSO CHARGES A DEFENDANT WITH ASSAULT IN THE SECOND DEGREE.

(D) RECKLESS ENDANGERMENT.

(1) TO BE FOUND GUILTY OF RECKLESS ENDANGERMENT UNDER § 3-204 OF THIS SUBTITLE, A DEFENDANT MUST BE CHARGED SPECIFICALLY WITH RECKLESS ENDANGERMENT.

(2) IF MORE THAN ONE INDIVIDUAL IS ENDANGERED BY THE CONDUCT OF THE DEFENDANT, A SEPARATE CHARGE MAY BE BROUGHT FOR EACH INDIVIDUAL ENDANGERED.

(3) A CHARGING DOCUMENT CONTAINING A CHARGE OF RECKLESS ENDANGERMENT UNDER § 3-204 OF THIS SUBTITLE MAY:

(I) INCLUDE A COUNT FOR EACH INDIVIDUAL ENDANGERED BY THE CONDUCT OF THE DEFENDANT; OR

(II) CONTAIN A SINGLE COUNT BASED ON THE CONDUCT OF THE DEFENDANT, REGARDLESS OF THE NUMBER OF INDIVIDUALS ENDANGERED BY THE CONDUCT OF THE DEFENDANT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 12A-2(c) and 12A-4.

In subsections (a) and (b) of this section, the word "crime" is substituted for the former word "offense". *See* General Revisor's Note to article.

In subsection (a) of this section, the reference to "a crime described in § 3-202, § 3-203, § 3-204, or § 3-205 of this subtitle" is substituted for the former reference to "assault or any other offense under this subheading" since the only crimes included under the former "Assault" subheading were assault in the first degree, assault in the second degree, reckless endangerment, and prison employee contact with a bodily fluid, which have been revised in §§ 3-202, 3-203, 3-204, and 3-205, respectively. Correspondingly, in subsection (b) of this section, the reference to a crime "described in § 3-202, § 3-203, § 3-204, or § 3-205 of this subtitle" is substituted for the former reference to a crime "under this subheading".

Also in subsection (a) of this section, the former archaic phrase "contrary to the form of the Act of the Assembly in such case made and provided" is deleted as surplusage.

In subsection (d)(2) and (3) of this section, the references to an "individual" are substituted for the former references to a "person" because only an individual, and not the other kinds of entities included in the definition of "person", may be subject to reckless endangerment under § 3-204 of this subtitle.

For specific time limits relating to a bill of particulars, *see* Md. Rule 4-241.

Defined terms: "Assault" § 3-201

"County" § 1-101

3-207. DISMISSAL OF ASSAULT CHARGE.

(A) DISMISSAL.

ON A PRETRIAL MOTION OF THE STATE, A COURT MAY DISMISS A CHARGE OF ASSAULT IF:

(1) THE VICTIM AND THE DEFENDANT AGREE TO THE DISMISSAL; AND

(2) THE COURT CONSIDERS THE DISMISSAL PROPER.

(B) PAYMENT OF COSTS.

THE DEFENDANT SHALL PAY THE COSTS THAT WOULD HAVE BEEN INCURRED IF THE DEFENDANT HAD BEEN FOUND GUILTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 12A-5.

In subsection (a) of this section, the reference to the "State" is substituted for the former reference to the "State's Attorney" for clarity.

In subsections (a)(1) and (b) of this section, the references to the "defendant" are substituted for the former references to the "accused" for consistency within this subtitle, particularly with § 3-206 of this subtitle.

In subsection (b) of this section, the requirement for the defendant to pay "the costs that" would have been incurred is substituted for the former requirement for the defendant to pay "the same costs as" would have been incurred for clarity.

Defined term: "Assault" § 3-201

3-208. EVIDENCE OF SERIOUS PHYSICAL INJURY.

EXPERT TESTIMONY IS ADMISSIBLE TO PROVE, BUT IS NOT REQUIRED TO PROVE, SERIOUS PHYSICAL INJURY.

REVISOR'S NOTE: This section formerly was Art. 27, § 12A-7(b).

No changes are made.

Former Art. 27, § 12A-7(a), which provided that the term "assault" used elsewhere in the Code meant assault in any degree, is revised as a general rule of interpretation in Art. 1, § 33.

Defined term: "Serious physical injury" § 3-201

3-209. DEFENSES.

A PERSON CHARGED WITH A CRIME UNDER § 3-202, § 3-203, § 3-204, OR § 3-205 OF THIS SUBTITLE MAY ASSERT ANY JUDICIALLY RECOGNIZED DEFENSE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 12A-3.

In this section, the reference to a "crime" is substituted for the former reference to an "offense" for consistency within this article. *See* General Revisor's Note to article.

Also in this section, the reference to a crime "under § 3-202, § 3-203, § 3-204, or § 3-205 of this subtitle" is substituted for the former reference to an offense "under this subheading" to reflect the organizational changes made by the revision.

Defined term: "Person" § 1-101

3-210. ASSAULT BY INMATE -- SENTENCING.

(A) IN GENERAL.

AN INMATE CONVICTED OF ASSAULT UNDER THIS SUBTITLE ON ANOTHER INMATE OR ON AN EMPLOYEE OF A STATE CORRECTIONAL FACILITY, A LOCAL CORRECTIONAL FACILITY, OR A SHERIFF'S OFFICE, REGARDLESS OF EMPLOYMENT CAPACITY, SHALL BE SENTENCED UNDER THIS SECTION.

(B) CONSECUTIVE SENTENCE.

A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE TO ANY SENTENCE THAT THE INMATE WAS SERVING AT THE TIME OF THE CRIME OR THAT HAD BEEN IMPOSED BUT WAS NOT YET BEING SERVED AT THE TIME OF SENTENCING.

(C) SUSPENSION OF SENTENCE PROHIBITED.

A SENTENCE IMPOSED UNDER THIS SECTION MAY NOT BE SUSPENDED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 12A-6(a), (c), and (d).

In subsection (a) of this section, the reference to assault "under this subtitle" is substituted for the former reference to assault "in any degree" since there are only two degrees of assault, both of which are included within this subtitle.

Also in subsection (a) of this section, the defined terms "State correctional facility" and "local correctional facility" are substituted for the former references to "the Division of Correction, the Patuxent Institution, [and] the Baltimore City Detention Center" and "any county jail, [or] detention center", respectively, for clarity and consistency throughout this article.

In subsection (b) of this section, the reference to a sentence that "the inmate was serving" is substituted for the former reference to a sentence that "was being served" for consistency with the Correctional Services Article.

Also in subsection (b) of this section, the reference to the "crime" is substituted for the former reference to the "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Assault" § 3-201

"Inmate" § 1-101

"Local correctional facility" § 1-101

"State correctional facility" § 1-101

3-211. LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL AND RELATED CRIMES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "UNDER THE INFLUENCE OF ALCOHOL PER SE" MEANS HAVING AN ALCOHOL CONCENTRATION AT THE TIME OF TESTING OF AT LEAST 0.08 AS MEASURED BY GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD OR GRAMS OF ALCOHOL PER 210 LITERS OF BREATH.

(3) (I) "VESSEL" MEANS ANY WATERCRAFT THAT IS USED OR IS CAPABLE OF BEING USED AS A MEANS OF TRANSPORTATION ON WATER OR ICE.

(II) "VESSEL" DOES NOT INCLUDE A SEAPLANE.

(B) CONVERSION OF ALCOHOL CONCENTRATION MEASUREMENT; PRESUMPTIONS AND EVIDENTIARY RULES.

(1) FOR PURPOSES OF DETERMINING ALCOHOL CONCENTRATION UNDER THIS SECTION, IF THE ALCOHOL CONCENTRATION IS MEASURED BY MILLIGRAMS OF ALCOHOL PER DECILITER OF BLOOD OR MILLIGRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD, A COURT SHALL CONVERT THE MEASUREMENT INTO GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD BY DIVIDING THE MEASUREMENT BY 1000.

(2) THE PRESUMPTIONS AND EVIDENTIARY RULES OF §§ 10-302, 10-306, 10-307, AND 10-308 OF THE COURTS ARTICLE APPLY TO A PERSON CHARGED UNDER THIS SECTION.

(C) LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR UNDER THE INFLUENCE OF ALCOHOL PER SE.

(1) A PERSON MAY NOT CAUSE A LIFE-THREATENING INJURY TO ANOTHER AS A RESULT OF THE PERSON'S NEGLIGENTLY DRIVING, OPERATING, OR CONTROLLING OF A MOTOR VEHICLE OR VESSEL WHILE THE PERSON IS:

(I) UNDER THE INFLUENCE OF ALCOHOL; OR

(II) UNDER THE INFLUENCE OF ALCOHOL PER SE.

(2) A VIOLATION OF THIS SUBSECTION IS LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE:

(I) UNDER THE INFLUENCE OF ALCOHOL; OR

(II) UNDER THE INFLUENCE OF ALCOHOL PER SE.

(3) A PERSON WHO VIOLATES THIS SUBSECTION 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.

(D) LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY ALCOHOL.

(1) A PERSON MAY NOT CAUSE A LIFE-THREATENING INJURY TO ANOTHER AS A RESULT OF THE PERSON'S NEGLIGENTLY DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE THE PERSON IS IMPAIRED BY ALCOHOL.

(2) A VIOLATION OF THIS SUBSECTION IS LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY ALCOHOL.

(3) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $3,000 OR BOTH.

(E) LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY DRUGS.

(1) A PERSON MAY NOT CAUSE A LIFE-THREATENING INJURY TO ANOTHER AS A RESULT OF THE PERSON'S NEGLIGENTLY DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE THE PERSON IS SO FAR IMPAIRED BY A DRUG, A COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON CANNOT DRIVE, OPERATE, OR CONTROL A MOTOR VEHICLE OR VESSEL SAFELY.

(2) A VIOLATION OF THIS SUBSECTION IS LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY DRUGS.

(3) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $3,000 OR BOTH.

(F) LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE.

(1) THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO IS ENTITLED TO USE THE CONTROLLED DANGEROUS SUBSTANCE UNDER THE LAWS OF THE STATE.

(2) A PERSON MAY NOT CAUSE A LIFE-THREATENING INJURY TO ANOTHER AS A RESULT OF THE PERSON'S NEGLIGENTLY DRIVING, OPERATING, OR CONTROLLING A MOTOR VEHICLE OR VESSEL WHILE THE PERSON IS IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE AS DEFINED IN § 5-101 OF THIS ARTICLE.

(3) A VIOLATION OF THIS SUBSECTION IS LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE.

(4) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $3,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 388C and 388B(a) through (e).

In subsection (a)(3)(i) of this section, the references to a watercraft "that is" used or "is" capable of being used are added for clarity and precision.

Also in subsection (a)(3)(i) of this section, the former reference to "every description of" watercraft is deleted as surplusage.

In subsection (b)(1) of this section, the introductory phrase "[f]or purposes of determining alcohol concentration under this section" is added to clarify that this provision was intended to be read in conjunction with the provisions relating to the determination of "under the influence of alcohol", "under the influence of alcohol per se", and "impaired by alcohol".

In subsection (b)(2) of this section, the reference to the presumptions and evidentiary rules of §§ 10-302, 10-306, 10-307, and 10-308 of the Courts Article "apply[ing] to a person charged under this section" is substituted for the former reference to "`[i]mpaired by alcohol' ... [being] subject to" those presumptions and evidentiary rules for clarity. Those sections of the Courts Article provide that they apply to "a proceeding in which a person is charged with a violation of Article 27, ... § 388B of the Code [this section]".

Also in subsection (b)(2) of this section, the former reference to "`[i]mpaired by alcohol' ha[ving] the meaning indicated in ... § 10-307 of the Courts Article" is deleted because "impaired by alcohol" is not a term defined in § 10-307 of the Courts Article.

Also in subsection (b)(2) of this section, the former reference to the "same" presumptions and evidentiary rules is deleted as surplusage.

Also in subsection (b)(2) of this section, the former reference to presumptions and evidentiary rules "regarding driving while impaired by alcohol under § 21-902(b) of the Transportation Article" is deleted as surplusage. TR § 21-902 merely prohibits driving while impaired by alcohol but does not provide additional clarification of the words "driving while impaired by alcohol", nor does it contain any presumptions or evidentiary rules.

Subsection (c) of this section is revised to distinguish life-threatening injury by motor vehicle or vessel "while under the influence of alcohol" from life-threatening injury by motor vehicle or vessel "while under the

influence of alcohol per se" for consistency with the parallel and distinct crimes of "driving while under the influence of alcohol" and "driving while under the influence of alcohol per se". *See* TR § 21-902(a); *Meanor v. State*, 364 Md. 511 (2001); *Janes v. State*, 350 Md. 284 (1998).

Subsections (c)(1), (d)(1), (e)(1), and (f)(2) of this section are revised in standard language used to state a prohibition.

In subsections (c)(1), (d)(1), (e)(1), and (f)(2) of this section, the references to a crime occurring while "[the] person" is under the influence of alcohol, under the influence of alcohol per se, impaired by alcohol, impaired by drugs, or a controlled dangerous substance are added for clarity.

In subsection (e) of this section, the Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the former law did not define the term "drug". However, at the time of the adoption of former Art. 27, § 388B in 1996, the Senate Judicial Proceedings Committee and the House Judiciary Committee were provided with written testimony from the Maryland Judicial Conference urging the Committees to "give consideration to clarification of ... `drug' ... as [this term is] used in these measures". Bill File, SB277/HB32 of 1996, letter from George B. Riggin, Jr., Executive Secretary, Maryland Judicial Conference, to Chairman Walter M. Baker and Chairman Joseph F. Vallario, Jr., February 1, 1996. The General Assembly may wish to clarify the use of the term "drug" in subsection (e) of this section.

Subsection (f)(1) of this section is revised as a scope provision relating to the crime of "life-threatening injury by motor vehicle or vessel while impaired by a controlled dangerous substance" and is substituted for the former limitation "if the person is not entitled to use the controlled dangerous substance under the laws of this State", which modified the former defined term "[i]mpaired by a controlled dangerous substance", for clarity.

Defined terms: "Controlled dangerous substance" § 5-101

"Person" § 1-101

3-212. SAME -- CHARGING DOCUMENTS.

(A) CONTENTS.

AN INDICTMENT, INFORMATION, OR OTHER CHARGING DOCUMENT FOR A CRIME DESCRIBED IN § 3-211 OF THIS SUBTITLE IS SUFFICIENT IF IT SUBSTANTIALLY STATES:

(1) "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY), CAUSED A LIFE-THREATENING INJURY TO (NAME OF VICTIM) WHILE UNDER THE INFLUENCE OF ALCOHOL, IN VIOLATION OF § 3-211(C) OF THE CRIMINAL LAW ARTICLE AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.";

(2) "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY), CAUSED A LIFE-THREATENING INJURY TO (NAME OF VICTIM) WHILE IMPAIRED BY ALCOHOL, IN VIOLATION OF § 3-211(D) OF THE CRIMINAL LAW ARTICLE AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.";

(3) "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY), CAUSED A LIFE-THREATENING INJURY TO (NAME OF VICTIM) WHILE IMPAIRED BY DRUGS, IN VIOLATION OF § 3-211(E) OF THE CRIMINAL LAW ARTICLE AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE."; OR

(4) "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) CAUSED A LIFE-THREATENING INJURY TO (NAME OF VICTIM) WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, IN VIOLATION OF § 3-211(F) OF THE CRIMINAL LAW ARTICLE AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) MANNER OR MEANS OF INJURY.

AN INDICTMENT, INFORMATION, OR OTHER CHARGING DOCUMENT FOR A CRIME DESCRIBED IN § 3-211 OF THIS SUBTITLE, NEED NOT SET FORTH THE MANNER OR MEANS OF THE LIFE-THREATENING INJURY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 388B(f).

In subsection (a)(1), (2), (3), and (4) of this section, the references to a crime "in violation of" a particular subsection of § 3-211 of this subtitle are added for clarity and consistency within this subtitle.

Also in subsection (a)(1), (2), (3), and (4) of this section, the citations of the particular subsections of § 3-211 of this subtitle are added for clarity.

In subsection (a) of this section, the Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that no separate charging document is provided for life-threatening injury by motor vehicle or vessel "while under the influence of alcohol per se" as distinguished from the crime "while under the influence of alcohol" chargeable under subsection (a)(1) of this section. *See* Revisor's Note to § 3-211 of this subtitle; *cf.* TR § 21-902(a).

Defined term: "County" § 1-101

3-213. ATTEMPTED POISONING.

(A) PROHIBITED.

A PERSON MAY NOT ATTEMPT TO POISON ANOTHER.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 450.

Subsection (a) of this section is revised in standard language used to state a prohibition.

In subsection (a) of this section, the former reference to a person's "aiders, advisers or abettors" is deleted because the distinctions among principals and accessories before the fact have been abrogated. *See* General Revisor's Note to article and CP § 4-204.

In subsection (b) of this section, the reference to a person being "subject to imprisonment" is substituted for the former reference to a person being "sentenced to undergo a confinement in the penitentiary" for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Defined term: "Person" § 1-101

3-214. CONTAMINATING WATER SUPPLY OR FOOD OR DRINK.

(A) CONTAMINATING WATER SUPPLY.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY CONTAMINATE, ATTEMPT TO CONTAMINATE, OR CONSPIRE TO CONTAMINATE THE WATER OF A SOURCE OR TRIBUTARY OF A WATER SUPPLY, INCLUDING THE WATERS OF A WELL, SPRING, BROOK, LAKE, POND, STREAM, RIVER, OR RESERVOIR BY ADDING DISEASE GERMS, BACTERIA, POISON, OR POISONOUS MATTER, IF THE WATER SUPPLY IS USED OR IS USABLE FOR DRINKING OR DOMESTIC PURPOSES.

(B) CONTAMINATING FOOD OR DRINK.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY CONTAMINATE, ATTEMPT TO CONTAMINATE, OR CONSPIRE TO CONTAMINATE ANY DRINK, FOOD, FOOD PRODUCT, OR FOOD SUPPLY BY ADDING DISEASE GERMS, BACTERIA, POISON, OR POISONOUS MATTER.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 451.

Subsections (a) and (b) of this section are revised in standard language used to state a prohibition.

In subsections (a) and (b) of this section, the references to "adding" disease germs, bacteria, poison, or poisonous matter are substituted for the former references to "insert[ing]" disease germs, bacteria, poison, or poisonous matter for clarity.

Also in subsections (a) and (b) of this section, the former references to a person's "aiders and abettors" are deleted because the distinctions among principals and accessories before the fact are abrogated. *See* General Revisor's Note to article and CP § 4-204.

Also in subsections (a) and (b) of this section, the former archaic references to a person "defil[ing]", "corrupt[ing]", or "poison[ing]" a water supply or foodstuffs are deleted as unnecessary in light of the broad references to "contaminat[ing]" those materials.

Also in subsections (a) and (b) of this section, the former references to a person "conniv[ing]" to contaminate water, food, or drink are deleted as included within the references to "conspir[ing]" to contaminate them.

In subsection (c) of this section, the former reference to a person on conviction being subject to imprisonment "in the penitentiary" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Also in subsection (c) of this section, the former reference to imprisonment "in the discretion of the court" is deleted as implicit in the establishment of a maximum penalty.

Defined term: "Person" § 1-101

SUBTITLE 3. SEXUAL CRIMES.

3-301. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 461(a).

In this section, the references to this "subtitle" are substituted for the former references to this "subheading", although this subtitle is derived, in part, from material outside of that contained in the former "Sexual Offenses" subheading in Article 27. Because the material revised in this subtitle that was not contained in the former "Sexual Offenses" subheading does not use the terms defined in this section in a manner

contrary to the meanings set forth here, no substantive change results.

No other changes are made.

(B) MENTALLY DEFECTIVE INDIVIDUAL.

"MENTALLY DEFECTIVE INDIVIDUAL" MEANS AN INDIVIDUAL WHO SUFFERS FROM MENTAL RETARDATION OR A MENTAL DISORDER, EITHER OF WHICH TEMPORARILY OR PERMANENTLY RENDERS THE INDIVIDUAL SUBSTANTIALLY INCAPABLE OF:

(1) APPRAISING THE NATURE OF THE INDIVIDUAL'S CONDUCT;

(2) RESISTING VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT; OR

(3) COMMUNICATING UNWILLINGNESS TO SUBMIT TO VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 461(b).

The defined term "mentally defective individual" is substituted for the former defined term "mentally defective" for grammatical accuracy.

The references to an "individual" are substituted for the former references to a "victim" because, where the defined term "mentally defective individual" is applicable in this subtitle, the term "victim" is used in the substantive crime. *See* §§ 3-304(a)(2), 3-306(a)(2)(i), and 3-307(a)(2) of this subtitle.

The instances of the former redundant phrase "the act of" are deleted as implicit in the references to "vaginal intercourse".

(C) MENTALLY INCAPACITATED INDIVIDUAL.

"MENTALLY INCAPACITATED INDIVIDUAL" MEANS AN INDIVIDUAL WHO, BECAUSE OF THE INFLUENCE OF A DRUG, NARCOTIC, OR INTOXICATING SUBSTANCE, OR BECAUSE OF AN ACT COMMITTED ON THE INDIVIDUAL WITHOUT THE INDIVIDUAL'S CONSENT OR AWARENESS, IS RENDERED SUBSTANTIALLY INCAPABLE OF:

(1) APPRAISING THE NATURE OF THE INDIVIDUAL'S CONDUCT; OR

(2) RESISTING VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 461(c).

The defined term "mentally incapacitated individual" is substituted for the

former defined term "mentally incapacitated" for grammatical accuracy.

The references to an "individual" are substituted for the former references to a "victim" because, where the defined term "mentally defective individual" is applicable in this subtitle, the term "victim" is used in the substantive crime. *See* §§ 3-304(a)(2), 3-306(a)(2)(i), and 3-307(a)(2) of this subtitle.

The former redundant phrase "the act of" is deleted as implicit in the reference to "vaginal intercourse".

(D) PHYSICALLY HELPLESS INDIVIDUAL.

"PHYSICALLY HELPLESS INDIVIDUAL" MEANS AN INDIVIDUAL WHO:

(1) IS UNCONSCIOUS; OR

(2) (I) DOES NOT CONSENT TO VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT; AND

(II) IS PHYSICALLY UNABLE TO RESIST, OR COMMUNICATE UNWILLINGNESS TO SUBMIT TO, VAGINAL INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 461(d).

The defined term "physically helpless individual" is substituted for the former defined term "physically helpless" for grammatical accuracy.

The references to an "individual" are substituted for the former references to a "victim" because, where the defined term "mentally defective individual" is applicable in this subtitle, the term "victim" is used in the substantive crime. *See* §§ 3-304(a)(2), 3-306(a)(2)(i), and 3-307(a)(2) of this subtitle.

The instances of the former redundant phrase "an act of" are deleted as implicit in the references to "vaginal intercourse".

(E) SEXUAL ACT.

(1) "SEXUAL ACT" MEANS ANY OF THE FOLLOWING ACTS, REGARDLESS OF WHETHER SEMEN IS EMITTED:

(I) ANALINGUS;

(II) CUNNILINGUS;

(III) FELLATIO;

(IV) ANAL INTERCOURSE, INCLUDING PENETRATION, HOWEVER SLIGHT, OF THE ANUS; OR

(V) AN ACT:

1. IN WHICH AN OBJECT PENETRATES, HOWEVER SLIGHTLY, INTO ANOTHER INDIVIDUAL'S GENITAL OPENING OR ANUS; AND

2. THAT CAN REASONABLY BE CONSTRUED TO BE FOR SEXUAL AROUSAL OR GRATIFICATION, OR FOR THE ABUSE OF EITHER PARTY.

(2) "SEXUAL ACT" DOES NOT INCLUDE:

(I) VAGINAL INTERCOURSE; OR

(II) AN ACT IN WHICH AN OBJECT PENETRATES AN INDIVIDUAL'S GENITAL OPENING OR ANUS FOR AN ACCEPTED MEDICAL PURPOSE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 461(e).

In paragraph (1)(iv) of this subsection, the phrase "including penetration, however slight, of the anus" is substituted for the former, inaccurate phrase "[p]enetration, however slight, is evidence of anal intercourse".

Defined term: "Vaginal intercourse" § 3-301

(F) SEXUAL CONTACT.

(1) "SEXUAL CONTACT", AS USED IN §§ 3-307 AND 3-308 OF THIS SUBTITLE, MEANS AN INTENTIONAL TOUCHING OF THE VICTIM'S OR ACTOR'S GENITAL, ANAL, OR OTHER INTIMATE AREA FOR SEXUAL AROUSAL OR GRATIFICATION, OR FOR THE ABUSE OF EITHER PARTY.

(2) "SEXUAL CONTACT" INCLUDES AN ACT:

(I) IN WHICH A PART OF AN INDIVIDUAL'S BODY, EXCEPT THE PENIS, MOUTH, OR TONGUE, PENETRATES, HOWEVER SLIGHTLY, INTO ANOTHER INDIVIDUAL'S GENITAL OPENING OR ANUS; AND

(II) THAT CAN REASONABLY BE CONSTRUED TO BE FOR SEXUAL AROUSAL OR GRATIFICATION, OR FOR THE ABUSE OF EITHER PARTY.

(3) "SEXUAL CONTACT" DOES NOT INCLUDE:

(I) A COMMON EXPRESSION OF FAMILIAL OR FRIENDLY AFFECTION; OR

(II) AN ACT FOR AN ACCEPTED MEDICAL PURPOSE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 461(f).

In paragraph (1) of this subsection, the former reference to "any part of" a genital, anal, or other intimate area is deleted because the specific reference to touching a part of a genital, anal, or other intimate area is included in the general reference to touching that area.

(G) VAGINAL INTERCOURSE.

(1) "VAGINAL INTERCOURSE" MEANS GENITAL COPULATION, WHETHER OR NOT SEMEN IS EMITTED.

(2) "VAGINAL INTERCOURSE" INCLUDES PENETRATION, HOWEVER SLIGHT, OF THE VAGINA.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 461(g).

In paragraph (1) of this subsection, the former reference to "ordinary meaning" is deleted as surplusage.

In paragraph (2) of this subsection, the phrase "includes penetration, however slight, of the vagina" is substituted for the former inaccurate phrase "[p]enetration, however slight, is evidence of vaginal intercourse" for clarity.

3-302. CONSTRUCTION OF SUBTITLE.

IN THIS SUBTITLE AN UNDEFINED WORD OR PHRASE THAT DESCRIBES AN ELEMENT OF COMMON-LAW RAPE RETAINS ITS JUDICIALLY DETERMINED MEANING, EXCEPT TO THE EXTENT IT IS EXPRESSLY OR IMPLIEDLY CHANGED IN THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464E.

The reference to an undefined "word or phrase" is substituted for the former reference to undefined "words or phrases" in light of Art. 1, § 8, which provides that the singular generally includes the plural. Similarly, the reference to an "element" is substituted for the former reference to "elements".

The reference to this "subtitle" is substituted for the former reference to this "subheading", although this subtitle is derived, in part, from material outside of that contained in the former "Sexual Offenses" subheading in Article 27. Because the material revised in this subtitle that was not contained in the former "Sexual Offenses" subheading does not deal with the elements of rape at common law or otherwise, no substantive change results.

The former redundant reference to the "crime of" rape is deleted as surplusage.

3-303. RAPE IN THE FIRST DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) ENGAGE IN VAGINAL INTERCOURSE WITH ANOTHER BY FORCE, OR THE THREAT OF FORCE, WITHOUT THE CONSENT OF THE OTHER; AND

(2) (I) EMPLOY OR DISPLAY A DANGEROUS WEAPON, OR A PHYSICAL OBJECT THAT THE VICTIM REASONABLY BELIEVES IS A DANGEROUS WEAPON;

(II) SUFFOCATE, STRANGLE, DISFIGURE, OR INFLICT SERIOUS PHYSICAL INJURY ON THE VICTIM OR ANOTHER IN THE COURSE OF COMMITTING THE CRIME;

(III) THREATEN, OR PLACE THE VICTIM IN FEAR, THAT THE VICTIM, OR AN INDIVIDUAL KNOWN TO THE VICTIM, IMMINENTLY WILL BE SUBJECT TO DEATH, SUFFOCATION, STRANGULATION, DISFIGUREMENT, SERIOUS PHYSICAL INJURY, OR KIDNAPPING;

(IV) COMMIT THE CRIME WHILE AIDED AND ABETTED BY ANOTHER; OR

(V) COMMIT THE CRIME IN CONNECTION WITH A BURGLARY IN THE FIRST, SECOND, OR THIRD DEGREE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF RAPE IN THE FIRST DEGREE AND ON CONVICTION IS SUBJECT TO:

(1) IMPRISONMENT NOT EXCEEDING LIFE; OR

(2) IF THE PERSON IS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 3-503(A)(2) OF THIS ARTICLE AND THE VICTIM WAS A CHILD UNDER THE AGE OF 16 YEARS, IMPRISONMENT NOT EXCEEDING LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(C) REQUIRED NOTICE.

IF THE STATE INTENDS TO SEEK A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBSECTION (B)(2) OF THIS SECTION, THE STATE SHALL NOTIFY THE PERSON IN WRITING OF THE STATE'S INTENTION AT LEAST 30 DAYS BEFORE TRIAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 462.

In this section and throughout this subtitle, references to "against the will" are deleted as included in the references to "without the consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. *See, e.g., State v. Rusk*, 289 Md. 230 (1981).

In subsection (a)(2)(i) and (ii) of this section, references to the "victim" are substituted for the former references to the "other person" for clarity and consistency within this section.

In subsection (a)(2)(i) of this section, the reference to a "physical object" is substituted for the former word "article" for clarity.

Also in subsection (a)(2)(i) of this section, the word "believes" is substituted for the former word "concludes" for clarity.

Also in subsection (a)(2)(i) of this section, the former references to a "deadly" weapon are deleted as included in the references to a "dangerous" weapon.

In subsection (a)(2)(iii) of this section, the reference to "an individual" known to the victim is substituted for the former reference to "any person", because only a human being may suffer death, strangulation, disfigurement, serious physical injury, or kidnapping.

In subsection (a)(2)(iv) of this section, the reference to "another" is substituted for the former reference to "one or more other persons", for clarity and in light of Art. 1, § 8, which provides that the singular generally includes the plural.

Defined terms: "Person" § 1-101

"Vaginal intercourse" § 3-301

3-304. RAPE IN THE SECOND DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT ENGAGE IN VAGINAL INTERCOURSE WITH ANOTHER:

(1) BY FORCE, OR THE THREAT OF FORCE, WITHOUT THE CONSENT OF THE OTHER;

(2) IF THE VICTIM IS A MENTALLY DEFECTIVE INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL, AND THE PERSON PERFORMING THE ACT KNOWS OR REASONABLY SHOULD KNOW THAT THE VICTIM IS A MENTALLY DEFECTIVE INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL; OR

(3) IF THE VICTIM IS UNDER THE AGE OF 14 YEARS, AND THE PERSON PERFORMING THE ACT IS AT LEAST 4 YEARS OLDER THAN THE VICTIM.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF RAPE IN THE SECOND DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 463.

In this section and throughout this subtitle, the references to "against the will" are deleted as included with references to "without the consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. *See, e.g., State v. Rusk*, 289 Md. 230 (1981).

In subsection (a)(2) of this section, the references to the "victim" are substituted for the former references to the "other person" for clarity and consistency within this subtitle.

Defined terms: "Mentally defective individual" § 3-301

"Mentally incapacitated individual" § 3-301

"Person" § 1-101

"Physically helpless individual" § 3-301

"Vaginal intercourse" § 3-301

3-305. SEXUAL OFFENSE IN THE FIRST DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) ENGAGE IN A SEXUAL ACT WITH ANOTHER BY FORCE, OR THE THREAT OF FORCE, WITHOUT THE CONSENT OF THE OTHER; AND

(2) (I) EMPLOY OR DISPLAY A DANGEROUS WEAPON, OR A PHYSICAL OBJECT THAT THE VICTIM REASONABLY BELIEVES IS A DANGEROUS WEAPON;

(II) SUFFOCATE, STRANGLE, DISFIGURE, OR INFLICT SERIOUS PHYSICAL INJURY ON THE VICTIM OR ANOTHER IN THE COURSE OF COMMITTING THE CRIME;

(III) THREATEN, OR PLACE THE VICTIM IN FEAR, THAT THE VICTIM, OR AN INDIVIDUAL KNOWN TO THE VICTIM, IMMINENTLY WILL BE SUBJECT TO DEATH, SUFFOCATION, STRANGULATION, DISFIGUREMENT, SERIOUS PHYSICAL INJURY, OR KIDNAPPING;

(IV) COMMIT THE CRIME WHILE AIDED AND ABETTED BY ANOTHER; OR

(V) COMMIT THE CRIME IN CONNECTION WITH A BURGLARY IN THE FIRST, SECOND, OR THIRD DEGREE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF SEXUAL OFFENSE IN THE FIRST DEGREE AND ON CONVICTION IS SUBJECT TO:

(1) IMPRISONMENT NOT EXCEEDING LIFE; OR

(2) IF THE PERSON IS CONVICTED IN THE SAME PROCEEDING OF VIOLATING § 3-503(A)(2) OF THIS ARTICLE AND THE VICTIM WAS A CHILD UNDER THE AGE OF 16 YEARS, IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

(C) REQUIRED NOTICE.

IF THE STATE INTENDS TO SEEK A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBSECTION (B)(2) OF THIS SECTION, THE STATE SHALL NOTIFY THE PERSON IN WRITING OF THE STATE'S INTENTION AT LEAST 30 DAYS BEFORE TRIAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464.

In this section and throughout this subtitle, the references to "against the will" are deleted as included in the references to "without consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. *See, e.g., State v. Rusk*, 289 Md. 230 (1981).

In subsection (a)(2)(i) and (ii) of this section, the references to the "victim" are substituted for the former references to the "other person" for clarity and consistency within this subtitle.

In subsection (a)(2)(i) of this section, the reference to a "physical object" is substituted for the former word "article" for clarity.

Also in subsection (a)(2)(i) of this section, the word "believes" is substituted for the former word "concludes" for clarity.

Also in subsection (a)(2)(i) of this section, the former references to a "deadly" weapon are deleted as included in the references to a "dangerous" weapon.

In subsection (a)(2)(iii) of this section, the reference to "an individual" is substituted for the former reference to "anyone else", because only a human being may suffer death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping.

In subsection (a)(2)(iv) of this section, the reference to "another person" is

substituted for the former reference to "one or more other persons" for clarity and in light of Art. 1, § 8, which provides that the singular generally includes the plural.

Subsection (b) of this section is revised in standard language used to establish a penalty.

Defined terms: "Person" § 1-101

"Sexual act" § 3-301

3-306. SEXUAL OFFENSE IN THE SECOND DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT ENGAGE IN A SEXUAL ACT WITH ANOTHER:

(1) BY FORCE, OR THE THREAT OF FORCE, WITHOUT THE CONSENT OF THE OTHER;

(2) IF THE VICTIM IS A MENTALLY DEFECTIVE INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL, AND THE PERSON PERFORMING THE SEXUAL ACT KNOWS OR REASONABLY SHOULD KNOW THAT THE VICTIM IS A MENTALLY DEFECTIVE INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL; OR

(3) IF THE VICTIM IS UNDER THE AGE OF 14 YEARS, AND THE PERSON PERFORMING THE SEXUAL ACT IS AT LEAST 4 YEARS OLDER THAN THE VICTIM.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF SEXUAL OFFENSE IN THE SECOND DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464A.

In this section and throughout this subtitle, the references to "against the will" are deleted as included in the references to "without the consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. *See, e.g., State v. Rusk*, 289 Md. 230 (1981).

In subsection (a)(2) and (3) of this section, the references to the "victim" are substituted for the former references to the "other person" for clarity and consistency within this subtitle.

In subsection (a)(2) of this section, the reference to the "sexual" act is added for clarity.

Defined terms: "Mentally defective individual" § 3-301

"Mentally incapacitated individual" § 3-301

"Person" § 1-101

"Physically helpless individual" § 3-301

"Sexual act" § 3-301

3-307. SEXUAL OFFENSE IN THE THIRD DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) (I) ENGAGE IN SEXUAL CONTACT WITH ANOTHER WITHOUT THE CONSENT OF THE OTHER; AND

(II) 1. EMPLOY OR DISPLAY A DANGEROUS WEAPON, OR A PHYSICAL OBJECT THAT THE VICTIM REASONABLY BELIEVES IS A DANGEROUS WEAPON;

2. SUFFOCATE, STRANGLE, DISFIGURE, OR INFLICT SERIOUS PHYSICAL INJURY ON THE VICTIM OR ANOTHER IN THE COURSE OF COMMITTING THE CRIME;

3. THREATEN, OR PLACE THE VICTIM IN FEAR, THAT THE VICTIM, OR AN INDIVIDUAL KNOWN TO THE VICTIM, IMMINENTLY WILL BE SUBJECT TO DEATH, SUFFOCATION, STRANGULATION, DISFIGUREMENT, SERIOUS PHYSICAL INJURY, OR KIDNAPPING; OR

4. COMMIT THE CRIME WHILE AIDED AND ABETTED BY ANOTHER;

(2) ENGAGE IN SEXUAL CONTACT WITH ANOTHER IF THE VICTIM IS A MENTALLY DEFECTIVE INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL, AND THE PERSON PERFORMING THE ACT KNOWS OR REASONABLY SHOULD KNOW THE VICTIM IS A MENTALLY DEFECTIVE INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL;

(3) ENGAGE IN SEXUAL CONTACT WITH ANOTHER IF THE VICTIM IS UNDER THE AGE OF 14 YEARS, AND THE PERSON PERFORMING THE SEXUAL CONTACT IS AT LEAST 4 YEARS OLDER THAN THE VICTIM;

(4) ENGAGE IN A SEXUAL ACT WITH ANOTHER IF THE VICTIM IS 14 OR 15 YEARS OLD, AND THE PERSON PERFORMING THE SEXUAL ACT IS AT LEAST 21 YEARS OLD; OR

(5) ENGAGE IN VAGINAL INTERCOURSE WITH ANOTHER IF THE VICTIM IS 14 OR 15 YEARS OLD, AND THE PERSON PERFORMING THE ACT IS AT LEAST 21 YEARS OLD.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF SEXUAL OFFENSE IN THE THIRD DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464B.

In this section and throughout this subtitle, the reference to "against the will" is deleted as included in the reference to "without the consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. *See, e.g., State v. Rusk*, 289 Md. 230 (1981).

In subsection (a)(1)(ii)1 through 3 and (2) through (5) of this section, the references to the "victim" are substituted for the former references to "another person" for clarity and consistency within this subtitle.

In subsection (a)(1)(ii)1 of this section, the reference to a "physical object" is substituted for the former word "article" for clarity.

Also in subsection (a)(1)(ii)1 of this section, the word "believes" is substituted for the former word "concludes" for clarity.

Also in subsection (a)(1)(ii)1 of this section, the references to a "deadly" weapon are deleted as included in the references to a "dangerous" weapon.

In subsection (a)(1)(ii)4 of this section, reference to "another" is substituted for the former reference to "one or more persons" for clarity and in light of Art. 1, § 8, which provides that the singular generally includes the plural.

Defined terms: "Mentally defective individual" § 3-301

"Mentally incapacitated individual" § 3-301

"Person" § 1-101

"Physically helpless individual" § 3-301

"Sexual act" § 3-301

"Sexual contact" § 3-301

"Vaginal intercourse" § 3-301

3-308. SEXUAL OFFENSE IN THE FOURTH DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT ENGAGE IN:

(1) SEXUAL CONTACT WITH ANOTHER WITHOUT THE CONSENT OF THE OTHER;

(2) EXCEPT AS PROVIDED IN § 3-307(A)(4) OF THIS SUBTITLE, A SEXUAL ACT WITH ANOTHER IF THE VICTIM IS 14 OR 15 YEARS OLD, AND THE PERSON PERFORMING THE SEXUAL ACT IS AT LEAST 4 YEARS OLDER THAN THE VICTIM; OR

(3) EXCEPT AS PROVIDED IN § 3-307(A)(5) OF THIS SUBTITLE, VAGINAL INTERCOURSE WITH ANOTHER IF THE VICTIM IS 14 OR 15 YEARS OLD, AND THE PERSON PERFORMING THE ACT IS AT LEAST 4 YEARS OLDER THAN THE VICTIM.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF SEXUAL OFFENSE IN THE FOURTH DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464C.

In this section and throughout this subtitle, the reference to "against the will" is deleted as included in the reference to "without the consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. *See, e.g., State v. Rusk*, 289 Md. 230 (1981).

In subsection (a)(2) and (3) of this section, references to the "victim" are substituted for the former references to "another person" and the "other person" for clarity and consistency within this subtitle.

Defined terms: "Person" § 1-101

"Sexual act" § 3-301

"Sexual contact" § 3-301

"Vaginal intercourse" § 3-301

3-309. ATTEMPTED RAPE IN THE FIRST DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT ATTEMPT TO COMMIT RAPE IN THE FIRST DEGREE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING LIFE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464F(b), as it applied to attempted rape in the first degree.

Defined term: "Person" § 1-101

3-310. ATTEMPTED RAPE IN THE SECOND DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT ATTEMPT TO COMMIT RAPE IN THE SECOND DEGREE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464F(a), as it applied to attempted rape in the second degree.

Defined term: "Person" § 1-101

3-311. ATTEMPTED SEXUAL OFFENSE IN THE FIRST DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT ATTEMPT TO COMMIT A SEXUAL OFFENSE IN THE FIRST DEGREE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING LIFE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464F(b), as it applied to attempted sexual offense in the first degree.

Defined term: "Person" § 1-101

3-312. ATTEMPTED SEXUAL OFFENSE IN THE SECOND DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT ATTEMPT TO COMMIT A SEXUAL OFFENSE IN THE SECOND DEGREE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464F(a), as it applied to attempted sexual offense in the second degree.

Defined term: "Person" § 1-101

3-313. SEXUAL CONDUCT BETWEEN CORRECTIONAL OR JUVENILE JUSTICE EMPLOYEE AND INMATE OR CONFINED CHILD.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "CORRECTIONAL EMPLOYEE" MEANS A:

1. CORRECTIONAL OFFICER, AS DEFINED IN § 8-201 OF THE CORRECTIONAL SERVICES ARTICLE; OR

2. MANAGING OFFICIAL OR DEPUTY MANAGING OFFICIAL OF A CORRECTIONAL FACILITY.

(II) "CORRECTIONAL EMPLOYEE" INCLUDES A SHERIFF, WARDEN, OR OTHER OFFICIAL WHO IS APPOINTED OR EMPLOYED TO SUPERVISE A CORRECTIONAL FACILITY.

(3) (I) "INMATE" HAS THE MEANING STATED IN § 1-101 OF THIS ARTICLE.

(II) "INMATE" INCLUDES AN INDIVIDUAL CONFINED IN A COMMUNITY ADULT REHABILITATION CENTER.

(B) PROHIBITED -- CORRECTIONAL EMPLOYEE WITH INMATE.

A CORRECTIONAL EMPLOYEE MAY NOT ENGAGE IN VAGINAL INTERCOURSE OR A SEXUAL ACT WITH AN INMATE.

(C) SAME -- JUVENILE JUSTICE EMPLOYEE WITH CONFINED CHILD.

AN EMPLOYEE OR LICENSEE OF THE DEPARTMENT OF JUVENILE JUSTICE MAY NOT ENGAGE IN VAGINAL INTERCOURSE OR A SEXUAL ACT WITH AN INDIVIDUAL CONFINED IN A CHILD CARE INSTITUTION LICENSED BY THE DEPARTMENT, A DETENTION CENTER FOR JUVENILES, OR A FACILITY FOR JUVENILES LISTED IN ARTICLE 83C, § 2-117(A)(2) OF THE CODE.

(D) 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 $3,000 OR BOTH.

(E) SENTENCING.

A SENTENCE IMPOSED FOR VIOLATION OF THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANOTHER CRIME UNDER §§ 3-303 THROUGH 3-312 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464G.

In subsection (a)(2)(i)2 of this section, the term "managing official" is substituted for the former word "head" of a correctional facility for consistency with the Correctional Services Article.

In subsection (a)(2)(ii) of this section, the reference to any "other official" is substituted for the former reference to any "person having an equivalent title" for brevity.

Also in subsection (a)(2)(ii) of this section, the former word "superintendent" is deleted as obsolete.

In subsection (a)(3)(i) of this section, the term "inmate" defined in § 1-101 of this article is substituted for the former reference to a "person who is incarcerated in a State or local correctional facility".

In subsection (e) of this section, the term "crime" is substituted for the former term "offense" for consistency within this article. *See* General Revisor's Note to article.

Also in subsection (e) of this section, the reference to "§§ 3-303 through 3-312 of this subtitle" is substituted for the former reference to "this subheading", to distinguish other substantive crimes derived from the former "Sexual Offenses" subheading in former Article 27 from other material revised in this subtitle.

Defined terms: "Correctional facility" § 1-101

"Inmate" § 1-101

"Sexual act" § 3-301

"Vaginal intercourse" § 3-301

3-314. RAPE AND SEXUAL OFFENSE -- VENUE.

IF A PERSON IS TRANSPORTED WITH THE INTENT TO VIOLATE A PROVISION OF §§ 3-303 THROUGH 3-313 OF THIS SUBTITLE, AND THE INTENT IS FOLLOWED BY ACTUAL VIOLATION OF A PROVISION OF §§ 3-303 THROUGH 3-313 OF THIS SUBTITLE, THE DEFENDANT MAY BE TRIED IN THE APPROPRIATE COURT IN A COUNTY WHERE THE TRANSPORTATION WAS OFFERED, SOLICITED, BEGUN, CONTINUED, OR ENDED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 465.

The former redundant phrase "by any means" is deleted as unnecessary because "transports" includes all means of transportation.

The reference to "a county" is substituted for the former phrase "jurisdiction [within a] ... county" for clarity.

The references to violating "a provision of §§ 3-303 through 3-313 of this subtitle" are substituted for the former references to violating "this subheading", to distinguish substantive crimes derived from the former "Sexual Offenses" subheading in former Article 27 from other crimes revised in this subtitle.

Defined terms: "County" § 1-101

"Person" § 1-101

3-315. SAME -- CHARGING DOCUMENT.

(A) CONTENT.

AN INDICTMENT, INFORMATION, OR WARRANT FOR A CRIME UNDER §§ 3-303 THROUGH 3-313 OF THIS SUBTITLE IS SUFFICIENT IF IT SUBSTANTIALLY STATES:

"(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) COMMITTED A RAPE OR SEXUAL OFFENSE ON (NAME OF VICTIM) IN VIOLATION OF (SECTION VIOLATED) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) BILL OF PARTICULARS.

IN A CASE IN WHICH THE GENERAL FORM OF INDICTMENT, INFORMATION, OR WARRANT DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS USED, THE DEFENDANT IS ENTITLED TO A BILL OF PARTICULARS SPECIFICALLY SETTING FORTH THE ALLEGATIONS AGAINST THE DEFENDANT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 461C.

In subsection (a) of this section, the reference to "a crime under §§ 3-303 through 3-313 of this subtitle" is substituted for the former reference to "rape or a sexual offense" for clarity and consistency within this subtitle.

Also in subsection (a) of this section, the former archaic phrase "contrary to the form of the Act of Assembly in such case made and provided" is deleted as surplusage.

For specific time limits relating to a bill of particulars, *see* Md. Rule 4-241.

Defined term: "County" § 1-101

3-316. SAME -- SPOUSAL DEFENSE.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, A PERSON MAY NOT BE PROSECUTED UNDER § 3-303, § 3-304, § 3-307, OR § 3-308 OF THIS

SUBTITLE FOR A CRIME AGAINST A VICTIM WHO WAS THE PERSON'S LEGAL SPOUSE AT THE TIME OF THE ALLEGED RAPE OR SEXUAL OFFENSE.

(B) SEPARATION OR USE OF FORCE.

A PERSON MAY BE PROSECUTED UNDER § 3-303(A), § 3-304(A)(1), OR § 3-307(A)(1)(I) AND (II)1 OR 2 OF THIS SUBTITLE FOR A CRIME AGAINST THE PERSON'S LEGAL SPOUSE IF:

(1) AT THE TIME OF THE ALLEGED CRIME THE PERSON AND THE PERSON'S LEGAL SPOUSE HAVE LIVED APART, WITHOUT COHABITATION AND WITHOUT INTERRUPTION:

(I) UNDER A WRITTEN SEPARATION AGREEMENT EXECUTED BY THE PERSON AND THE SPOUSE; OR

(II) FOR AT LEAST 3 MONTHS IMMEDIATELY BEFORE THE ALLEGED RAPE OR SEXUAL OFFENSE; OR

(2) THE PERSON IN COMMITTING THE CRIME USES FORCE AND THE ACT IS WITHOUT THE CONSENT OF THE SPOUSE.

(C) LIMITED DIVORCE.

A PERSON MAY BE PROSECUTED UNDER § 3-303, § 3-304, § 3-307, OR § 3-308 OF THIS SUBTITLE FOR A CRIME AGAINST THE PERSON'S LEGAL SPOUSE IF AT THE TIME OF THE ALLEGED CRIME THE PERSON AND THE SPOUSE LIVE APART, WITHOUT COHABITATION AND WITHOUT INTERRUPTION, UNDER A DECREE OF LIMITED DIVORCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464D.

In this section and throughout this subtitle, the term "against the will" is deleted as included in the reference to "without the consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. *See, e.g., State v. Rusk*, 289 Md. 230 (1981).

Throughout this section, references to "commission" of a crime are deleted as implicit in the references to a specific crime.

In subsection (b)(2) of this section, the reference to using force "in committing the crime" is added for clarity.

Defined term: "Person" § 1-101

3-317. SAME -- ADMISSIBILITY OF EVIDENCE.

(A) REPUTATION AND OPINION EVIDENCE INADMISSIBLE.

EVIDENCE RELATING TO A VICTIM'S REPUTATION FOR CHASTITY AND OPINION EVIDENCE RELATING TO A VICTIM'S CHASTITY MAY NOT BE ADMITTED IN A PROSECUTION FOR RAPE, A SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE, ATTEMPTED RAPE, OR AN ATTEMPTED SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE.

(B) SPECIFIC INSTANCE EVIDENCE ADMISSIBILITY REQUIREMENTS.

EVIDENCE OF A SPECIFIC INSTANCE OF A VICTIM'S PRIOR SEXUAL CONDUCT MAY BE ADMITTED IN A PROSECUTION FOR RAPE, A SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE, ATTEMPTED RAPE, OR AN ATTEMPTED SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE ONLY IF THE JUDGE FINDS THAT:

(1) THE EVIDENCE IS RELEVANT;

(2) THE EVIDENCE IS MATERIAL TO A FACT IN ISSUE IN THE CASE;

(3) THE INFLAMMATORY OR PREJUDICIAL NATURE OF THE EVIDENCE DOES NOT OUTWEIGH ITS PROBATIVE VALUE; AND

(4) THE EVIDENCE:

(I) IS OF THE VICTIM'S PAST SEXUAL CONDUCT WITH THE DEFENDANT;

(II) IS OF A SPECIFIC INSTANCE OF SEXUAL ACTIVITY SHOWING THE SOURCE OR ORIGIN OF SEMEN, PREGNANCY, DISEASE, OR TRAUMA;

(III) SUPPORTS A CLAIM THAT THE VICTIM HAS AN ULTERIOR MOTIVE TO ACCUSE THE DEFENDANT OF THE CRIME; OR

(IV) IS OFFERED FOR IMPEACHMENT AFTER THE PROSECUTOR HAS PUT THE VICTIM'S PRIOR SEXUAL CONDUCT IN ISSUE.

(C) CLOSED HEARING.

(1) EVIDENCE DESCRIBED IN SUBSECTION (A) OR (B) OF THIS SECTION MAY NOT BE REFERRED TO IN A STATEMENT TO A JURY OR INTRODUCED IN A TRIAL UNLESS THE COURT HAS FIRST HELD A CLOSED HEARING UNDER PARAGRAPH (2) OF THIS SUBSECTION AND DETERMINED THAT THE EVIDENCE IS ADMISSIBLE.

(2) THE COURT MAY RECONSIDER A RULING EXCLUDING THE EVIDENCE AND HOLD AN ADDITIONAL CLOSED HEARING IF NEW INFORMATION IS DISCOVERED DURING THE COURSE OF THE TRIAL THAT MAY MAKE THE EVIDENCE ADMISSIBLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 461A.

In subsection (a) of this section, the former reference to "commission" of a crime is deleted as implicit in the references to specific crimes.

In subsection (b) of this section, the reference to "in a prosecution for rape, a sexual offense in the first or second degree, attempted rape, or an attempted sexual offense in the first or second degree" is added for clarity.

In subsection (c)(1) and (2) of this section, the references to a "closed" hearing are substituted for the former archaic references to an "in camera" hearing.

In subsection (c)(2) of this section, the reference to "reconsider[ing] a ruling excluding evidence and hold[ing] an additional closed hearing" is substituted for the former reference to "order[ing] an in camera hearing" for clarity and accuracy.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b)(2) of this section, the separate requirement for "material" evidence may be obsolete in light of the requirement for "relevant" evidence. *See, e.g.*, Md. Rule 5-401.

3-318. SAME -- JURY INSTRUCTIONS.

IN A CRIMINAL PROSECUTION UNDER §§ 3-303 THROUGH 3-313 OF THIS SUBTITLE, A JUDGE MAY NOT INSTRUCT THE JURY:

(1) TO EXAMINE THE TESTIMONY OF THE PROSECUTING WITNESS WITH CAUTION, SOLELY BECAUSE OF THE NATURE OF THE CHARGE;

(2) THAT THE CHARGE IS EASILY MADE OR DIFFICULT TO DISPROVE, SOLELY BECAUSE OF THE NATURE OF THE CHARGE; OR

(3) TO FOLLOW ANOTHER SIMILAR INSTRUCTION, SOLELY BECAUSE OF THE NATURE OF THE CHARGE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 461B.

The reference to prosecution "under §§ 3-303 through 3-313 of this subtitle" is substituted for the former reference to prosecution "for rape, attempted rape, attempted sexual offense, or any other sexual offense", for clarity, and to distinguish between prosecutions for crimes subject to this section and the other crimes of a sexual nature revised in this subtitle: sodomy, perverted practices, and incest.

3-319. SODOMY.

A PERSON WHO IS CONVICTED OF SODOMY IS GUILTY OF A FELONY AND IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 553.

The reference to being "guilty of a felony" is added to state expressly that which was previously established in the common law of Maryland. *See Davis v. State*, 3 Har. & J. 154 (1810); *Cherry v. State*, 18 Md. App. 252, 265 (1973).

The former redundant reference to the "crime of" sodomy is deleted as surplusage.

The reference to being "subject to imprisonment" is substituted for the former reference to being "sentenced to the penitentiary" for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Defined term: "Person" § 1-101

3-320. UNNATURAL OR PERVERTED SEXUAL PRACTICE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) TAKE THE SEXUAL ORGAN OF ANOTHER OR OF AN ANIMAL IN THE PERSON'S MOUTH;

(2) PLACE THE PERSON'S SEXUAL ORGAN IN THE MOUTH OF ANOTHER OR OF AN ANIMAL; OR

(3) COMMIT ANOTHER UNNATURAL OR PERVERTED SEXUAL PRACTICE WITH ANOTHER OR WITH AN ANIMAL.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $1,000 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.

(D) CHARGING DOCUMENT.

AN INDICTMENT FOR A VIOLATION OF THIS SECTION:

(1) IS SUFFICIENT IF IT STATES THAT THE DEFENDANT COMMITTED AN UNNATURAL AND PERVERTED SEXUAL PRACTICE WITH A PERSON OR ANIMAL AS APPLICABLE; BUT

(2) NEED NOT STATE THE PARTICULAR:

(I) UNNATURAL OR PERVERTED SEXUAL PRACTICE WITH WHICH THE DEFENDANT IS CHARGED; OR

(II) MANNER IN WHICH THE DEFENDANT COMMITTED THE UNNATURAL OR PERVERTED SEXUAL PRACTICE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 554.

In subsection (b) of this section, the phrase "guilty of a misdemeanor" is added to state expressly that which was only implied in the former law. In this State, any crime that was not a felony at common law and has not been declared to be a felony by statute is considered to be a misdemeanor. *See State v. Canova*, 278 Md. 483, 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 (1968).

Also in subsection (b) of this section, the former reference to imprisonment "in jail or in the house of correction" is deleted in light of CS § 9-103, which requires a judge to sentence an individual to the jurisdiction of the Division of Correction if the individual is required to be incarcerated at a specific State institution, and CS § 9-105, which provides that a judge only may sentence an individual to a local correctional facility if the individual is sentenced for less than 18 months.

Also in subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to imprisonment "in the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the revision is not intended in any way to alter the judicial interpretation of this section or to affect the scope of its application to any activity.

Defined term: "Person" § 1-101

3-321. INCEST.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY ENGAGE IN VAGINAL INTERCOURSE WITH ANYONE WHOM THE PERSON MAY NOT MARRY UNDER § 2-202 OF THE FAMILY LAW ARTICLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 1 YEAR AND NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 335.

In subsection (a) of this section, the defined term "vaginal intercourse" is substituted for the former archaic reference to "carnal knowledge" because the appellate courts of the State have determined that "carnal knowledge" and "sexual intercourse", defined in this subtitle as "vaginal intercourse", are synonymous. *See Scott v. State*, 2 Md. App. 709, cert. denied, 249 Md. 733 (1968); *Simms v. State*, 52 Md. App. 448, 453 (1982).

Also in subsection (a) of this section, the reference to anyone "whom the person may not marry under § 2-202 of the Family Law Article" is substituted for the former reference to "being within the degrees of consanguinity within which marriages are prohibited by law in this State" for clarity and brevity.

In subsection (b) of this section, the former reference to imprisonment "in the penitentiary" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Also in subsection (b) of this section, the former redundant phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined terms: "Person" § 1-101

"Vaginal intercourse" § 3-301

SUBTITLE 4. ROBBERY.

3-401. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 486(a)(1).

In this subsection and throughout this subtitle, the references to this "subtitle" are substituted for the former references to this "subheading" to reflect the reorganization of material derived from the former "Robbery" subheading of Article 27.

No other changes are made.

(B) DEPRIVE.

"DEPRIVE" MEANS TO WITHHOLD PROPERTY OF ANOTHER:

(1) PERMANENTLY;

(2) FOR A PERIOD THAT RESULTS IN THE APPROPRIATION OF A PART OF THE PROPERTY'S VALUE;

(3) WITH THE PURPOSE TO RESTORE IT ONLY ON PAYMENT OF A REWARD OR OTHER COMPENSATION; OR

(4) TO DISPOSE OF THE PROPERTY OR USE OR DEAL WITH THE PROPERTY IN A MANNER THAT MAKES IT UNLIKELY THAT THE OWNER WILL RECOVER IT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 486(a)(2).

In item (4) of this subsection, the reference to disposing "or" using property is substituted for the former reference to disposing "and" using property for clarity. The Criminal Law Article Review Committee calls this substitution to the attention of the General Assembly.

(C) OBTAIN.

"OBTAIN" MEANS:

(1) IN RELATION TO PROPERTY, TO BRING ABOUT A TRANSFER OF INTEREST IN OR POSSESSION OF THE PROPERTY; AND

(2) IN RELATION TO A SERVICE, TO SECURE THE PERFORMANCE OF THE SERVICE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 486(a)(3).

In item (1) of this subsection, the former reference to transferring "to the offender or to another" is deleted as unnecessary.

The only other changes are in style.

(D) PROPERTY.

(1) "PROPERTY" MEANS ANYTHING OF VALUE.

(2) "PROPERTY" INCLUDES:

(I) REAL ESTATE;

(II) MONEY;

(III) A COMMERCIAL INSTRUMENT;

(IV) AN ADMISSION OR TRANSPORTATION TICKET;

(V) A WRITTEN INSTRUMENT REPRESENTING OR EMBODYING RIGHTS CONCERNING ANYTHING OF VALUE, OR SERVICES, OR ANYTHING OTHERWISE OF VALUE TO THE OWNER;

(VI) A THING GROWING ON, AFFIXED TO, OR FOUND ON LAND, OR THAT IS PART OF OR AFFIXED TO ANY BUILDING;

(VII) ELECTRICITY, GAS, AND WATER;

(VIII) A BIRD, ANIMAL, OR FISH THAT ORDINARILY IS KEPT IN A STATE OF CONFINEMENT;

(IX) FOOD OR DRINK;

(X) A SAMPLE, CULTURE, MICROORGANISM, OR SPECIMEN;

(XI) A RECORD, RECORDING, DOCUMENT, BLUEPRINT, DRAWING, MAP, OR A WHOLE OR PARTIAL COPY, DESCRIPTION, PHOTOGRAPH, PROTOTYPE, OR MODEL OF ANY OF THEM;

(XII) AN ARTICLE, MATERIAL, DEVICE, SUBSTANCE, OR A WHOLE OR PARTIAL COPY, DESCRIPTION, PHOTOGRAPH, PROTOTYPE, OR MODEL OF ANY OF THEM THAT REPRESENTS EVIDENCE OF, REFLECTS, OR RECORDS A SECRET:

1. SCIENTIFIC, TECHNICAL, MERCHANDISING, PRODUCTION, OR MANAGEMENT INFORMATION; OR

2. DESIGNED PROCESS, PROCEDURE, FORMULA, INVENTION, TRADE SECRET, OR IMPROVEMENT;

(XIII) A FINANCIAL INSTRUMENT; AND

(XIV) INFORMATION, ELECTRONICALLY PRODUCED DATA, AND A COMPUTER SOFTWARE OR PROGRAM IN A FORM READABLE BY MACHINE OR INDIVIDUAL.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 486(a)(4).

In item (2)(xii)1 of this subsection, a comma is added between "merchandising" and "production" for clarity.

In item (2)(xii)2 of this subsection, the phrase "designed process," is retained, although substituting the phrase "design, process," may be more accurate. The Criminal Law Article Review Committee calls this retention to the attention of the General Assembly.

In item (2)(xiv) of this subsection, the former reference to "other tangible or intangible items of value" is deleted as included in the comprehensive

reference to "anything of value" in item (1) of this subsection.

(E) ROBBERY.

"ROBBERY" RETAINS ITS JUDICIALLY DETERMINED MEANING EXCEPT THAT:

(1) ROBBERY INCLUDES OBTAINING THE SERVICE OF ANOTHER BY FORCE OR THREAT OF FORCE; AND

(2) ROBBERY REQUIRES PROOF OF INTENT TO WITHHOLD PROPERTY OF ANOTHER:

(I) PERMANENTLY;

(II) FOR A PERIOD THAT RESULTS IN THE APPROPRIATION OF A PART OF THE PROPERTY'S VALUE;

(III) WITH THE PURPOSE TO RESTORE IT ONLY ON PAYMENT OF A REWARD OR OTHER COMPENSATION; OR

(IV) TO DISPOSE OF THE PROPERTY OR USE OR DEAL WITH THE PROPERTY IN A MANNER THAT MAKES IT UNLIKELY THAT THE OWNER WILL RECOVER IT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 486(b) and (a)(2).

In item (2) of this subsection, the substance of the defined term "deprive" is substituted for the former reference to "depriv[ing]" for clarity.

(F) SERVICE.

"SERVICE" INCLUDES:

(1) LABOR OR PROFESSIONAL SERVICE;

(2) TELECOMMUNICATION, PUBLIC UTILITY, TOLL FACILITY, OR TRANSPORTATION SERVICE;

(3) LODGING, ENTERTAINMENT, OR RESTAURANT SERVICE; AND

(4) THE USE OF COMPUTERS, DATA PROCESSING, OR OTHER EQUIPMENT.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 486(a)(5).

The only changes are in style.

3-402. ROBBERY.

(A) PROHIBITED.

A PERSON MAY NOT COMMIT OR ATTEMPT TO COMMIT ROBBERY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 486(c) and (d).

Defined terms: "Person" § 1-101

"Robbery" § 3-401

3-403. ROBBERY WITH DANGEROUS WEAPON.

(A) PROHIBITED.

A PERSON MAY NOT COMMIT OR ATTEMPT TO COMMIT ROBBERY UNDER § 3-402 OF THIS SUBTITLE WITH A DANGEROUS WEAPON.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 487.

In subsection (a) of this section, the former reference to a "deadly" weapon is deleted as included in the reference to a "dangerous" weapon. Maryland courts apply an objective test to characterize such a weapon: "to be deadly or dangerous a weapon must be inherently of that character or must be used or useable in a manner that gives it that character." *Handy v. State*, 357 Md. 685, 692 (2000), citing *Brooks v. State*, 314 Md. 585, 590 (1989). Any weapon that is inherently deadly is also inherently dangerous.

Defined terms: "Person" § 1-101

"Robbery" § 3-401

3-404. CHARGING DOCUMENT.

(A) IN GENERAL.

AN INDICTMENT, INFORMATION, WARRANT, OR OTHER CHARGING DOCUMENT FOR ROBBERY IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) DID FELONIOUSLY ROB (NAME OF VICTIM) OF (PROPERTY/SERVICE) (HAVING A VALUE OF $500 OR MORE) (WITH A DANGEROUS WEAPON) IN VIOLATION OF (SECTION VIOLATED) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) DETERMINATION OF VALUE.

IF A CHARGING DOCUMENT ALLEGES THAT THE VALUE OF THE PROPERTY OR SERVICE SUBJECT TO THIS SUBTITLE IS $500 OR MORE, THE COURT SHALL INSTRUCT THE JURY TO DETERMINE WHETHER THE VALUE OF THE PROPERTY OR SERVICE IS LESS THAN $500, OR $500 OR MORE.

(C) THEFT AS LESSER INCLUDED CRIME.

UNLESS A CHARGING DOCUMENT ALLEGES THAT THE VALUE OF THE PROPERTY OR SERVICE SUBJECT TO THIS SUBTITLE IS $500 OR MORE, A FELONY VIOLATION OF § 7-104 OF THIS ARTICLE IS NOT A LESSER INCLUDED CRIME OF ROBBERY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 488.

In subsection (a) of this section, the former reference to a "deadly" weapon is deleted as included in the reference to a "dangerous" weapon.

Also in subsection (a) of this section, the former archaic phrase "contrary to the form of the act of assembly in such case made and provided" is deleted as surplusage.

In subsection (c) of this section, the reference to a lesser included "crime" is substituted for the former reference to a lesser included "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "County" § 1-101

"Property" § 3-401

"Robbery" § 3-401

"Service" § 3-401

3-405. CARJACKING.

(A) "MOTOR VEHICLE" DEFINED.

IN THIS SECTION, "MOTOR VEHICLE" HAS THE MEANING STATED IN § 11-135 OF THE TRANSPORTATION ARTICLE.

(B) PROHIBITED -- CARJACKING.

(1) AN INDIVIDUAL MAY NOT TAKE UNAUTHORIZED POSSESSION OR CONTROL OF A MOTOR VEHICLE FROM ANOTHER INDIVIDUAL WHO ACTUALLY POSSESSES THE MOTOR VEHICLE, BY FORCE OR VIOLENCE, OR BY PUTTING THAT INDIVIDUAL IN FEAR THROUGH INTIMIDATION OR THREAT OF FORCE OR VIOLENCE.

(2) A VIOLATION OF THIS SUBSECTION IS CARJACKING.

(C) SAME -- ARMED CARJACKING.

(1) A PERSON MAY NOT EMPLOY OR DISPLAY A DANGEROUS WEAPON DURING THE COMMISSION OF A CARJACKING.

(2) A VIOLATION OF THIS SUBSECTION IS ARMED CARJACKING.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS.

(E) SENTENCING.

A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO A SENTENCE FOR ANY OTHER CRIME THAT ARISES FROM THE CONDUCT UNDERLYING THE CARJACKING OR ARMED CARJACKING.

(F) PROHIBITED DEFENSE.

IT IS NOT A DEFENSE UNDER THIS SECTION THAT THE DEFENDANT DID NOT INTEND PERMANENTLY TO DEPRIVE THE OWNER OF THE MOTOR VEHICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 348A.

In subsection (c)(1) of this section, the former reference to a "deadly" weapon is deleted as included in the reference to a "dangerous" weapon.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that while subsections (b)(1) and (c)(1) of this section prohibit taking a motor vehicle from "another individual who actually possesses" the vehicle, subsection (f) of this section prohibits a defense relating to depriving "the owner" of the vehicle. The General Assembly may wish to consider whether these provisions should be reconciled to refer to the same individual, either the "individual who actually possesses" the vehicle, or the vehicle owner.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that there is no difference between the penalty imposed for carjacking and the penalty imposed for armed carjacking.

Defined terms: "Deprive" § 3-401

"Person" § 1-101

SUBTITLE 5. KIDNAPPING.

3-501. "HOME OR USUAL PLACE OF ABODE" DEFINED.

IN THIS SUBTITLE, "HOME OR USUAL PLACE OF ABODE" INCLUDES THE REAL PROPERTY APPURTENANT TO THE HOME OR PLACE OF ABODE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the second sentence of former Art. 27, § 2.

The former reference to a "house" is deleted for brevity.

3-502. KIDNAPPING.

(A) PROHIBITED.

A PERSON MAY NOT, BY FORCE OR FRAUD, CARRY OR CAUSE A PERSON TO BE CARRIED IN OR OUTSIDE THE STATE WITH THE INTENT TO HAVE THE PERSON CARRIED OR CONCEALED IN OR OUTSIDE THE STATE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF KIDNAPPING AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS.

(C) EXCEPTION.

KIDNAPPING DOES NOT INCLUDE THE ACT OF A PARENT IN CARRYING A MINOR CHILD OF THAT PARENT IN OR OUTSIDE THE STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 337.

In the introductory language to subsection (a) of this section, the former reference to "counsellors, aiders or abettors" is deleted as included in the reference to a "person".

In subsection (b) of this section, the former reference to a person being sentenced "to the penitentiary" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

In subsection (c) of this section, the reference to a "minor child of that parent" is substituted for the former reference to a "person under eighteen years of age, by a parent thereof" for brevity.

Defined terms: "Minor" § 1-101

"Person" § 1-101

3-503. CHILD KIDNAPPING.

(A) PROHIBITED.

(1) A PERSON MAY NOT, WITHOUT COLOR OF RIGHT:

(I) FORCIBLY ABDUCT, TAKE, OR CARRY AWAY A CHILD UNDER THE AGE OF 12 YEARS FROM:

1. THE HOME OR USUAL PLACE OF ABODE OF THE CHILD; OR

2. THE CUSTODY AND CONTROL OF THE CHILD'S PARENT OR LEGAL GUARDIAN;

(II) WITHOUT THE CONSENT OF THE CHILD'S PARENT OR LEGAL GUARDIAN, PERSUADE OR ENTICE A CHILD UNDER THE AGE OF 12 YEARS FROM:

1. THE CHILD'S HOME OR USUAL PLACE OF ABODE; OR

2. THE CUSTODY AND CONTROL OF THE CHILD'S PARENT OR LEGAL GUARDIAN; OR

(III) WITH THE INTENT OF DEPRIVING THE CHILD'S PARENT OR LEGAL GUARDIAN, OR ANY PERSON LAWFULLY POSSESSING THE CHILD, OF THE CUSTODY, CARE, AND CONTROL OF THE CHILD, KNOWINGLY SECRETE OR HARBOR A CHILD UNDER THE AGE OF 12 YEARS.

(2) IN ADDITION TO THE PROHIBITIONS PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A PERSON MAY NOT, BY FORCE OR FRAUD, KIDNAP, STEAL, TAKE, OR CARRY AWAY A CHILD UNDER THE AGE OF 16 YEARS.

(B) PENALTY.

(1) A PERSON WHO VIOLATES SUBSECTION (A)(1) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

(2) (I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERSON, OTHER THAN A PARENT OF THE CHILD, WHO VIOLATES SUBSECTION (A)(2) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS.

(II) 1. IF A PERSON CONVICTED UNDER SUBSECTION (A)(2) OF THIS SECTION IS CONVICTED IN THE SAME PROCEEDING OF RAPE OR A FIRST DEGREE SEXUAL OFFENSE UNDER SUBTITLE 3 OF THIS TITLE, THE PERSON IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING LIFE WITHOUT THE POSSIBILITY OF PAROLE.

2. IF THE STATE INTENDS TO SEEK A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE STATE SHALL NOTIFY THE PERSON IN WRITING OF THE STATE'S INTENT AT LEAST 30 DAYS BEFORE TRIAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 338 and the first sentence of § 2.

In the introductory language of subsection (a)(1) of this section, the former references to "accessor[ies]" and to "his counsellors, aiders or abettors" are deleted as included in the reference to a "person" in light of the abrogation of the distinction between principals and accessories before the fact to a crime. *See* General Revisor's Note to article and CP § 4-204. The Criminal

Law Article Review Committee believes that the reference to being an "accessory" to child kidnapping under former Art. 27, § 2 refers only to being an "accessory before the fact", not to being an accessory after the fact. Accordingly, no reference to being an accessory of any kind is retained. The Committee calls this matter to the attention of the General Assembly.

In subsection (a)(1) of this section, the former references to "parents" and "guardians" are deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

Also in subsection (a)(1) of this section, the references to a "legal guardian" are substituted for the former references to a "lawful guardian" for clarity.

In subsection (b)(1) and (2)(i) of this section, the former references to a person being sentenced "in the penitentiary" and "to the penitentiary" are deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

In subsection (b)(1) of this section, the former reference to "the discretion of the court" is deleted as implicit in setting maximum penalties.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the provisions of subsection (a)(2) of this section, kidnapping a child under the age of 16 years (derived from former Art. 27, § 338), significantly overlap the provisions of subsection (a)(1) of this section, kidnapping a child under the age of 12 years (derived from former Art. 27, § 2), and carry significantly greater penalties. The General Assembly may wish to consider consolidating these provisions or revisiting their respective penalties.

Defined terms: "Home or usual place of abode" § 3-501

"Person" § 1-101

SUBTITLE 6. ABUSE AND OTHER OFFENSIVE CONDUCT.

3-601. CHILD ABUSE.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "ABUSE" MEANS:

(I) PHYSICAL INJURY SUSTAINED BY A MINOR AS A RESULT OF CRUEL OR INHUMANE TREATMENT OR AS A RESULT OF A MALICIOUS ACT UNDER CIRCUMSTANCES THAT INDICATE THAT THE MINOR'S HEALTH OR WELFARE IS HARMED OR THREATENED BY THE TREATMENT OR ACT; OR

(II) SEXUAL ABUSE OF A MINOR, WHETHER PHYSICAL INJURIES ARE SUSTAINED OR NOT.

(3) "FAMILY MEMBER" MEANS A RELATIVE OF A MINOR BY BLOOD, ADOPTION, OR MARRIAGE.

(4) "HOUSEHOLD MEMBER" MEANS A PERSON WHO LIVES WITH OR IS A REGULAR PRESENCE IN A HOME OF A MINOR AT THE TIME OF THE ALLEGED ABUSE.

(5) (I) "SEXUAL ABUSE" MEANS AN ACT THAT INVOLVES SEXUAL MOLESTATION OR EXPLOITATION OF A MINOR.

(II) "SEXUAL ABUSE" INCLUDES:

1. INCEST;

2. RAPE;

3. SEXUAL OFFENSE IN ANY DEGREE;

4. SODOMY; AND

5. UNNATURAL OR PERVERTED SEXUAL PRACTICES.

(B) PROHIBITED.

(1) A PARENT OR OTHER PERSON WHO HAS PERMANENT OR TEMPORARY CARE OR CUSTODY OR RESPONSIBILITY FOR THE SUPERVISION OF A MINOR MAY NOT CAUSE ABUSE TO THE MINOR.

(2) A HOUSEHOLD MEMBER OR FAMILY MEMBER MAY NOT CAUSE ABUSE TO A MINOR.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

(1) IMPRISONMENT NOT EXCEEDING 15 YEARS; OR

(2) IF THE VIOLATION RESULTS IN THE DEATH OF THE VICTIM, IMPRISONMENT NOT EXCEEDING 30 YEARS.

(D) SENTENCING.

A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 35C(a)(1), (2), and (4) through (6) and (b).

Throughout this section, the defined term "minor" is substituted for the former term "child" which was defined as an individual under the age of 18 years.

In subsection (a)(2)(i) and (5) of this section, the former references to actions "by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member" are deleted as duplicative of the references to a "parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor" and a "household member or family member" in subsection (b)(1) and (2) of this section, respectively.

In subsection (c) of this section, the former reference to a person being subject to imprisonment "in the penitentiary" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

In subsection (d) of this section, the reference to the "violation of this section" is substituted for the former reference to the "[child] abuse", to reflect the reorganization of material in this section.

Also in subsection (d) of this section, the former phrase "or acts" is deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

Former Art. 27, § 35C(a)(3), which defined "child" to mean an individual under the age of 18 years, is deleted because it is not used in the revision of this section.

Defined terms: "Minor" § 1-101

"Person" § 1-101

3-602. SALE OF MINOR.

(A) PROHIBITED.

A PERSON MAY NOT SELL, BARTER, OR TRADE, OR OFFER TO SELL, BARTER, OR TRADE, A MINOR FOR MONEY, PROPERTY, OR ANYTHING ELSE OF VALUE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH FOR EACH VIOLATION.

(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, § 35E.

In subsection (a) of this section, the defined term "minor" is substituted for the former reference to a "child" for consistency within this article. *See* § 1-101 of this article.

Also in subsection (a) of this section, the former reference to "real or personal" property is deleted as surplusage.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violator being subject to imprisonment "in the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Minor" § 1-101

"Person" § 1-101

3-603. ABUSE OR NEGLECT OF VULNERABLE ADULT.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "ABUSE" MEANS THE SUSTAINING OF PHYSICAL PAIN OR INJURY BY A VULNERABLE ADULT AS A RESULT OF CRUEL OR INHUMANE TREATMENT OR AS A RESULT OF A MALICIOUS ACT UNDER CIRCUMSTANCES THAT INDICATE THAT THE VULNERABLE ADULT'S HEALTH OR WELFARE IS HARMED OR THREATENED.

(II) "ABUSE" INCLUDES THE SEXUAL ABUSE OF A VULNERABLE ADULT.

(III) "ABUSE" DOES NOT INCLUDE AN ACCEPTED MEDICAL OR BEHAVIORAL PROCEDURE ORDERED BY A HEALTH CARE PROVIDER AUTHORIZED TO PRACTICE UNDER THE HEALTH OCCUPATIONS ARTICLE OR § 13-516 OF THE EDUCATION ARTICLE ACTING WITHIN THE SCOPE OF THE HEALTH CARE PROVIDER'S PRACTICE.

(3) "CAREGIVER" MEANS A PERSON UNDER A DUTY TO CARE FOR A VULNERABLE ADULT BECAUSE OF A CONTRACTUAL UNDERTAKING TO PROVIDE CARE.

(4) "FAMILY MEMBER" MEANS A RELATIVE OF A VULNERABLE ADULT BY BLOOD, MARRIAGE, ADOPTION, OR THE MARRIAGE OF A CHILD.

(5) "HOUSEHOLD" MEANS THE LOCATION:

(I) IN WHICH THE VULNERABLE ADULT RESIDES;

(II) WHERE THE ABUSE OR NEGLECT OF A VULNERABLE ADULT IS ALLEGED TO HAVE TAKEN PLACE; OR

(III) WHERE THE PERSON SUSPECTED OF ABUSING OR NEGLECTING A VULNERABLE ADULT RESIDES.

(6) "HOUSEHOLD MEMBER" MEANS AN INDIVIDUAL WHO LIVES WITH, OR IS A REGULAR PRESENCE IN, A HOME OF A VULNERABLE ADULT AT THE TIME OF THE ALLEGED ABUSE OR NEGLECT.

(7) (I) "NEGLECT" MEANS THE INTENTIONAL FAILURE TO PROVIDE NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS OF A VULNERABLE ADULT, INCLUDING:

1. FOOD;

2. CLOTHING;

3. TOILETING;

4. ESSENTIAL MEDICAL TREATMENT;

5. SHELTER; OR

6. SUPERVISION.

(II) "NEGLECT" DOES NOT INCLUDE THE PROVISION OF NONMEDICAL REMEDIAL CARE AND TREATMENT FOR THE HEALING OF INJURY OR DISEASE THAT IS:

1. GIVEN WITH THE CONSENT OF THE VULNERABLE ADULT; AND

2. RECOGNIZED BY STATE LAW IN PLACE OF MEDICAL TREATMENT.

(8) (I) "SEXUAL ABUSE" MEANS AN ACT THAT INVOLVES SEXUAL MOLESTATION OR EXPLOITATION OF A VULNERABLE ADULT.

(II) "SEXUAL ABUSE" INCLUDES:

1. INCEST;

2. RAPE;

3. SEXUAL OFFENSE IN ANY DEGREE;

4. SODOMY; AND

5. UNNATURAL OR PERVERTED SEXUAL PRACTICES.

(9) "VULNERABLE ADULT" MEANS AN ADULT WHO LACKS THE PHYSICAL OR MENTAL CAPACITY TO PROVIDE FOR THE ADULT'S DAILY NEEDS.

(B) PROHIBITED.

(1) A CAREGIVER, A PARENT, OR OTHER PERSON WHO HAS PERMANENT OR TEMPORARY CARE OR RESPONSIBILITY FOR THE SUPERVISION OF A VULNERABLE ADULT MAY NOT CAUSE ABUSE OR NEGLECT OF THE VULNERABLE ADULT.

(2) A HOUSEHOLD MEMBER OR FAMILY MEMBER MAY NOT CAUSE ABUSE OR NEGLECT OF A VULNERABLE ADULT.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(D) SENTENCING.

A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR A CONVICTION ARISING FROM THE SAME FACTS AND CIRCUMSTANCES UNLESS THE EVIDENCE REQUIRED TO PROVE EACH CRIME IS SUBSTANTIALLY IDENTICAL.

(E) INVESTIGATION.

IF A STATE OR LOCAL UNIT RECEIVES A REPORT OF PRESENT OR PAST ABUSE OR NEGLECT OF A VULNERABLE ADULT, AN INVESTIGATION SHALL BE CONDUCTED IN ACCORDANCE WITH:

(1) § 7-1005 OF THE HEALTH - GENERAL ARTICLE IF THE ADULT HAS A DEVELOPMENTAL DISABILITY AS DEFINED IN § 7-101 OF THE HEALTH - GENERAL ARTICLE;

(2) § 10-705 OF THE HEALTH - GENERAL ARTICLE IF THE ADULT IS IN A FACILITY AS DEFINED IN § 10-101 OF THE HEALTH - GENERAL ARTICLE;

(3) § 19-346 OR § 19-347 OF THE HEALTH - GENERAL ARTICLE IF THE ADULT IS A RESIDENT OF A RELATED INSTITUTION AS DEFINED IN § 19-301 OF THE HEALTH - GENERAL ARTICLE; AND

(4) §§ 14-301 THROUGH 14-309 OF THE FAMILY LAW ARTICLE IF THE ADULT DOES NOT MEET THE CRITERIA OF ITEM (1), (2), OR (3) OF THIS SUBSECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 35D.

In subsection (a)(2)(i) and (8)(i) of this section, the former references to

actions by a "caregiver, a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a vulnerable adult, or by any household or family member" are deleted as duplicative of the references to a "caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult" and a "household member or family member" in subsection (b)(1) and (2) of this section, respectively.

In subsection (a)(2)(iii) of this section, the former definition of "health care provider" is incorporated into an exception to the definition of "abuse" because that exception is the only place where the defined term was used in the former law.

In subsection (a)(5) of this section, the reference to a household member as a regular presence in a "home" of a vulnerable adult is retained, although the defined term "household" may be more appropriate. It is not clear that the adult child of the owner of an elder day care facility would be a "household member" as defined with the reference to "home". Substituting the defined term "household" for the term "home" would more clearly address this. Because the substitution would constitute a substantive change, the Criminal Law Article Review Committee brings this matter to the attention of the General Assembly.

In the introductory language of subsection (e) of this section, the defined term "vulnerable adult" is substituted for the former reference to an "adult" for clarity.

Also in the introductory language of subsection (e) of this section, the term "unit" is substituted for the former term "agency" for consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

3-604. HAZING.

(A) PROHIBITED.

A PERSON MAY NOT RECKLESSLY OR INTENTIONALLY DO AN ACT OR CREATE A SITUATION THAT SUBJECTS A STUDENT TO THE RISK OF SERIOUS BODILY INJURY FOR THE PURPOSE OF AN INITIATION INTO A STUDENT ORGANIZATION OF A SCHOOL, COLLEGE, OR UNIVERSITY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

(C) PROHIBITED DEFENSE.

THE IMPLIED OR EXPRESS CONSENT OF A STUDENT TO HAZING IS NOT A DEFENSE UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 268H.

In subsection (a) of this section, the former defined term "haze" is incorporated into the substantive prohibition of hazing.

Defined term: "Person" § 1-101

SUBTITLE 7. EXTORTION AND OTHER THREATS.

3-701. EXTORTION GENERALLY.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO LEGITIMATE EFFORTS BY EMPLOYEES OR THEIR REPRESENTATIVES TO OBTAIN CERTAIN WAGES, HOURS, OR WORKING CONDITIONS.

(B) OBTAINING OR ATTEMPTING TO OBTAIN PROPERTY PROHIBITED.

A PERSON MAY NOT OBTAIN OR ATTEMPT TO OBTAIN MONEY, PROPERTY, OR ANYTHING OF VALUE FROM ANOTHER PERSON WITH THE PERSON'S CONSENT, IF THE CONSENT IS INDUCED BY WRONGFUL USE OF ACTUAL OR THREATENED FORCE OR VIOLENCE, OR BY WRONGFUL THREAT OF ECONOMIC INJURY.

(C) PENALTY -- PROPERTY VALUE OF $500 OR MORE.

IF THE VALUE OF THE PROPERTY IS $500 OR MORE, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF EXTORTION AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(D) SAME -- PROPERTY VALUE LESS THAN $500.

IF THE VALUE OF THE PROPERTY IS LESS THAN $500, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF EXTORTION AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

(E) LIMITATION.

A PROSECUTION FOR A FELONY UNDER THIS SECTION SHALL BE INSTITUTED WITHIN 5 YEARS AFTER THE CRIME WAS COMMITTED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 562B.

Subsection (b) of this section is revised to incorporate the substance of the

definition of "extortion" contained in the third sentence of former Art. 27, § 562B. That definition was unnecessary because it was used only once in the former law.

In subsection (b) of this section, the phrase "by wrongful use of actual or threatened force or violence" is substituted for the former phrase "by wrongful use of actual or threatened force, or violence" for clarity. The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

In subsections (c) and (d) of this section, the references to the "value of the" property are added for clarity.

Also in subsections (c) and (d) of this section, the references to a person "who violates this section" are added for consistency with other penalty provisions in this subtitle and throughout this article. Similarly, the phrase "is subject to" a fine or imprisonment is substituted for the former phrases "shall be sentenced to" imprisonment or "[be] fined".

Also in subsections (c) and (d) of this section, the former references to a "sum of money", "real or personal" property, and a "thing of value" are deleted as included in the references to "property".

In subsection (c) of this section, the reference to being subject to "imprisonment" is added to state expressly that which was only implied in the former reference to being "sentenced to" not more than 18 months.

Also in subsection (c) of this section, the reference to a fine "or" imprisonment is substituted for the former reference to a fine "and" imprisonment for consistency within subsection (c), which provides for a fine, imprisonment, "or both".

Defined term: "Person" § 1-101

3-702. EXTORTION BY STATE OR LOCAL GOVERNMENT OFFICER OR EMPLOYEE.

(A) PROHIBITED.

AN OFFICER OR EMPLOYEE OF THE STATE OR OF A COUNTY, MUNICIPAL CORPORATION, BICOUNTY AGENCY, OR MULTICOUNTY AGENCY MAY NOT WRONGFULLY OBTAIN OR ATTEMPT TO OBTAIN MONEY, PROPERTY, OR ANYTHING OF VALUE FROM A PERSON WITH THE PERSON'S CONSENT, IF THE CONSENT IS OBTAINED UNDER COLOR OR PRETENSE OF OFFICE, UNDER COLOR OF OFFICIAL RIGHT, OR BY WRONGFUL USE OF ACTUAL OR THREATENED FORCE OR VIOLENCE.

(B) PENALTY -- PROPERTY VALUE GREATER THAN $500.

IF THE VALUE OF THE PROPERTY IS GREATER THAN $500, A PERSON WHO VIOLATES THIS SECTION:

(1) IS GUILTY OF THE FELONY OF EXTORTION AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH; AND

(2) NOTWITHSTANDING ANY PARDON, SHALL BE BARRED PERMANENTLY FROM EMPLOYMENT BY THE STATE OR BY A COUNTY, MUNICIPAL CORPORATION, BICOUNTY AGENCY, OR MULTICOUNTY AGENCY.

(C) SAME -- PROPERTY VALUE OF $500 OR LESS.

IF THE VALUE OF THE PROPERTY IS $500 OR LESS, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF EXTORTION AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

(D) LIMITATION.

A PROSECUTION FOR A FELONY UNDER THIS SECTION SHALL BE INSTITUTED WITHIN 5 YEARS AFTER THE CRIME WAS COMMITTED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 562C.

Subsection (a) of this section is revised to incorporate the substance of the definition of "extortion" contained in the third sentence of former Art. 27, § 562C. That definition was unnecessary because it was used only once in the former law.

In subsections (a) and (b)(2) of this section, the term "municipal corporation" is substituted for the former references to a "municipality" to conform to the usage of Md. Constitution, Art. XI-E.

In subsection (a) of this section, the phrase "by wrongful use of actual or threatened force or violence" is substituted for the former phrase "by wrongful use of actual or threatened force, or violence" for clarity. The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

Also in subsection (a) of this section, the former reference to "Baltimore City" is deleted as included in the defined term "county". *See* § 1-101 of this article.

In the introductory language of subsection (b) and in subsection (c) of this section, the references to the "value of the" property are added for clarity.

In subsection (b) of this section, the reference to imprisonment "not exceeding" 6 months is substituted for the former reference to imprisonment "for" 6 months, to conform to the apparent legislative intent, expressed in the former requirement that punishment "be limited to" 6 months imprisonment, to establish a maximum, and not a mandatory

minimum, term of imprisonment.

In subsections (b)(1) and (c) of this section, the references to an individual "on conviction" being subject to a fine or imprisonment are added to state expressly that which was only implied in the former law, and for consistency with other penalty provisions in this subtitle and throughout this article.

In the introductory language of subsection (b) of this section, the reference to a person "who violates this section" is added for consistency with other penalty provisions in this subtitle and throughout this article. Similarly, in subsection (b)(1) of this section, the phrase "is subject to a fine ... or imprisonment" is substituted for the former phrase "shall be fined ... or imprisoned".

Also in the introductory language of subsection (b) of this section, the former reference to a "sum of money", "real or personal" property, and a "thing of value" is deleted as included in the reference to "property".

In subsection (c) of this section, the reference to an individual "who violates this section" being "guilty of" a misdemeanor is substituted for the former reference to "it" being a misdemeanor for clarity and consistency with other penalty provisions in this subtitle and throughout this article. Similarly, the phrase "is subject to" a fine or imprisonment is substituted for the former phrase "the punishment shall be limited to" a fine or imprisonment.

The Criminal Law Article Review Committee notes, for consideration by the General Assembly, that a person is guilty of a felony under subsection (c) of this section if the value of the property extorted is "greater than" $500, while § 3-701(c) of this subtitle establishes a threshold of $500 "or more" for a felony offense. The General Assembly may wish to consider making the penalty provisions for these two crimes consistent.

Defined terms: "County" § 1-101

"Person" § 1-101

3-703. INDUCING ANOTHER TO GIVE UP COMPENSATION.

(A) PROHIBITED.

AN OFFICER OR EMPLOYEE OF THE STATE OR OF A COUNTY, MUNICIPAL CORPORATION, BICOUNTY AGENCY, OR MULTICOUNTY AGENCY MAY NOT, BY FORCE, INTIMIDATION, OR THREAT, INDUCE A PERSON EMPLOYED IN WORK FINANCED WHOLLY OR PARTLY BY THE STATE OR BY A COUNTY, MUNICIPAL CORPORATION, BICOUNTY AGENCY, OR MULTICOUNTY AGENCY TO GIVE UP ANY COMPENSATION TO WHICH THE PERSON IS ENTITLED UNDER A CONTRACT OR OTHERWISE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(C) LIMITATION.

A PROSECUTION FOR A CRIME UNDER THIS SECTION SHALL BE INSTITUTED WITHIN 5 YEARS AFTER THE CRIME WAS COMMITTED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 562D.

In subsection (a) of this section, the term "municipal corporation" is substituted for the former references to a "municipality" to conform to the usage of Md. Constitution, Art. XI-E.

Also in subsection (a) of this section, the former references to "Baltimore City" are deleted as included in the defined term "county". *See* § 1-101 of this article.

Also in subsection (a) of this section, the former reference to a person employed "in any way" is deleted as surplusage.

Also in subsection (a) of this section, the former reference to any "part of the" compensation is deleted as unnecessary in light of the reference to "any" compensation.

In subsection (b) of this section, the reference to an individual "who violates this section" is added for consistency with other penalty provisions in this subtitle and throughout this article. Similarly, the phrase "is subject to a fine ... or imprisonment" is substituted for the former phrase "shall be fined ... or imprisoned".

Also in subsection (b) of this section, the reference to an individual "on conviction" being subject to a fine or imprisonment is added to state expressly that which was only implied in the former law, and for consistency with other penalty provisions in this subtitle and throughout this article.

Defined terms: "County" § 1-101

"Person" § 1-101

3-704. EXTORTION BY FALSE ACCUSATION.

(A) PROHIBITED.

A PERSON, WITH THE INTENT TO EXTORT MONEY OR PROCURE OTHER PROFIT, MAY NOT FALSELY ACCUSE OR THREATEN TO ACCUSE ANOTHER OF A CRIME OR OF ANYTHING THAT, IF THE ACCUSATION WERE TRUE, WOULD TEND TO BRING THE OTHER INTO CONTEMPT OR DISREPUTE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 563.

In subsection (b) of this section, the reference to a person "who violates this section" is added for consistency with other penalty provisions in this subtitle and throughout this article. Similarly, the phrase "is subject to" imprisonment is substituted for the former phrase "punishable by" imprisonment.

Also in subsection (b) of this section, the reference to a person "on conviction" being subject to imprisonment is added to state expressly that which was only implied in the former law, and for consistency with other penalty provisions in this subtitle and throughout this article.

Also in subsection (b) of this section, the former reference to imprisonment "in jail or the house of correction" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Defined term: "Person" § 1-101

3-705. EXTORTION BY VERBAL THREAT.

(A) PROHIBITED.

A PERSON, WITH THE INTENT TO EXTORT OR GAIN MONEY, PROPERTY, OR ANYTHING OF VALUE FROM ANOTHER, MAY NOT VERBALLY THREATEN TO:

(1) ACCUSE ANY PERSON OF A CRIME THAT MAY BE CHARGED BY INDICTMENT UNDER THE LAWS OF THE STATE OR OF ANYTHING THAT, IF TRUE, WOULD BRING THE PERSON INTO CONTEMPT OR DISREPUTE; OR

(2) INJURE THE PERSON OR PROPERTY OF ANYONE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 562.

In the introductory language of subsection (a) of this section, the reference to extorting property "from another" is added for clarity.

Also in the introductory language of subsection (a) of this section, the reference to an "intent" to extort is substituted for the former reference to a "view" to extort for clarity and consistency with the language used in §§ 3-704(a) and 3-706(b) of this subtitle.

Also in the introductory language of subsection (a) of this section, the reference to extorting "money, property, or anything of value" is substituted for the former reference to extorting "money, goods or chattels or any other valuable thing" for brevity.

In subsection (a)(1) of this section, the reference to a crime "that may be charged by indictment" is substituted for the former archaic reference to a crime "of an indictable nature" for clarity.

In subsection (b) of this section, the reference to a person "who violates this section" is added for consistency with other penalty provisions in this subtitle and throughout this article.

Also in subsection (b) of this section, the former reference to imprisonment "in the penitentiary" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a)(2) of this section, it is unclear whether threats to do "mental" or "economic" injury are included. The General Assembly may wish to explore the types of threatened injury that should be covered by this section.

Defined term: "Person" § 1-101

3-706. EXTORTION BY WRITTEN THREAT.

(A) SCOPE OF SECTION.

(1) THIS SECTION APPLIES TO ANY WRITING, WHETHER OR NOT THE WRITING IS SIGNED, OR IF THE WRITING IS SIGNED, WHETHER OR NOT IT IS SIGNED WITH A FICTITIOUS NAME OR ANY OTHER MARK OR DESIGNATION.

(2) THIS SECTION DOES NOT APPLY TO A GOOD FAITH REASONABLE NOTICE OF DISHONOR AND WARNING OF CRIMINAL PROSECUTION UNDER TITLE 8, SUBTITLE 1 OF THIS ARTICLE GIVEN BY A HOLDER OF AN INSTRUMENT TO THE MAKER OF THE INSTRUMENT.

(B) PROHIBITED.

A PERSON, WITH THE INTENT TO EXTORT OR GAIN MONEY, PROPERTY, OR ANYTHING OF VALUE FROM ANOTHER, MAY NOT KNOWINGLY SEND OR DELIVER, OR MAKE FOR THE PURPOSE OF BEING SENT OR DELIVERED AND PART WITH THE POSSESSION OF, A WRITING THREATENING TO:

(1) ACCUSE ANY PERSON OF A CRIME THAT MAY BE CHARGED BY INDICTMENT UNDER THE LAWS OF THE STATE OR OF ANYTHING THAT, IF TRUE, WOULD BRING THE PERSON INTO CONTEMPT OR DISREPUTE; OR

(2) INJURE THE PERSON OR PROPERTY OF ANYONE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 561.

In subsection (a)(1) of this section, the phrase "whether or not the writing is signed" is substituted for the former phrase "with or without a name subscribed thereto" for clarity and consistency with similar language used in § 3-708(a)(4) of this subtitle.

Also in subsection (a)(1) of this section, the former reference to a "letter" is deleted as included in the reference to a "writing".

Also in subsection (a)(1) of this section, the former reference to a writing signed with any "letter" is deleted as included in the reference to a writing signed with any other "mark or designation".

In subsection (a)(2) of this section, the reference to the maker "of the instrument" is added for clarity.

In the introductory language of subsection (b) of this section, the reference to extorting property "from another" is added for clarity.

Also in the introductory language of subsection (b) of this section, the reference to extorting "money, property, or anything of value" is substituted for the former reference to extorting "money, goods or chattels or other valuable thing" for brevity.

Also in the introductory language of subsection (b) of this section, the former phrase "[e]xcept as provided in subsection (b) of this section", is deleted as unnecessary in light of subsection (a)(2) of this section.

Also in the introductory language of subsection (b) of this section, the former reference to a "view" to extort is deleted as unnecessary in light of the reference to an "intent" to extort.

In subsection (b)(1) of this section, the reference to a crime "that may be charged by indictment" is substituted for the former archaic reference to a crime "of an indictable nature" for clarity.

In subsection (c) of this section, the reference to a person "who violates this section" is added for consistency with other penalty provisions in this subtitle and throughout this article. Similarly, the phrase "is subject to" imprisonment is substituted for the former phrase "shall be punished by" imprisonment.

Also in subsection (c) of this section, the former reference to imprisonment "in the penitentiary" is deleted as unnecessary in light of CS § 9-103, which gives the Division of Correction the authority to determine where an individual will be confined.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that, in subsection (b)(2) of this section, it is unclear whether threats to do "mental" or "economic" injury are included. The General Assembly may wish to explore the types of threatened injury that should be covered by this section.

Defined term: "Person" § 1-101

3-707. COERCING OR INTIMIDATING ANOTHER TO CONTRIBUTE OR DONATE.

(A) EFFECT OF SECTION.

THIS SECTION DOES NOT PROHIBIT PICKETING IN CONNECTION WITH A LABOR DISPUTE, AS DEFINED IN § 4-301 OF THE LABOR AND EMPLOYMENT ARTICLE.

(B) PROHIBITED.

A PERSON OR GROUP MAY NOT ENGAGE IN AN ACT OR CONDUCT SOLELY TO COERCE OR INTIMIDATE ANOTHER PERSON TO CONTRIBUTE OR DONATE ANY MONEY, GOODS, MATERIALS, OR SERVICES TO A SOCIAL, ECONOMIC, OR POLITICAL ASSOCIATION OR ORGANIZATION.

(C) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $100 OR BOTH.

(2) EACH DAY ON WHICH A VIOLATION OF THIS SECTION OCCURS IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 562A.

In subsection (a) of this section, the reference to "assembly" is deleted as included in the comprehensive reference to "picketing". The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

In subsection (b) of this section, the former reference to an "organization" is deleted as included in the reference to a "group".

In subsection (c)(1) of this section, the reference to a person who violates this section being guilty "of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (c)(1) of this section, the reference to a person "on conviction" being subject to a fine or imprisonment is added to state expressly that which was only implied in the former law, and for consistency with other penalty provisions in this subtitle and throughout this article.

Also in subsection (c)(1) of this section, the phrase "is subject to" a fine or imprisonment is substituted for the former phrase "shall be punished by" a fine or imprisonment for consistency with other penalty provisions in this subtitle and throughout this article.

Defined term: "Person" § 1-101

3-708. THREAT AGAINST STATE OR LOCAL OFFICIAL.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "LOCAL OFFICIAL" MEANS AN INDIVIDUAL SERVING IN A PUBLICLY ELECTED OFFICE OF A LOCAL GOVERNMENT UNIT, AS DEFINED IN § 10-101 OF THE STATE GOVERNMENT ARTICLE.

(3) (I) "STATE OFFICIAL" HAS THE MEANING STATED IN § 15-102 OF THE STATE GOVERNMENT ARTICLE.

(II) "STATE OFFICIAL" INCLUDES THE GOVERNOR, GOVERNOR-ELECT, LIEUTENANT GOVERNOR, AND LIEUTENANT GOVERNOR-ELECT.

(4) "THREAT" INCLUDES:

(I) AN ORAL THREAT; OR

(II) A THREAT IN ANY WRITTEN FORM, WHETHER OR NOT THE WRITING IS SIGNED, OR IF THE WRITING IS SIGNED, WHETHER OR NOT IT IS SIGNED WITH A FICTITIOUS NAME OR ANY OTHER MARK.

(B) PROHIBITED -- MAKING THREAT.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY MAKE A THREAT TO TAKE THE LIFE OF, KIDNAP, OR CAUSE PHYSICAL INJURY TO A STATE OFFICIAL OR LOCAL OFFICIAL.

(C) SAME -- SENDING OR DELIVERING THREAT.

A PERSON MAY NOT KNOWINGLY SEND, DELIVER, PART WITH, OR MAKE FOR THE PURPOSE OF SENDING OR DELIVERING A THREAT PROHIBITED UNDER SUBSECTION (B) OF THIS SECTION.

(D) 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 $2,500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 561A.

In subsection (b) of this section, the reference to "caus[ing] physical injury to" a State official or local official is substituted for the former reference to "inflict[ing] bodily harm upon" a State official or local official for consistency with similar language used in §§ 3-705(a)(2) and 3-706(b)(2) of this subtitle.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section covers only threats involving killing, kidnapping, or causing physical injury, whereas §§ 3-705(a)(2) and 3-706(b)(2) of this subtitle cover oral and written threats of "injur[ing] the person or property of anyone". The Committee brings this distinction to the attention of the General Assembly.

Defined term: "Person" § 1-101

SUBTITLE 8. STALKING AND HARASSMENT.

3-801. "COURSE OF CONDUCT" DEFINED.

IN THIS SUBTITLE, "COURSE OF CONDUCT" MEANS A PERSISTENT PATTERN OF CONDUCT, COMPOSED OF A SERIES OF ACTS OVER TIME, THAT SHOWS A CONTINUITY OF PURPOSE.

REVISOR'S NOTE: This section formerly was Art. 27, §§ 123(a) and 124(a)(1) and (2).

In this section, the reference to this "subtitle" is substituted for the former references to this "section", although this subtitle is derived, in part, from material outside former Art. 27, §§ 123 and 124. Because the defined term "course of conduct" is used only in material derived from former §§ 123 and 124, no substantive change results.

The only other changes are in style.

3-802. STALKING.

(A) "STALKING" DEFINED.

IN THIS SECTION, "STALKING" MEANS A MALICIOUS COURSE OF CONDUCT THAT INCLUDES APPROACHING OR PURSUING ANOTHER WITH THE INTENT TO PLACE THAT INDIVIDUAL IN REASONABLE FEAR:

(1) OF SERIOUS BODILY INJURY OR DEATH; OR

(2) THAT A THIRD PERSON LIKELY WILL SUFFER SERIOUS BODILY INJURY OR DEATH.

(B) PROHIBITED.

A PERSON MAY NOT ENGAGE IN STALKING.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(D) SENTENCE.

A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY OTHER CRIME BASED ON THE ACTS ESTABLISHING A VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 124(a)(1) and (3), (b), (c), and (d).

In subsection (d) of this section, the former phrase "act or" is deleted as inaccurate because, as "stalking" is defined in subsection (a) of this section and as "course of conduct" is defined in § 3-801 of this subtitle, a violation of this section requires more than one act. *See also* Art. 1, § 8.

Also in subsection (d) of this section, the reference to any other "crime" is substituted for the former reference to any other "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Course of conduct" § 3-801

"Person" § 1-101

3-803. HARASSMENT.

(A) PROHIBITED.

A PERSON MAY NOT FOLLOW ANOTHER IN OR ABOUT A PUBLIC PLACE OR MALICIOUSLY ENGAGE IN A COURSE OF CONDUCT THAT ALARMS OR SERIOUSLY ANNOYS THE OTHER:

(1) WITH THE INTENT TO HARASS, ALARM, OR ANNOY THE OTHER;

(2) AFTER RECEIVING A REASONABLE WARNING OR REQUEST TO STOP BY OR ON BEHALF OF THE OTHER; AND

(3) WITHOUT A LEGAL PURPOSE.

(B) EXCEPTION.

THIS SECTION DOES NOT APPLY TO A PEACEABLE ACTIVITY INTENDED TO EXPRESS A POLITICAL VIEW OR PROVIDE INFORMATION TO OTHERS.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 123(b), (c), and (d).

In subsection (a)(2) of this section, the reference to "receiving a" warning or request is added to state expressly that which only was implied in the former law, *i.e.*, the reasonable warning or request to stop must be received by the offender.

Defined terms: "Course of conduct" § 3-801

"Person" § 1-101

3-804. MISUSE OF TELEPHONE FACILITIES AND EQUIPMENT.

(A) PROHIBITED.

A PERSON MAY NOT USE TELEPHONE FACILITIES OR EQUIPMENT TO MAKE:

(1) AN ANONYMOUS CALL THAT IS REASONABLY EXPECTED TO ANNOY, ABUSE, TORMENT, HARASS, OR EMBARRASS ANOTHER;

(2) REPEATED CALLS WITH THE INTENT TO ANNOY, ABUSE, TORMENT, HARASS, OR EMBARRASS ANOTHER; OR

(3) A COMMENT, REQUEST, SUGGESTION, OR PROPOSAL THAT IS OBSCENE, LEWD, LASCIVIOUS, FILTHY, OR INDECENT.

(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 $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 555A.

In the introductory language of subsection (a) of this section, the reference to "mak[ing]" calls is added to state expressly that which only was implied in the former law.

In subsection (a)(1) of this section, the former reference to "calls" is deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (a)(1) and (2) of this section, the word "another" is substituted for the former references to "one or more persons" for brevity. *See also* Art. 1, § 8.

In subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of a maximum penalty.

Defined term: "Person" § 1-101

3-805. MISUSE OF ELECTRONIC MAIL.

(A) "ELECTRONIC MAIL" DEFINED.

IN THIS SECTION, "ELECTRONIC MAIL" MEANS THE TRANSMISSION OF INFORMATION OR A COMMUNICATION BY THE USE OF A COMPUTER OR OTHER ELECTRONIC MEANS THAT IS SENT TO A PERSON IDENTIFIED BY A UNIQUE ADDRESS AND THAT IS RECEIVED BY THE PERSON.

(B) PROHIBITED.

A PERSON MAY NOT USE ELECTRONIC MAIL WITH THE INTENT TO HARASS:

(1) ONE OR MORE PERSONS; OR

(2) BY SENDING LEWD, LASCIVIOUS, OR OBSCENE MATERIAL.

(C) CONSTRUCTION OF SECTION.

IT IS NOT A VIOLATION OF THIS SECTION FOR ANY OF THE FOLLOWING PERSONS TO PROVIDE INFORMATION, FACILITIES, OR TECHNICAL ASSISTANCE TO ANOTHER WHO IS AUTHORIZED BY FEDERAL OR STATE LAW TO INTERCEPT OR PROVIDE ELECTRONIC MAIL OR TO CONDUCT SURVEILLANCE OF ELECTRONIC MAIL, IF A COURT ORDER DIRECTS THE PERSON TO PROVIDE THE INFORMATION, FACILITIES, OR TECHNICAL ASSISTANCE:

(1) A PROVIDER OF ELECTRONIC MAIL;

(2) AN OFFICER, EMPLOYEE, AGENT, LANDLORD, OR CUSTODIAN OF A PROVIDER OF ELECTRONIC MAIL; OR

(3) A PERSON SPECIFIED IN A COURT ORDER DIRECTING THE PROVISION OF INFORMATION, FACILITIES, OR TECHNICAL ASSISTANCE TO ANOTHER WHO IS AUTHORIZED BY FEDERAL OR STATE LAW TO INTERCEPT OR PROVIDE ELECTRONIC MAIL OR TO CONDUCT SURVEILLANCE OF ELECTRONIC MAIL.

(D) EXCEPTION.

THIS SECTION DOES NOT APPLY TO A PEACEABLE ACTIVITY INTENDED TO EXPRESS A POLITICAL VIEW OR PROVIDE INFORMATION TO OTHERS.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 555C.

In subsections (b) and (c) of this section, the former references to "a communication" and "communications" are deleted as included in the definition of "electronic mail".

In the introductory language of subsection (c) of this section, the phrase "a court order directs the person to provide" is substituted for the former phrase "the provider ... has been provided with a court order signed by the authorizing judge directing the provision of", for clarity.

In subsection (c)(2) of this section, the phrase "agent ... of a provider of electronic mail" is patterned after nearly identical language in the second sentence of CJ § 10-402(c)(1)(ii)2, which provides a comparable exception to the general prohibition against intercepting wire, oral, or electronic communications for a provider of wire or electronic communication service, or its officers, employees, or agents, or landlords, custodians, or other persons specified in a court order directing the provision of information, facilities, or technical assistance to federal or State law enforcement officers.

In subsection (c)(3) of this section, the phrase "in a court order directing the provision of information, facilities, or technical assistance to another who is authorized by federal or State law to intercept or provide electronic mail" is added for clarity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section seems to present a dilemma. Since item (1) prohibits the use of electronic mail with the intent to harass regardless of the content of the electronic mail, then

item (2), which prohibits sending lewd, lascivious, or obscene material, seems to be surplusage. On the other hand, item (2) imposes a particular limit and prohibits the use of electronic mail with the intent to harass by sending lewd, lascivious, or obscene material. Moreover, item (1) seems to be surplusage in any event because the definition of "electronic mail" is "the transmission of information or a communication by the use of a computer or other electronic means *that is sent to a person identified by a unique address and that is received by the person*" (emphasis added). It is unclear whether the intention of this subsection is to prohibit the use of electronic mail with the intent to harass in general, or to prohibit the use of electronic mail with the intent to harass only in a certain manner, *i.e.*, by sending lewd, lascivious, or obscene material. The General Assembly may wish to consider substantive legislation to clarify this provision.

Defined term: "Person" § 1-101

3-806. MISUSE OF LASER POINTER.

(A) "LASER POINTER" DEFINED.

IN THIS SECTION, "LASER POINTER" MEANS A DEVICE THAT EMITS LIGHT AMPLIFIED BY THE STIMULATED EMISSION OF RADIATION THAT IS VISIBLE TO THE HUMAN EYE.

(B) SCOPE OF SECTION.

THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO THE USE OF A LASER POINTER:

(1) FOR EDUCATIONAL PURPOSES BY INDIVIDUALS ENGAGED IN AN ORGANIZED MEETING OR TRAINING CLASS; OR

(2) DURING THE NORMAL COURSE OF WORK OR TRADE ACTIVITIES.

(C) PROHIBITED.

A PERSON MAY NOT KNOWINGLY USE A LASER POINTER TO ILLUMINATE ANOTHER IN A PUBLIC PLACE IN A MANNER THAT HARASSES OR ENDANGERS THE OTHER.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION 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, § 353.

Defined term: "Person" § 1-101

SUBTITLE 9. SURVEILLANCE AND OTHER CRIMES AGAINST PRIVACY.

3-901. VISUAL SURVEILLANCE.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "PRIVATE PLACE" MEANS A DRESSING ROOM OR REST ROOM IN A RETAIL STORE.

(3) "VISUAL SURVEILLANCE" MEANS SURVEILLANCE BY:

(I) DIRECT SIGHT;

(II) THE USE OF MIRRORS;

(III) THE USE OF CAMERAS; OR

(IV) THE USE OF AN ELECTRONIC DEVICE THAT CAN BE USED SURREPTITIOUSLY TO OBSERVE AN INDIVIDUAL.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO ANY OTHERWISE LAWFUL SURVEILLANCE CONDUCTED BY A LAW ENFORCEMENT OFFICER WHILE PERFORMING OFFICIAL DUTIES.

(C) PROHIBITED.

A PERSON MAY NOT CONDUCT OR PROCURE ANOTHER TO CONDUCT VISUAL SURVEILLANCE OF AN INDIVIDUAL IN A PRIVATE PLACE WITHOUT THE CONSENT OF THAT INDIVIDUAL.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(E) PROHIBITED DEFENSE.

IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE DEFENDANT OWNS THE PREMISES WHERE THE PRIVATE PLACE IS LOCATED.

(F) CIVIL ACTION.

(1) AN INDIVIDUAL WHO WAS UNDER VISUAL SURVEILLANCE IN VIOLATION OF THIS SECTION HAS A CIVIL CAUSE OF ACTION AGAINST ANY PERSON

WHO CONDUCTED OR PROCURED A PERSON TO CONDUCT THE VISUAL SURVEILLANCE.

(2) IN AN ACTION UNDER THIS SUBSECTION, THE COURT MAY AWARD ACTUAL DAMAGES AND REASONABLE ATTORNEY'S FEES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 579.

In subsections (a)(3)(iv), (c), and (f)(1) of this section, the references to an "individual" are substituted for the former references to a "person" because only an individual may be observed by visual surveillance.

In subsection (b) of this section, the former reference to a law enforcement officer performing "his" official duties is deleted as implicit.

In subsection (e) of this section, the reference to the "defendant" is substituted for the former reference to the "person charged" for accuracy.

Also in subsection (e) of this section, the reference to the premises "where" the private place "is located" is substituted for the former reference to the premises "of" the private place for clarity and accuracy.

In subsection (f)(1) of this section, the defined term "visual surveillance" is substituted for the former references to "surveillance" for consistency within this section.

In subsection (f)(2) of this section, the reference to "an action under this subsection" is substituted for the former reference to "such an action" for clarity.

Defined term: "Person" § 1-101

3-902. VISUAL SURVEILLANCE WITH PRURIENT INTENT.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CAMERA" INCLUDES ANY ELECTRONIC DEVICE THAT CAN BE USED SURREPTITIOUSLY TO OBSERVE AN INDIVIDUAL.

(3) "PRIVATE PLACE" MEANS A DRESSING ROOM, BEDROOM, OR REST ROOM IN:

(I) AN OFFICE, BUSINESS, OR STORE;

(II) A RECREATIONAL FACILITY;

(III) A RESTAURANT OR TAVERN;

(IV) A HOTEL, MOTEL, OR OTHER LODGING FACILITY;

(V) A THEATER OR SPORTS ARENA;

(VI) A SCHOOL OR OTHER EDUCATIONAL INSTITUTION;

(VII) A BANK OR OTHER FINANCIAL INSTITUTION;

(VIII) ANY PART OF A DAY CARE HOME USED FOR THE CARE AND CUSTODY OF A CHILD; OR

(IX) ANOTHER PLACE OF PUBLIC USE OR ACCOMMODATION.

(4) (I) "VISUAL SURVEILLANCE" MEANS THE DELIBERATE, SURREPTITIOUS OBSERVATION OF AN INDIVIDUAL BY ANY MEANS.

(II) "VISUAL SURVEILLANCE" INCLUDES SURVEILLANCE BY:

1. DIRECT SIGHT;

2. THE USE OF MIRRORS; OR

3. THE USE OF CAMERAS.

(III) "VISUAL SURVEILLANCE" DOES NOT INCLUDE A CASUAL, MOMENTARY, OR UNINTENTIONAL OBSERVATION OF AN INDIVIDUAL.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A PERSON WHO WITHOUT PRURIENT INTENT:

(1) CONDUCTS FILMING BY OR FOR THE PRINT OR BROADCAST MEDIA;

(2) CONDUCTS OR PROCURES ANOTHER TO CONDUCT VISUAL SURVEILLANCE OF AN INDIVIDUAL TO PROTECT PROPERTY OR PUBLIC SAFETY OR PREVENT CRIME; OR

(3) CONDUCTS VISUAL SURVEILLANCE AND:

(I) HOLDS A LICENSE ISSUED UNDER TITLE 13 OR TITLE 19 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; AND

(II) IS ACTING WITHIN THE SCOPE OF THE PERSON'S OCCUPATION.

(C) PROHIBITED.

A PERSON MAY NOT WITH PRURIENT INTENT CONDUCT OR PROCURE ANOTHER TO CONDUCT VISUAL SURVEILLANCE OF AN INDIVIDUAL IN A PRIVATE PLACE WITHOUT THE CONSENT OF THAT INDIVIDUAL.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(E) CIVIL ACTION.

(1) AN INDIVIDUAL WHO WAS UNDER VISUAL SURVEILLANCE IN VIOLATION OF THIS SECTION HAS A CIVIL CAUSE OF ACTION AGAINST ANY PERSON WHO CONDUCTED OR PROCURED ANOTHER TO CONDUCT THE VISUAL SURVEILLANCE.

(2) IN AN ACTION UNDER THIS SUBSECTION, THE COURT MAY AWARD ACTUAL DAMAGES AND REASONABLE ATTORNEY'S FEES.

(F) OTHER REMEDIES.

THIS SECTION DOES NOT AFFECT ANY LEGAL OR EQUITABLE RIGHT OR REMEDY OTHERWISE PROVIDED BY LAW.

(G) EFFECT OF SECTION.

THIS SECTION DOES NOT AFFECT THE APPLICATION OF § 3-901 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 579B.

In subsections (a)(2), (b)(2), (c), and (e)(1) of this section, the references to an "individual" are substituted for the former references to a "person" because only an individual and not the other entities included in the defined term "person" may be observed by visual surveillance. *See* § 1-101 of this article.

In subsection (a)(4)(i) and (iii) of this section, the references to an "individual" are substituted for the former references to "another" for consistency within this section.

In subsection (c) of this section, the reference to the consent "of that individual" is substituted for the former reference to consent "of the person in the private place" for clarity and brevity.

In subsection (e) of this section, the reference to "[a]n individual who was under" visual surveillance is substituted for the former reference to "[a] person who was subject to" visual surveillance for clarity.

In subsection (f) of this section, the term "affect" is substituted for the former terms "abrogate" and "limit" for brevity.

Also in subsection (f) of this section, the reference to a right or remedy

otherwise "provided by law" is substituted for the former reference to a right or remedy otherwise "available by common law or statute" for brevity.

In subsection (g) of this section, the former reference to "abrogat[ion] ... in any way" is deleted for brevity.

Defined term: "Person" § 1-101

3-903. CAMERA SURVEILLANCE.

(A) "CAMERA" DEFINED.

IN THIS SECTION, "CAMERA" INCLUDES ANY ELECTRONIC DEVICE THAT CAN BE USED SURREPTITIOUSLY TO OBSERVE AN INDIVIDUAL.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) AN ADULT RESIDENT OF THE PRIVATE RESIDENCE WHERE A CAMERA IS PLACED;

(2) A PERSON WHO PLACES OR PROCURES ANOTHER TO PLACE A CAMERA ON REAL PROPERTY WITHOUT THE INTENT TO CONDUCT DELIBERATE SURREPTITIOUS OBSERVATION OF AN INDIVIDUAL INSIDE THE PRIVATE RESIDENCE;

(3) A PERSON WHO HAS OBTAINED THE CONSENT OF AN ADULT RESIDENT, OR THE ADULT RESIDENT'S LEGAL GUARDIAN, TO PLACE A CAMERA ON REAL PROPERTY TO CONDUCT DELIBERATE SURREPTITIOUS OBSERVATION OF AN INDIVIDUAL INSIDE THE PRIVATE RESIDENCE;

(4) ANY OTHERWISE LAWFUL OBSERVATION WITH A CAMERA CONDUCTED BY A LAW ENFORCEMENT OFFICER WHILE PERFORMING OFFICIAL DUTIES;

(5) FILMING CONDUCTED BY A PERSON BY OR FOR THE PRINT OR BROADCAST MEDIA THROUGH USE OF A CAMERA THAT IS NOT SECRETED FROM VIEW;

(6) ANY PART OF A PRIVATE RESIDENCE USED FOR BUSINESS PURPOSES, INCLUDING ANY PART OF A PRIVATE RESIDENCE USED AS A DAY CARE HOME FOR THE CARE AND CUSTODY OF A CHILD; OR

(7) FILMING OF A PRIVATE RESIDENCE BY A PERSON THROUGH USE OF A CAMERA THAT IS NOT LOCATED ON THE REAL PROPERTY WHERE THE PRIVATE RESIDENCE IS LOCATED.

(C) PROHIBITED.

A PERSON MAY NOT PLACE OR PROCURE ANOTHER TO PLACE A CAMERA ON REAL PROPERTY WHERE A PRIVATE RESIDENCE IS LOCATED TO CONDUCT

DELIBERATE SURREPTITIOUS OBSERVATION OF AN INDIVIDUAL INSIDE THE PRIVATE RESIDENCE.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(E) PROHIBITED DEFENSE.

SUBJECT TO SUBSECTION (B)(1) OF THIS SECTION, IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE DEFENDANT OWNS THE PRIVATE RESIDENCE.

(F) AVAILABLE DEFENSE.

A GOOD FAITH RELIANCE ON A COURT ORDER IS A COMPLETE DEFENSE TO A CIVIL OR CRIMINAL ACTION BROUGHT UNDER THIS SECTION.

(G) CIVIL ACTION.

(1) AN INDIVIDUAL WHO WAS OBSERVED THROUGH THE USE OF A CAMERA IN VIOLATION OF THIS SECTION HAS A CIVIL CAUSE OF ACTION AGAINST ANY PERSON WHO PLACED OR PROCURED ANOTHER TO PLACE THE CAMERA ON THE REAL PROPERTY.

(2) IN AN ACTION UNDER THIS SUBSECTION, THE COURT MAY AWARD DAMAGES AND REASONABLE ATTORNEY'S FEES.

(H) OTHER REMEDIES.

THIS SECTION DOES NOT AFFECT ANY LEGAL OR EQUITABLE RIGHT OR REMEDY OTHERWISE PROVIDED BY LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 579A.

In subsections (a), (b)(2) and (3), (c), and (g)(1) of this section, the references to an "individual" are substituted for the former references to a "person" because only an individual and not the other entities included in the defined term "person" may be observed by visual surveillance. *See* § 1-101 of this article.

In subsection (b)(1) of this section, the reference to an adult resident of "the private residence located on real property where a camera is placed" is added for clarity.

In subsection (b)(4) of this section, the former reference to a law enforcement officer while performing "the officer's" official duties is deleted as implicit.

In subsection (e) of this section, the qualification "[s]ubject to subsection (b)(1) of this section," is added for clarity.

Also in subsection (e) of this section, the reference to the "defendant" is substituted for the former reference to the "person charged" for accuracy.

In subsection (g) of this section, the former reference to a person "in a private residence" is deleted as included in the reference to an individual "observed ... in violation of this section" in light of the fact that a violation of this section requires observation of an individual "inside the private residence".

In subsection (h) of this section, the reference to a right or remedy otherwise "provided by law" is substituted for the former reference to a right or remedy otherwise "available by common law or statute" for brevity.

Also in subsection (h) of this section, the former reference to "abrogat[ion] ... in any way" is deleted for brevity.

Defined term: "Person" § 1-101

3-904. UNLAWFUL PICKETING AND ASSEMBLY.

(A) LEGISLATIVE POLICY.

THE GENERAL ASSEMBLY DECLARES THAT:

(1) THE PROTECTION AND PRESERVATION OF THE HOME IS THE KEYSTONE OF DEMOCRATIC GOVERNMENT;

(2) THE PUBLIC HEALTH AND WELFARE AND THE GOOD ORDER OF THE COMMUNITY REQUIRE THAT MEMBERS OF THE COMMUNITY ENJOY IN THEIR HOMES A FEELING OF WELL-BEING, TRANQUILITY, AND PRIVACY AND, WHEN ABSENT FROM THEIR HOMES, CARRY WITH THEM THE SENSE OF SECURITY INHERENT IN THE ASSURANCE THAT THEY MAY RETURN TO THE ENJOYMENT OF THEIR HOMES;

(3) THE PRACTICE OF PICKETING BEFORE OR ABOUT RESIDENCES AND DWELLING PLACES CAUSES EMOTIONAL DISTURBANCE AND DISTRESS TO THE OCCUPANTS;

(4) THE PURPOSE OF THIS PRACTICE IS TO HARASS THE OCCUPANTS OF THE RESIDENCES AND DWELLING PLACES;

(5) WITHOUT RESORT TO THIS PRACTICE, FULL OPPORTUNITY EXISTS, AND UNDER THE PROVISIONS OF THIS ARTICLE WILL CONTINUE TO EXIST, FOR THE EXERCISE OF FREEDOM OF SPEECH AND OTHER CONSTITUTIONAL RIGHTS; AND

(6) THE PROVISIONS OF THIS SECTION ARE NECESSARY IN THE PUBLIC INTEREST TO AVOID THE DETRIMENTAL RESULTS DESCRIBED IN THIS SUBSECTION.

(B) EFFECT OF SECTION.

THIS SECTION DOES NOT PROHIBIT:

(1) PICKETING OR ASSEMBLY IN CONNECTION WITH A LABOR DISPUTE, AS DEFINED IN § 4-301 OF THE LABOR AND EMPLOYMENT ARTICLE;

(2) PICKETING IN A LAWFUL MANNER OF A PERSON'S HOME WHEN IT IS ALSO THE PERSON'S SOLE PLACE OF BUSINESS; OR

(3) HOLDING A MEETING OR ASSEMBLY ON ANY PREMISES COMMONLY USED FOR THE DISCUSSION OF SUBJECTS OF GENERAL PUBLIC INTEREST.

(C) PROHIBITED -- ASSEMBLY DISRUPTING HOME TRANQUILITY.

A PERSON MAY NOT INTENTIONALLY ASSEMBLE WITH ANOTHER IN A MANNER THAT DISRUPTS A PERSON'S RIGHT TO TRANQUILITY IN THE PERSON'S HOME.

(D) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $100 OR BOTH.

(2) EACH DAY ON WHICH A VIOLATION OF THIS SECTION OCCURS IS A SEPARATE VIOLATION.

(E) INJUNCTIVE RELIEF.

IN ADDITION TO THE PENALTY PROVIDED IN SUBSECTION (D) OF THIS SECTION, A CIRCUIT COURT:

(1) MAY ENJOIN CONDUCT PROSCRIBED BY THIS SECTION; AND

(2) IN THE PROCEEDING FOR INJUNCTIVE RELIEF, MAY AWARD DAMAGES, INCLUDING PUNITIVE DAMAGES, AGAINST ANY PERSON FOUND GUILTY OF VIOLATING THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 580A1, 3, 4, 5, and 6.

The introductory language of subsection (a) of this section is revised in the active voice to clarify that it is the General Assembly that is making the declarations contained in subsection (a).

In subsection (a)(5) of this section, the reference to "this article" is retained, although portions of former Article 27 have been revised in other articles. Because the reference to "this article", in context, applies to the substantive criminal law of the State, and this article comprises substantially all of the substantive criminal provisions formerly contained in Article 27, no substantive change results.

Also in subsection (a)(5) of this section, the former reference to the "terms"

of this article is deleted as included in the reference to the "provisions" of this article.

In subsection (a)(6) of this section, the reference to the provisions "of this section" is substituted for the former reference to the provisions "hereinafter enacted" for clarity and accuracy. Correspondingly, the reference to the results "described in this subsection" is substituted for the former reference to the results "herein set forth".

In subsection (c) of this section, the defined term "person" is substituted for the former references to an "individual" for consistency within this article.

Also in subsection (c) of this section, the former reference to assembling with another "person or persons" is deleted as surplusage and for consistency within this article.

In subsection (d)(1) of this section, the reference to a person who violates this section being guilty "of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (d)(1) of this section, the reference to a person "on conviction" being subject to a fine or imprisonment is added to state expressly that which was only implied in the former law, and for consistency with other penalty provisions in this subtitle and throughout this article.

Also in subsection (d)(1) of this section, the phrase "is subject to" a fine or imprisonment is substituted for the former phrase "shall be punished by" a fine or imprisonment for consistency with other penalty provisions in this subtitle and throughout this article.

In the introductory language of subsection (e) of this section, the phrase "[i]n addition to the penalty provided in subsection (d) of this section" is substituted for the former phrase "[n]otwithstanding the penalties herein provided" for clarity and accuracy.

Also in the introductory language of subsection (e) of this section, the reference to a "circuit court" is substituted for the former reference to a "court of general equity jurisdiction" to reflect the merger of law and equity effected by Md. Rule 2-301, which mandates "one form of action known as the `civil action'".

In subsection (e)(1) of this section, the reference to enjoining conduct proscribed by this "section" is substituted for the former reference to enjoining conduct proscribed by this "article" for consistency within subsection (e) of this section.

In subsection (e)(2) of this section, the reference to "the proceeding for injunctive relief" is substituted for the former reference to "any such proceeding" for clarity.

Also in subsection (e)(2) of this section, the reference to any person found guilty of "violating" this section is substituted for the former reference to any person found guilty of "actions made unlawful by" this section for brevity and consistency with language used in subsection (e)(1) of this section.

Former Art. 27, § 580A2 is deleted as unconstitutional in light of the ruling of the Court of Appeals in *State v. Schuller*, 280 Md. 305 (1977). The Criminal Law Article Review Committee notes, for consideration by the General Assembly, that the Court in *State v. Schuller* found that former Art. 27, § 580A2 was invalid on its face as violating the right to freedom of speech guaranteed by the First and Fourteenth Amendments to the federal Constitution. The court also found that former Art. 27, § 580A2, when coupled with the exemption provided for labor-related picketing contained in former Art. 27, § 580A4(1) (revised as subsection (b)(1) of this section), deprived persons of the right to equal protection of the laws guaranteed by the Fourteenth Amendment to the federal Constitution. The Attorney General reached a similar conclusion in a letter of advice to the Criminal Law Article Review Committee, in which the Attorney General stated that removal of § 580A2 was imperative, and further recommended deletion of the balance of § 580A as well due to the stated constitutional defects. The Attorney General also noted that more limited legislative regulation of residential picketing might be possible under federal precedent. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 8-10 (October 17, 2000).

Defined term: "Person" § 1-101

3-905. OPENING LETTER WITHOUT PERMISSION.

(A) PROHIBITED.

A PERSON MAY NOT TAKE AND BREAK OPEN A LETTER THAT IS NOT ADDRESSED TO THE PERSON WITHOUT PERMISSION FROM THE PERSON TO WHOM THE LETTER IS ADDRESSED OR THE PERSONAL REPRESENTATIVE OF THE ADDRESSEE'S ESTATE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR 6 DAYS AND A FINE OF $15.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 354.

In subsection (a) of this section, the reference to "the personal representative of the addressee's estate" is substituted for the former

reference to "his executors or administrators," to conform to the terminology used throughout the Estates and Trusts Article.

Also in subsection (a) of this section, the former references to any person "whatsoever" and any letter "whatsoever" are deleted as surplusage.

In subsection (b) of this section, the reference to a person "who violates this section" is added for consistency with other penalty provisions in this subtitle and throughout this article. Similarly, the phrase "is subject to a fine ... and imprisonment" is substituted for the former phrase "shall ... suffer imprisonment ... and be fined".

Also in subsection (b) of this section, the reference to a person who violates this section being guilty "of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (b) of this section, the former requirement that the fine imposed be paid "one half to the State and the other half to the informer" is deleted as obsolete in light of Art. 38, § 3, which prohibits the payment of any "portion of any fine ... to any informer".

Defined term: "Person" § 1-101

3-906. DIVULGING OR FAILING TO DELIVER PRIVATE COMMUNICATIONS.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "TELEGRAPH COMPANY" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(3) "TELEGRAPH LINES" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(4) "TELEPHONE COMPANY" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(5) "TELEPHONE LINES" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(B) PROHIBITED.

A PERSON CONNECTED IN ANY CAPACITY WITH A TELEGRAPH COMPANY OR TELEPHONE COMPANY, OR WITH PERSONS OPERATING TELEGRAPH LINES OR TELEPHONE LINES FOR PROFIT IN THE STATE, MAY NOT:

(1) WILLFULLY DIVULGE THE CONTENTS OR NATURE OF THE CONTENTS OF A PRIVATE COMMUNICATION THAT IS ENTRUSTED TO THE PERSON FOR TRANSMISSION OR DELIVERY; OR

(2) WILLFULLY REFUSE OR NEGLECT TO TRANSMIT OR DELIVER A PRIVATE COMMUNICATION.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 556.

Subsection (a)(1) of this section is revised in the standard introductory language used in a definition subsection.

In the introductory language of subsection (b) of this section, the former reference to a "clerk, operator, messenger, or other" person is deleted as included in the comprehensive reference to the defined term "person". Similarly, in the introductory language of subsection (b) of this section, the defined term "person[s]" is substituted for the former reference to "individuals" operating telegraph or telephone lines, for consistency within this article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b) of this section, the capacity in which a person subject to this section may be connected to a telephone or telegraph company is intended to be one of employment or agency, not that of a customer.

Defined term: "Person" § 1-101

3-907. PUBLICATION OF INFORMATION BY VIDEO TAPE DISTRIBUTOR.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "PROTECTED INDIVIDUAL" MEANS AN INDIVIDUAL WHO BUYS, RENTS, OR BORROWS A VIDEO TAPE, VIDEO DISK, OR FILM FROM A VIDEO TAPE DISTRIBUTOR.

(3) "PUBLISH" MEANS TO DISTRIBUTE TO A PERSON OTHER THAN THE PROTECTED INDIVIDUAL OR AN AGENT OF THE PROTECTED INDIVIDUAL.

(4) "VIDEO TAPE DISTRIBUTOR" MEANS A RETAIL ESTABLISHMENT OPERATING FOR PROFIT THAT SELLS, RENTS, OR LOANS VIDEO TAPES, VIDEO DISKS, OR FILMS.

(B) PROHIBITED.

EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A VIDEO TAPE DISTRIBUTOR, OR AN AGENT OR EMPLOYEE OF A VIDEO TAPE DISTRIBUTOR, MAY NOT PUBLISH THE FOLLOWING INFORMATION RELATING TO SALES, RENTALS, OR LOANS OF VIDEO TAPES, VIDEO DISKS, OR FILMS TO A PROTECTED INDIVIDUAL:

(1) ANY NUMERICAL DESIGNATION USED BY THE VIDEO TAPE DISTRIBUTOR TO IDENTIFY THE PROTECTED INDIVIDUAL; OR

(2) ANY LISTING OF VIDEO TAPES, VIDEO DISKS, OR FILMS BOUGHT, RENTED, OR BORROWED BY THE PROTECTED INDIVIDUAL FROM THE VIDEO TAPE DISTRIBUTOR.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS FOR ALL VIOLATIONS OR A FINE NOT EXCEEDING $500 FOR EACH VIOLATION OR BOTH.

(D) EXCEPTIONS.

THIS SECTION DOES NOT PROHIBIT THE DISTRIBUTION OF INFORMATION PROTECTED UNDER SUBSECTION (B) OF THIS SECTION TO:

(1) A PERSON DESIGNATED BY THE VIDEO TAPE DISTRIBUTOR AND AUTHORIZED BY THE PROTECTED INDIVIDUAL BEFORE DISTRIBUTION TO RECEIVE THE INFORMATION;

(2) ANY APPROPRIATELY AUTHORIZED LAW ENFORCEMENT PERSONNEL; OR

(3) A COLLECTION AGENCY USED OR PERSON DESIGNATED BY THE VIDEO TAPE DISTRIBUTOR TO COLLECT UNRETURNED RENTAL VIDEO TAPES, VIDEO DISKS, OR FILMS, OR AN AMOUNT EQUAL TO THEIR VALUE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 583.

In the introductory language of subsection (b) of this section, the former reference to a "servant" of a video tape distributor is deleted as unnecessary in light of the reference to an "employee" of a video tape distributor.

In subsection (b)(2) of this section, the former reference to an "individual or summary" listing is deleted in light of the comprehensive reference to "any" listing.

In subsection (c) of this section, the reference to a person who violates this section being guilty "of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Defined term: "Person" § 1-101

TITLE 4. WEAPON CRIMES.

SUBTITLE 1. IN GENERAL.

4-101. DANGEROUS WEAPONS.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "NUNCHAKU" MEANS A DEVICE CONSTRUCTED OF TWO PIECES OF ANY SUBSTANCE, INCLUDING WOOD, METAL, OR PLASTIC, CONNECTED BY ANY CHAIN, ROPE, LEATHER, OR OTHER FLEXIBLE MATERIAL NOT EXCEEDING 24 INCHES IN LENGTH.

(3) (I) "PEPPER MACE" MEANS AN AEROSOL PROPELLED COMBINATION OF HIGHLY DISABLING IRRITANT PEPPER-BASED PRODUCTS.

(II) "PEPPER MACE" IS ALSO KNOWN AS OLEORESIN CAPSICUM (O.C.) SPRAY.

(4) "STAR KNIFE" MEANS A DEVICE USED AS A THROWING WEAPON, CONSISTING OF SEVERAL SHARP OR POINTED BLADES ARRAYED AS RADIALLY DISPOSED ARMS ABOUT A CENTRAL DISK.

(5) (I) "WEAPON" INCLUDES A DIRK KNIFE, BOWIE KNIFE, SWITCHBLADE KNIFE, STAR KNIFE, SANDCLUB, METAL KNUCKLES, RAZOR, AND NUNCHAKU.

(II) "WEAPON" DOES NOT INCLUDE:

1. A HANDGUN; OR

2. A PENKNIFE WITHOUT A SWITCHBLADE.

(B) EXCEPTIONS FOR CERTAIN INDIVIDUALS.

THIS SECTION DOES NOT PROHIBIT THE FOLLOWING INDIVIDUALS FROM CARRYING A WEAPON:

(1) AN OFFICER OF THE STATE, OR OF ANY COUNTY OR MUNICIPAL CORPORATION OF THE STATE, WHO IS ENTITLED OR REQUIRED TO CARRY THE WEAPON AS PART OF THE OFFICER'S OFFICIAL EQUIPMENT, OR BY ANY CONSERVATOR OF THE PEACE, WHO IS ENTITLED OR REQUIRED TO CARRY THE WEAPON AS PART OF THE CONSERVATOR'S OFFICIAL EQUIPMENT, OR BY ANY OFFICER OR CONSERVATOR OF THE PEACE OF ANOTHER STATE WHO IS TEMPORARILY IN THIS STATE;

(2) A SPECIAL AGENT OF A RAILROAD;

(3) A HOLDER OF A PERMIT TO CARRY A HANDGUN ISSUED UNDER ARTICLE 27, § 36E OF THE CODE; OR

(4) AN INDIVIDUAL WHO CARRIES THE WEAPON AS A REASONABLE PRECAUTION AGAINST APPREHENDED DANGER, SUBJECT TO THE RIGHT OF THE COURT IN AN ACTION ARISING UNDER THIS SECTION TO JUDGE THE REASONABLENESS OF THE CARRYING OF THE WEAPON, AND THE PROPER OCCASION FOR CARRYING IT, UNDER THE EVIDENCE IN THE CASE.

(C) PROHIBITED.

(1) A PERSON MAY NOT WEAR OR CARRY A DANGEROUS WEAPON OF ANY KIND CONCEALED ON OR ABOUT THE PERSON.

(2) A PERSON MAY NOT WEAR OR CARRY A DANGEROUS WEAPON, CHEMICAL MACE, PEPPER MACE, OR A TEAR GAS DEVICE OPENLY WITH THE INTENT OR PURPOSE OF INJURING AN INDIVIDUAL IN AN UNLAWFUL MANNER.

(3) EXCEPT AS AUTHORIZED UNDER SUBSECTION (B) OF THIS SECTION, A MINOR MAY NOT POSSESS PEPPER MACE, EITHER OPENLY OR CONCEALED.

(4) (I) THIS PARAGRAPH APPLIES IN ANNE ARUNDEL COUNTY, BALTIMORE COUNTY, CAROLINE COUNTY, CECIL COUNTY, HARFORD COUNTY, KENT COUNTY, MONTGOMERY COUNTY, PRINCE GEORGE'S COUNTY, ST. MARY'S COUNTY, TALBOT COUNTY, WASHINGTON COUNTY, AND WORCESTER COUNTY.

(II) A MINOR MAY NOT CARRY A DANGEROUS WEAPON BETWEEN 1 HOUR AFTER SUNSET AND 1 HOUR BEFORE SUNRISE, WHETHER CONCEALED OR NOT, EXCEPT WHILE:

1. ON A BONA FIDE HUNTING TRIP; OR

2. ENGAGED IN OR ON THE WAY TO OR RETURNING FROM A BONA FIDE TRAP SHOOT, SPORT SHOOTING EVENT, OR ANY ORGANIZED CIVIC OR MILITARY ACTIVITY.

(D) PENALTIES.

(1) (I) A PERSON WHO VIOLATES SUBSECTION (C)(1), (2), OR (4) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $1,000.

(II) FOR A PERSON CONVICTED UNDER SUBSECTION (C)(1) OR (2) OF THIS SECTION, IF IT APPEARS FROM THE EVIDENCE THAT THE WEAPON WAS CARRIED, CONCEALED OR OPENLY, WITH THE DELIBERATE PURPOSE OF INJURING OR KILLING ANOTHER, THE COURT SHALL IMPOSE THE HIGHEST SENTENCE OF IMPRISONMENT PRESCRIBED.

(2) A PERSON WHO VIOLATES SUBSECTION (C)(3) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36.

Throughout this section, the references to a "deadly" weapon are deleted as included in the references to a "dangerous" weapon.

Subsection (a)(1) of this section is new language used as the standard introductory language to a definition subsection.

In subsection (b)(1) of this section, the reference to a "municipal corporation" is substituted for the former reference to "any ... city" for consistency with usage in Md. Constitution, Art. XI-E.

In subsection (b)(3) of this section, the reference to a permit to carry a "handgun" under Art. 27, § 36E is substituted for the former reference to a "concealed weapon" permit for clarity, because Art. 27, § 36E only applies to a permit to carry a handgun.

In subsection (b)(4) of this section, the reference to an "individual" is substituted for the former reference to a "person" because only a natural person may apprehend danger. Similarly, in subsection (c)(2) of this section, the reference to an "individual" is substituted for the former reference to a "person" because only a natural person may be injured by these weapons.

In subsection (c)(4)(ii) of this section, the former reference to a weapon "other than a handgun" is deleted as redundant of the exclusion of a "handgun" from the term "weapon" defined in subsection (a)(5) of this section.

In subsection (d)(1) of this section, the former reference to imprisonment "in jail, or sentenced to the Maryland Department of Correction" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in

a particular facility. *See* CS § 9-103.

In subsection (d)(1)(ii) of this section, the term "killing" is substituted for the former reference to "destroying the life of" another, for clarity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that, in subsection (b)(1) of this section, it is unclear whether the reference to an "officer of the State" who is entitled to wear a dangerous weapon denotes a "law enforcement officer" or some other, broader class of State official. Similarly, in subsection (b)(1) of this section, the reference to an officer of a "county or municipal corporation" entitled to wear a dangerous weapon, which is substituted for the former reference to an officer of a "county or city" so entitled, does not appear to include a law enforcement officer of a special taxing district such as Crofton, and may not include a law enforcement officer of a multicounty unit such as the Maryland-National Capital Park and Planning Commission. The General Assembly may wish to address the scope of law enforcement or other officers who are exempt from this section but are not employed by a State unit or a county or municipal corporation.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that in subsection (b)(2) of this section, it is unclear whether the reference to a "special agent of a railroad" who is entitled to wear a dangerous weapon denotes a "Maryland railroad police officer" appointed under Art. 23, §§ 256 through 266 or some other class of railroad agent.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that the crimes established in subsection (c)(3) and (4) of this section apply only to minors, although they are not characterized as delinquent acts. It appears from the statute that these crimes would be prosecuted in criminal rather than juvenile court, although in practice they apparently are not.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that in subsection (d)(1) of this section, the penalty for anyone carrying a concealed dangerous weapon is either imprisonment not exceeding 3 years or a fine not exceeding $1,000 *but not both*. However, the penalty for a minor carrying pepper mace under subsection (d)(2) of this section is imprisonment not exceeding 3 years or a fine not exceeding $1,000 *or both*. The General Assembly may wish to address the disparity between these sentences.

Defined terms: "County" § 1-101

"Minor" § 1-101

"Person" § 1-101

"State" § 1-101

4-102. DEADLY WEAPONS ON SCHOOL PROPERTY.

(A) EXCEPTIONS.

THIS SECTION DOES NOT APPLY TO:

(1) A LAW ENFORCEMENT OFFICER IN THE REGULAR COURSE OF THE OFFICER'S DUTY;

(2) A PERSON HIRED BY A COUNTY BOARD OF EDUCATION SPECIFICALLY FOR THE PURPOSE OF GUARDING PUBLIC SCHOOL PROPERTY;

(3) A PERSON ENGAGED IN ORGANIZED SHOOTING ACTIVITY FOR EDUCATIONAL PURPOSES; OR

(4) A PERSON WHO, WITH A WRITTEN INVITATION FROM THE SCHOOL PRINCIPAL, DISPLAYS OR ENGAGES IN A HISTORICAL DEMONSTRATION USING A WEAPON OR A REPLICA OF A WEAPON FOR EDUCATIONAL PURPOSES.

(B) PROHIBITED.

A PERSON MAY NOT CARRY OR POSSESS A FIREARM, KNIFE, OR DEADLY WEAPON OF ANY KIND ON PUBLIC SCHOOL PROPERTY.

(C) PENALTY.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, 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 $1,000.

(2) A PERSON WHO IS CONVICTED OF CARRYING OR POSSESSING A HANDGUN IN VIOLATION OF THIS SECTION SHALL BE SENTENCED UNDER SUBTITLE 2 OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36A.

In subsection (a)(2) of this section, the former reference to "Baltimore City" is deleted as included in the defined term "county" and for consistency with ED § 1-101, which defines "county board" to include the New Baltimore City Board of School Commissioners.

In subsection (b) of this section, the former limitation "unless otherwise excepted in this section" is deleted in light of the express language in subsection (a) of this section providing exceptions to this section.

Also in subsection (b) of this section, the reference to a "firearm" is substituted for the former references to a "rifle" and a "gun" for brevity. It is clear that the reference to a "deadly weapon of any kind" includes all firearms.

Also in subsection (b) of this section, the former phrase "in this State" is deleted as implicit because the State has jurisdiction to prohibit activities only in this State.

In subsection (c)(1) of this section, the former reference to being sentenced "to the Maryland Department of Correction" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

In subsection (c)(2) of this section, the phrase "is convicted of carrying or possessing" a handgun is substituted for the former phrase "shall be found to carry" a handgun for clarity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (c)(1) of this section, the penalty for anyone possessing a weapon on school property is either imprisonment not exceeding 3 years or a fine not exceeding $1,000 *but not both*. Although this is the same as the general penalty for carrying a concealed weapon under § 4-101(d)(1) of this subtitle, the penalty for a minor carrying pepper mace under § 4-101(d)(2) of this subtitle is imprisonment not exceeding 3 years or a fine not exceeding $1,000 *or both*. The General Assembly may wish to address the disparities among these sentences.

Defined terms: "County" § 1-101

"Person" § 1-101

4-103. DISARMING A LAW ENFORCEMENT OFFICER.

(A) "LAW ENFORCEMENT OFFICER" DEFINED.

IN THIS SECTION, "LAW ENFORCEMENT OFFICER" MEANS:

(1) A LAW ENFORCEMENT OFFICER WHO, IN AN OFFICIAL CAPACITY, IS AUTHORIZED BY LAW TO MAKE ARRESTS;

(2) A SHERIFF, DEPUTY SHERIFF, OR ASSISTANT SHERIFF; OR

(3) AN EMPLOYEE OF THE DIVISION OF CORRECTION, THE PATUXENT INSTITUTION, THE DIVISION OF PRETRIAL DETENTION AND SERVICES, THE DIVISION OF PAROLE AND PROBATION, A LOCAL CORRECTIONAL FACILITY, OR ANY BOOKING FACILITY.

(B) PROHIBITED.

A PERSON MAY NOT KNOWINGLY REMOVE OR ATTEMPT TO REMOVE A FIREARM FROM THE POSSESSION OF ANOTHER IF:

(1) THE OTHER IS LAWFULLY ACTING WITHIN THE COURSE AND SCOPE OF EMPLOYMENT; AND

(2) THE PERSON HAS KNOWLEDGE OR REASON TO KNOW THAT THE OTHER IS EMPLOYED AS A LAW ENFORCEMENT OFFICER.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

(D) SENTENCING.

A SENTENCE IMPOSED UNDER THIS SECTION MAY BE IMPOSED SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT OR ACTS ESTABLISHING THE VIOLATION UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36A-1.

In subsection (a)(3) of this section, the defined term "local correctional facility" is substituted for the former reference to a "county jail or detention center" for consistency within this article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that under subsection (b)(2) of this section, it is not necessary that the person who is disarmed actually be employed as a law enforcement officer, merely that the person disarming "hav[e] knowledge or reason to know" that the other is employed as a law enforcement officer.

Defined terms: "Local correctional facility" § 1-101

"Person" § 1-101

4-104. CHILD'S ACCESS TO FIREARMS.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "AMMUNITION" MEANS A CARTRIDGE, SHELL, OR OTHER DEVICE CONTAINING EXPLOSIVE OR INCENDIARY MATERIAL DESIGNED AND INTENDED FOR USE IN A FIREARM.

(3) "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 16 YEARS.

(4) (I) "FIREARM" MEANS A HANDGUN, RIFLE, SHOTGUN, SHORT-BARRELED RIFLE, OR SHORT-BARRELED SHOTGUN, AS THOSE TERMS ARE DEFINED IN § 4-201 OF THIS TITLE, OR ANY OTHER FIREARM.

(II) "FIREARM" DOES NOT INCLUDE AN ANTIQUE FIREARM AS DEFINED IN § 4-201 OF THIS TITLE.

(B) EXCEPTIONS.

THIS SECTION DOES NOT APPLY IF:

(1) THE CHILD'S ACCESS TO A FIREARM IS SUPERVISED BY AN INDIVIDUAL AT LEAST 18 YEARS OLD;

(2) THE CHILD'S ACCESS TO A FIREARM WAS OBTAINED AS A RESULT OF AN UNLAWFUL ENTRY;

(3) THE FIREARM IS IN THE POSSESSION OR CONTROL OF A LAW ENFORCEMENT OFFICER WHILE THE OFFICER IS ENGAGED IN OFFICIAL DUTIES; OR

(4) THE CHILD HAS A CERTIFICATE OF FIREARM AND HUNTER SAFETY ISSUED UNDER § 10-301.1 OF THE NATURAL RESOURCES ARTICLE.

(C) PROHIBITED.

A PERSON MAY NOT STORE OR LEAVE A LOADED FIREARM IN A LOCATION WHERE THE PERSON KNEW OR SHOULD HAVE KNOWN THAT AN UNSUPERVISED CHILD WOULD GAIN ACCESS TO THE FIREARM.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000.

(E) EFFECT OF VIOLATION.

(1) A VIOLATION OF THIS SECTION MAY NOT:

(I) BE CONSIDERED EVIDENCE OF NEGLIGENCE;

(II) BE CONSIDERED EVIDENCE OF CONTRIBUTORY NEGLIGENCE;

(III) LIMIT LIABILITY OF A PARTY OR AN INSURER; OR

(IV) DIMINISH RECOVERY FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR OPERATION OF A FIREARM OR AMMUNITION.

(2) A PARTY, WITNESS, OR LAWYER MAY NOT REFER TO A VIOLATION OF THIS SECTION DURING A TRIAL OF A CIVIL ACTION THAT INVOLVES PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36K.

Throughout this section, the defined term "child" is substituted for the

term "minor" that was defined by former Art. 27, § 36K(a)(3) to mean an individual under the age of 16 years, to avoid confusion with the term "minor" that is defined in § 1-101 of this article to mean an individual under the age of 18 years.

In subsection (a)(4) of this section, the reference to a "handgun" is substituted for the former references to a "pistol" and a "revolver" for consistency within this article.

Also in subsection (a)(4) of this section, the reference to a handgun, rifle, shotgun, short-barreled rifle, or short-barreled shotgun "as those terms are defined in § 4-201 of this title" is added for clarity.

In subsection (c) of this section, the former phrase "[e]xcept as provided in this section" is deleted in light of the express language in subsection (b) of this section providing exceptions to this section.

In subsection (e)(2) of this section, the reference to a "lawyer" is substituted for the former reference to "counsel" for consistency with usage in the Business Occupations and Professions Article.

Defined term: "Person" § 1-101

4-105. TRANSFER OF SWITCHBLADE OR SHOOTING KNIFE.

(A) PROHIBITED.

A PERSON MAY NOT SELL, BARTER, DISPLAY, OR OFFER TO SELL OR BARTER:

(1) A KNIFE OR A PENKNIFE HAVING A BLADE THAT OPENS AUTOMATICALLY BY HAND PRESSURE APPLIED TO A BUTTON, SPRING, OR OTHER DEVICE IN THE HANDLE OF THE KNIFE, COMMONLY CALLED A SWITCHBLADE KNIFE OR A SWITCHBLADE PENKNIFE; OR

(2) A DEVICE THAT IS DESIGNED TO PROPEL A KNIFE FROM A METAL SHEATH BY MEANS OF A HIGH-COMPRESSION EJECTOR SPRING, COMMONLY CALLED A SHOOTING KNIFE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 12 MONTHS OR A FINE OF NOT LESS THAN $50 AND NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 339.

In the introductory language of subsection (a) of this section, the former reference to a "firm or corporation or the agent of either" is deleted as included in the defined term "person".

Also in subsection (a) of this section, the former phrase "whether a licensed dealer or not" is deleted as unnecessary. It is unclear what type of licensed dealer this section referred to and, assuming that the reference was intended to apply to firearms dealers, laws regulating firearms dealers provide no exceptions to sell this kind of weapon.

In subsection (a)(1) of this section, the former reference to "operating in a similar manner" is deleted as unnecessary because of the addition of the term "penknife" before the description of how the knife or penknife operates.

In subsection (b) of this section, the former phrase "or any agent" is deleted as included in the defined term "person".

Also in subsection (b) of this section, the reference to being guilty "of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Defined term: "Person" § 1-101

4-106. BULLETPROOF BODY ARMOR.

(A) DEFINITIONS.

(1) IN THIS SECTION AND § 4-107 OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "AMMUNITION" MEANS A CARTRIDGE, SHELL, OR OTHER DEVICE CONTAINING EXPLOSIVE OR INCENDIARY MATERIAL DESIGNED AND INTENDED FOR USE IN A FIREARM.

(3) "BULLETPROOF BODY ARMOR" MEANS A MATERIAL OR OBJECT THAT IS DESIGNED TO COVER OR BE WORN ON ANY PART OF THE BODY TO PREVENT, DEFLECT, OR SLOW DOWN THE PENETRATION OF AMMUNITION.

(4) "CRIME OF VIOLENCE" HAS THE MEANING STATED IN § 14-101 OF THIS ARTICLE.

(5) "DRUG TRAFFICKING CRIME" HAS THE MEANING STATED IN § 5-621 OF THIS ARTICLE.

(6) "FIREARM" INCLUDES:

(I) A HANDGUN, ANTIQUE FIREARM, RIFLE, SHOTGUN, SHORT-BARRELED SHOTGUN, OR SHORT-BARRELED RIFLE AS THOSE TERMS ARE DEFINED IN § 4-201 OF THIS TITLE;

(II) AN ASSAULT PISTOL AS DEFINED IN § 4-301 OF THIS TITLE;

(III) A MACHINE GUN AS DEFINED IN § 4-401 OF THIS TITLE; AND

(IV) A REGULATED FIREARM AS DEFINED IN ARTICLE 27, § 441 OF THE CODE.

(7) "SECRETARY" MEANS THE SECRETARY OF THE STATE POLICE OR THE SECRETARY'S DESIGNEE.

(B) PROHIBITED -- WEARING IN CRIME OF VIOLENCE.

A PERSON MAY NOT WEAR BULLETPROOF BODY ARMOR IN THE COMMISSION OF A CRIME OF VIOLENCE.

(C) SAME -- WEARING IN DRUG TRAFFICKING CRIME.

A PERSON MAY NOT WEAR OR POSSESS BULLETPROOF BODY ARMOR DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(E) SENTENCING.

A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM A SENTENCE FOR ANY CRIME OF VIOLENCE OR DRUG TRAFFICKING CRIME ESTABLISHING THE VIOLATION OF THIS SECTION.

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

In subsection (a)(1) of this section, the reference to "this section and § 4-107 of this subtitle" is substituted for the former reference to "this subheading" to reflect the reorganization of material derived from the former "Bulletproof Body Armor" subheading of Article 27.

In subsection (a)(6)(i) of this section, the Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the terms "short-barreled shotgun" and "short-barreled rifle", as defined in § 4-201 of this title, are included in the term "handgun" as defined in the same section. It is unclear whether the terms "short-barreled shotgun" and "short-barreled rifle" as used in this section are redundant of the term "handgun", or differ in some way from those terms used in the definition of "handgun".

Defined term: "Person" § 1-101

4-107. SAME -- PERMIT TO USE, POSSESS, OR PURCHASE.

(A) PROHIBITED -- USE, POSSESSION, OR PURCHASE WITHOUT PERMIT.

EXCEPT FOR A PERSON HOLDING A VALID PERMIT ISSUED UNDER SUBSECTION (C) OF THIS SECTION, A PERSON WHO WAS PREVIOUSLY CONVICTED OF A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME MAY NOT USE, POSSESS, OR PURCHASE BULLETPROOF BODY ARMOR.

(B) PERMIT -- PETITION.

A PERSON WITH A PRIOR CONVICTION FOR A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME MAY FILE A PETITION WITH THE SECRETARY FOR A PERMIT TO PURCHASE, POSSESS, AND USE BULLETPROOF BODY ARMOR.

(C) SAME -- ISSUANCE.

ON RECEIVING A PETITION UNDER SUBSECTION (B) OF THIS SECTION, THE SECRETARY MAY ISSUE TO THE PETITIONER A PERMIT TO PURCHASE, POSSESS, AND USE BULLETPROOF BODY ARMOR UNDER THE TERMS, CONDITIONS, AND LIMITATIONS THAT THE SECRETARY SETS AS APPROPRIATE, BASED ON A DETERMINATION THAT THE PETITIONER:

(1) IS LIKELY TO USE OR POSSESS BULLETPROOF BODY ARMOR IN A SAFE AND LAWFUL MANNER; AND

(2) HAS SHOWN GOOD CAUSE FOR THE USE, POSSESSION, OR PURCHASE OF BULLETPROOF BODY ARMOR.

(D) SAME -- REQUIRED CONSIDERATIONS.

IN MAKING A DETERMINATION UNDER SUBSECTION (C) OF THIS SECTION WITH RESPECT TO A PETITIONER, THE SECRETARY SHALL CONSIDER:

(1) THE EFFECT OF THE DETERMINATION ON THE EMPLOYMENT OF THE PETITIONER;

(2) THE INTERESTS OF JUSTICE;

(3) THE SAFETY OF THE PETITIONER;

(4) ANY OTHER VALID REASON FOR THE PETITIONER TO PURCHASE, POSSESS, OR USE BULLETPROOF BODY ARMOR; AND

(5) THE TOTALITY OF THE CIRCUMSTANCES.

(E) SAME -- CONDITIONS.

AS A CONDITION OF ISSUING A PERMIT TO A PETITIONER, THE SECRETARY SHALL REQUIRE THAT THE PETITIONER AGREE TO MAINTAIN IN THE PERSON'S

POSSESSION A CERTIFIED COPY OF THE PERMIT, INCLUDING ANY TERMS, CONDITIONS, OR LIMITATIONS.

(F) SAME -- DURATION AND RENEWAL.

(1) A PERMIT UNDER THIS SECTION EXPIRES 5 YEARS AFTER THE DATE OF ITS ISSUANCE.

(2) A PERMIT SHALL BE RENEWED FOR SUCCESSIVE PERIODS OF 5 YEARS IF THE APPLICANT:

(I) FILES AN APPLICATION FOR RENEWAL AT ANY TIME WITHIN 3 MONTHS BEFORE THE PERMIT EXPIRES; AND

(II) SATISFIES THE REQUIREMENTS OF THIS SECTION.

(G) SAME -- REVOCATION.

THE SECRETARY MAY REVOKE A PERMIT AT ANY TIME IF THE SECRETARY FINDS THAT THE HOLDER NO LONGER SATISFIES THE QUALIFICATIONS SET FORTH IN SUBSECTION (C) OF THIS SECTION.

(H) INFORMAL REVIEW.

(1) A PERSON WHOSE APPLICATION FOR A PERMIT OR RENEWAL OF A PERMIT HAS BEEN REJECTED OR WHOSE PERMIT HAS BEEN REVOKED OR LIMITED MAY REQUEST THE SECRETARY TO CONDUCT AN INFORMAL REVIEW BY FILING A WRITTEN REQUEST WITHIN 10 DAYS AFTER RECEIVING WRITTEN NOTICE OF THE SECRETARY'S INITIAL ACTION.

(2) THE INFORMAL REVIEW MAY INCLUDE A PERSONAL INTERVIEW OF THE APPLICANT.

(3) AN INFORMAL REVIEW UNDER THIS SUBSECTION IS NOT SUBJECT TO THE ADMINISTRATIVE PROCEDURE ACT.

(4) AFTER THE INFORMAL REVIEW, THE SECRETARY SHALL SUSTAIN, REVERSE, OR MODIFY THE INITIAL ACTION TAKEN AND NOTIFY THE APPLICANT OF THE DECISION IN WRITING WITHIN 30 DAYS AFTER RECEIVING THE REQUEST FOR INFORMAL REVIEW.

(I) CONTESTED CASE PROCEEDING.

(1) A PERSON AGGRIEVED BY A DECISION OF THE SECRETARY MAY SEEK REVIEW OF THE DECISION UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(2) A REQUEST FOR INFORMAL REVIEW UNDER SUBSECTION (H) OF THIS SECTION IS NOT A CONDITION PRECEDENT TO INSTITUTING A CONTESTED CASE PROCEEDING UNDER THIS SUBSECTION.

(J) REGULATIONS.

THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

(K) PENALTY.

A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS 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, § 27C.

In subsection (b) of this section, the former reference to filing a petition "for good cause shown" is deleted as redundant of the requirement that the Secretary base the decision to issue a permit on whether the petitioner "has shown good cause" under subsection (c)(2) of this section.

In subsection (c) of this section, the reference to "issu[ing]" a permit is substituted for the former reference to "permit[ting]" for clarity and consistency within this section. Similarly, in subsection (e) of this section, the reference to "issu[ing]" a permit is substituted for the former reference to "grant[ing]" a permit.

In subsection (e) of this section, the former reference to the "Secretary's" permit is deleted for clarity.

In subsection (i)(2) of this section, the reference to a "contested case proceeding" is substituted for the former reference to "proceedings under this subsection" for clarity and accuracy.

In subsection (k) of this section, the reference to violating "subsection (a) of" this section is added for clarity.

Defined terms: "Bulletproof body armor" § 4-106

"Crime of violence" § 4-106

"Drug trafficking crime" § 4-106

"Secretary" § 4-106

"Person" § 1-101

SUBTITLE 2. HANDGUNS.

4-201. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language patterned after present Art. 27, § 36F(a).

(B) ANTIQUE FIREARM.

"ANTIQUE FIREARM" MEANS:

(1) A FIREARM, INCLUDING A FIREARM WITH A MATCHLOCK, FLINTLOCK, PERCUSSION CAP, OR SIMILAR IGNITION SYSTEM, MANUFACTURED BEFORE 1899; OR

(2) A REPLICA OF A FIREARM DESCRIBED IN ITEM (1) OF THIS SUBSECTION THAT:

(I) IS NOT DESIGNED OR REDESIGNED TO USE RIMFIRE OR CONVENTIONAL CENTERFIRE FIXED AMMUNITION; OR

(II) USES RIMFIRE OR CONVENTIONAL CENTERFIRE FIXED AMMUNITION THAT IS NO LONGER MANUFACTURED IN THE UNITED STATES AND IS NOT READILY AVAILABLE IN THE ORDINARY CHANNELS OF COMMERCIAL TRADE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 36F(c).

In item (1) of this subsection, the conjunction "or" is substituted for the former conjunction "and" to clarify that "antique firearm" means either a firearm described in item (1) or a replica of a firearm described in item (2) of this subsection but not necessarily both.

Also in item (1) of this subsection, the former reference to a similar "type" of ignition system is deleted as surplusage.

(C) HANDGUN.

(1) "HANDGUN" MEANS A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED ON THE PERSON.

(2) "HANDGUN" INCLUDES A SHORT-BARRELED SHOTGUN AND A SHORT-BARRELED RIFLE.

(3) "HANDGUN" DOES NOT INCLUDE A SHOTGUN, RIFLE, OR ANTIQUE FIREARM.

REVISOR'S NOTE: This subsection is new language patterned after present Art. 27, § 36F(b).

In paragraphs (2) and (3) of this subsection, the former phrases "as these terms are defined below," and "as those terms are defined below" are deleted as surplusage.

Defined term: "Person" § 1-101

(D) LAW ENFORCEMENT OFFICIAL.

"LAW ENFORCEMENT OFFICIAL" MEANS:

(1) A FULL-TIME MEMBER OF A POLICE FORCE OR OTHER UNIT OF THE UNITED STATES, A STATE, A COUNTY, A MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION OF A STATE WHO IS RESPONSIBLE FOR THE PREVENTION AND DETECTION OF CRIME AND THE ENFORCEMENT OF THE LAWS OF THE UNITED STATES, A STATE, A COUNTY, A MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION OF A STATE;

(2) A PART-TIME MEMBER OF A POLICE FORCE OF A COUNTY OR MUNICIPAL CORPORATION WHO IS CERTIFIED BY THE COUNTY OR MUNICIPAL CORPORATION AS BEING TRAINED AND QUALIFIED IN THE USE OF HANDGUNS; OR

(3) A FIRE INVESTIGATOR OF THE PRINCE GEORGE'S COUNTY FIRE DEPARTMENT WHO:

(I) IS CERTIFIED BY PRINCE GEORGE'S COUNTY AS BEING TRAINED AND QUALIFIED IN THE USE OF HANDGUNS; AND

(II) HAS MET THE MINIMUM QUALIFICATIONS AND HAS SATISFACTORILY COMPLETED THE TRAINING REQUIRED BY THE MARYLAND POLICE TRAINING COMMISSION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 36F(i).

In items (1) and (2) of this subsection, the references to a "municipal corporation" are substituted for the former references to a "municipality" for consistency with Md. Constitution, Art. XI-E.

In item (1) of this subsection, the reference to a "unit" is substituted for the former reference to an "agency" for consistency within this article. *See* General Revisor's Note to article.

Also in item (1) of this subsection, the references to a political subdivision "of a state" are added for clarity.

In item (2) of this subsection, the conjunction "or" is substituted for the former conjunction "and" to clarify that "law enforcement official" means any individual described in item (1), (2), or (3).

Defined terms: "County" § 1-101

"State" § 1-101

(E) RIFLE.

"RIFLE" MEANS A WEAPON THAT IS:

(1) DESIGNED OR REDESIGNED, MADE OR REMADE, AND INTENDED TO BE FIRED FROM THE SHOULDER; AND

(2) DESIGNED OR REDESIGNED, AND MADE OR REMADE TO USE THE ENERGY OF THE EXPLOSIVE IN A FIXED METALLIC CARTRIDGE TO FIRE ONLY A SINGLE PROJECTILE THROUGH A RIFLED BORE FOR EACH SINGLE PULL OF THE TRIGGER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 36F(d).

(F) SHORT-BARRELED RIFLE.

"SHORT-BARRELED RIFLE" MEANS:

(1) A RIFLE THAT HAS ONE OR MORE BARRELS LESS THAN 16 INCHES LONG; OR

(2) A WEAPON THAT HAS AN OVERALL LENGTH OF LESS THAN 26 INCHES AND THAT WAS MADE FROM A RIFLE, WHETHER BY ALTERATION, MODIFICATION, OR OTHERWISE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 36F(f).

In item (1) of this subsection, the conjunction "or" is substituted for the former conjunction "and" to clarify that "short-barreled rifle" means either the rifle described in item (1) of this subsection or the weapon described in item (2) of this subsection.

Defined term: "Rifle" § 4-201

(G) SHORT-BARRELED SHOTGUN.

"SHORT-BARRELED SHOTGUN" MEANS:

(1) A SHOTGUN THAT HAS ONE OR MORE BARRELS LESS THAN 18 INCHES LONG; OR

(2) A WEAPON THAT HAS AN OVERALL LENGTH OF LESS THAN 26 INCHES LONG AND WAS MADE FROM A SHOTGUN, WHETHER BY ALTERATION, MODIFICATION, OR OTHERWISE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 36F(e).

In item (1) of this subsection, the conjunction "or" is substituted for the former conjunction "and" to clarify that "short-barreled shotgun" means either the shotgun described in item (1) of this subsection or the weapon described in item (2) of this subsection, but not necessarily both.

(H) SHOTGUN.

"SHOTGUN" MEANS A WEAPON THAT IS:

(1) DESIGNED OR REDESIGNED, MADE OR REMADE, AND INTENDED TO BE FIRED FROM THE SHOULDER; AND

(2) DESIGNED OR REDESIGNED AND MADE OR REMADE TO USE THE ENERGY OF THE EXPLOSIVE IN A FIXED SHOTGUN SHELL TO FIRE THROUGH A SMOOTH BORE ONE OR MORE PROJECTILES FOR EACH PULL OF THE TRIGGER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 36F(g).

In item (2) of this subsection, the reference to "one or more projectiles" is substituted for the former reference to "either a number of ball shot or a single projectile" for clarity.

(I) VEHICLE.

"VEHICLE" MEANS A MOTOR VEHICLE AS DEFINED IN TITLE 11, SUBTITLE 1 OF THE TRANSPORTATION ARTICLE, A TRAIN, AN AIRCRAFT, OR A VESSEL.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 36F(k).

The reference to "Subtitle 1" of Title 11 of the Transportation Article is added for clarity since Subtitle 1 contains the definitions for that title.

The references to "a train", "an aircraft", and "a vessel" are substituted for the former references to "trains", "aircraft", and "vessels" in light of Art. 1, § 8, which provides that the singular includes the plural.

The conjunction "or" is substituted for the former conjunction "and" for clarity.

4-202. LEGISLATIVE FINDINGS.

THE GENERAL ASSEMBLY FINDS THAT:

(1) THE NUMBER OF VIOLENT CRIMES COMMITTED IN THE STATE HAS INCREASED ALARMINGLY IN RECENT YEARS;

(2) A HIGH PERCENTAGE OF VIOLENT CRIMES COMMITTED IN THE STATE INVOLVES THE USE OF HANDGUNS;

(3) THE RESULT IS A SUBSTANTIAL INCREASE IN THE NUMBER OF DEATHS AND INJURIES LARGELY TRACEABLE TO THE CARRYING OF HANDGUNS IN PUBLIC PLACES BY CRIMINALS;

(4) CURRENT LAW HAS NOT BEEN EFFECTIVE IN CURBING THE MORE FREQUENT USE OF HANDGUNS IN COMMITTING CRIME; AND

(5) ADDITIONAL REGULATIONS ON THE WEARING, CARRYING, AND TRANSPORTING OF HANDGUNS ARE NECESSARY TO PRESERVE THE PEACE AND

TRANQUILITY OF THE STATE AND TO PROTECT THE RIGHTS AND LIBERTIES OF THE PUBLIC.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36B(a).

In the introductory language of this section, the former reference to the General Assembly "of Maryland" is deleted as implicit.

Also in the introductory language of this section, the former archaic word "hereby" is deleted as unnecessary.

Also in the introductory language of this section, the former reference to "declar[ing]" is deleted as redundant of the reference to "find[ing]" and for consistency with similar provisions elsewhere in the revised articles of the Code. *See, e.g.*, BR § 3-102 and IN § 7-102.

In item (2) of this section, the reference to "violent crimes committed in the State" is substituted for the former reference to "those crimes" for clarity.

In item (3) of this section, the reference to "deaths and injuries" is substituted for the former reference to "persons killed or injured" for clarity and brevity.

Also in item (3) of this section, the reference to "public places" is substituted for the former reference to "streets and public ways" for clarity.

Also in item (3) of this section, the reference to "criminals" is substituted for the former reference to "persons inclined to use them in criminal activity" for brevity.

In item (4) of this section, the reference to "current law" is substituted for the former reference to "[t]he laws currently in force" for brevity.

In item (5) of this section, the reference to "additional" regulations is substituted for the former reference to "[f]urther" regulations for clarity.

Also in item (5) of this section, the reference to the "public" is substituted for the former reference to the "citizens" of the State for clarity.

The findings contained in this section appear to refer to the original effective date of former Art. 27, § 36B, March 27, 1972. *See* Ch. 13, Acts of 1972.

Defined term: "Handgun" § 4-201

4-203. WEARING, CARRYING, OR TRANSPORTING HANDGUN.

(A) PROHIBITED.

(1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON MAY NOT:

(I) WEAR, CARRY, OR TRANSPORT A HANDGUN, WHETHER CONCEALED OR OPEN, ON OR ABOUT THE PERSON; OR

(II) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR OPEN, IN A VEHICLE TRAVELING ON A ROAD OR PARKING LOT GENERALLY USED BY THE PUBLIC, HIGHWAY, WATERWAY, OR AIRWAY OF THE STATE.

(2) THERE IS A REBUTTABLE PRESUMPTION THAT A PERSON WHO TRANSPORTS A HANDGUN UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION TRANSPORTS THE HANDGUN KNOWINGLY.

(B) EXCEPTIONS.

THIS SECTION DOES NOT PROHIBIT:

(1) THE WEARING, CARRYING, OR TRANSPORTING OF A HANDGUN BY A PERSON WHO IS ON ACTIVE ASSIGNMENT ENGAGED IN LAW ENFORCEMENT, IS AUTHORIZED AT THE TIME AND UNDER THE CIRCUMSTANCES TO WEAR, CARRY, OR TRANSPORT THE HANDGUN AS PART OF THE PERSON'S OFFICIAL EQUIPMENT, AND IS:

(I) A LAW ENFORCEMENT OFFICIAL OF THE UNITED STATES, THE STATE, OR A COUNTY OR CITY OF THE STATE;

(II) A MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR OF THE NATIONAL GUARD ON DUTY OR TRAVELING TO OR FROM DUTY;

(III) A LAW ENFORCEMENT OFFICIAL OF ANOTHER STATE OR SUBDIVISION OF ANOTHER STATE TEMPORARILY IN THIS STATE ON OFFICIAL BUSINESS;

(IV) A CORRECTIONAL OFFICER OR WARDEN OF A CORRECTIONAL FACILITY IN THE STATE;

(V) A SHERIFF OR FULL-TIME ASSISTANT OR DEPUTY SHERIFF OF THE STATE; OR

(VI) A TEMPORARY OR PART-TIME SHERIFFS' DEPUTY;

(2) THE WEARING, CARRYING, OR TRANSPORTING OF A HANDGUN BY A PERSON TO WHOM A PERMIT TO WEAR, CARRY, OR TRANSPORT THE HANDGUN HAS BEEN ISSUED UNDER ARTICLE 27, § 36E OF THE CODE;

(3) THE CARRYING OF A HANDGUN ON THE PERSON OR IN A VEHICLE WHILE THE PERSON IS TRANSPORTING THE HANDGUN TO OR FROM THE PLACE OF LEGAL PURCHASE OR SALE, OR TO OR FROM A BONA FIDE REPAIR SHOP, OR

BETWEEN BONA FIDE RESIDENCES OF THE PERSON, OR BETWEEN THE BONA FIDE RESIDENCE AND PLACE OF BUSINESS OF THE PERSON, IF THE BUSINESS IS OPERATED AND OWNED SUBSTANTIALLY BY THE PERSON;

(4) THE WEARING, CARRYING, OR TRANSPORTING BY A PERSON OF A HANDGUN USED IN CONNECTION WITH AN ORGANIZED MILITARY ACTIVITY, A TARGET SHOOT, FORMAL OR INFORMAL TARGET PRACTICE, SPORT SHOOTING EVENT, HUNTING, A DEPARTMENT OF NATURAL RESOURCES-SPONSORED FIREARMS AND HUNTER SAFETY CLASS, TRAPPING, OR A DOG OBEDIENCE TRAINING CLASS OR SHOW, WHILE THE PERSON IS ENGAGED IN, ON THE WAY TO, OR RETURNING FROM THAT ACTIVITY;

(5) THE MOVING BY A BONA FIDE GUN COLLECTOR OF PART OR ALL OF THE COLLECTOR'S GUN COLLECTION FROM PLACE TO PLACE FOR PUBLIC OR PRIVATE EXHIBITION IF EACH HANDGUN IS UNLOADED AND CARRIED IN AN ENCLOSED CASE OR AN ENCLOSED HOLSTER;

(6) THE WEARING, CARRYING, OR TRANSPORTING OF A HANDGUN BY A PERSON ON REAL ESTATE THAT THE PERSON OWNS OR LEASES OR WHERE THE PERSON RESIDES OR WITHIN THE CONFINES OF A BUSINESS ESTABLISHMENT THAT THE PERSON OWNS OR LEASES;

(7) THE WEARING, CARRYING, OR TRANSPORTING OF A HANDGUN BY A SUPERVISORY EMPLOYEE:

(I) IN THE COURSE OF EMPLOYMENT;

(II) WITHIN THE CONFINES OF THE BUSINESS ESTABLISHMENT IN WHICH THE SUPERVISORY EMPLOYEE IS EMPLOYED; AND

(III) WHEN SO AUTHORIZED BY THE OWNER OR MANAGER OF THE BUSINESS ESTABLISHMENT; OR

(8) THE CARRYING OR TRANSPORTING OF A SIGNAL PISTOL OR OTHER VISUAL DISTRESS SIGNAL APPROVED BY THE UNITED STATES COAST GUARD IN A VESSEL ON THE WATERWAYS OF THE STATE OR, IF THE SIGNAL PISTOL OR OTHER VISUAL DISTRESS SIGNAL IS UNLOADED AND CARRIED IN AN ENCLOSED CASE, IN A VEHICLE.

(C) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO THE PENALTIES PROVIDED IN THIS SUBSECTION.

(2) IF THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED UNDER THIS SECTION, § 4-204 OF THIS SUBTITLE, OR § 4-101 OR § 4-102 OF THIS TITLE:

(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, THE PERSON IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 30 DAYS AND NOT

EXCEEDING 3 YEARS OR A FINE OF NOT LESS THAN $250 AND NOT EXCEEDING $2,500 OR BOTH; BUT

(II) IF IT APPEARS FROM THE EVIDENCE THAT THE HANDGUN WAS WORN, CARRIED, OR TRANSPORTED ON PUBLIC SCHOOL PROPERTY IN THE STATE, THE PERSON SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 90 DAYS.

(3) (I) IF THE PERSON HAS PREVIOUSLY BEEN CONVICTED ONCE UNDER THIS SECTION, § 4-204 OF THIS SUBTITLE, OR § 4-101 OR § 4-102 OF THIS TITLE, THE PERSON SHALL BE SENTENCED:

1. TO IMPRISONMENT FOR NOT LESS THAN 1 YEAR AND NOT EXCEEDING 10 YEARS; BUT

2. IF IT APPEARS FROM THE EVIDENCE THAT THE HANDGUN WAS WORN, CARRIED, OR TRANSPORTED ON PUBLIC SCHOOL PROPERTY IN THE STATE, TO IMPRISONMENT FOR NOT LESS THAN 3 YEARS AND NOT EXCEEDING 10 YEARS.

(II) THE COURT MAY NOT IMPOSE LESS THAN THE APPLICABLE MINIMUM SENTENCE PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(4) (I) IF THE PERSON HAS PREVIOUSLY BEEN CONVICTED MORE THAN ONCE UNDER THIS SECTION, § 4-204 OF THIS SUBTITLE, OR § 4-101 OR § 4-102 OF THIS TITLE, OR OF ANY COMBINATION OF THESE CRIMES, THE PERSON SHALL BE SENTENCED:

1. TO IMPRISONMENT FOR NOT LESS THAN 3 YEARS AND NOT EXCEEDING 10 YEARS; BUT

2. A. IF IT APPEARS FROM THE EVIDENCE THAT THE HANDGUN WAS WORN, CARRIED, OR TRANSPORTED ON PUBLIC SCHOOL PROPERTY IN THE STATE, TO IMPRISONMENT FOR NOT LESS THAN 5 YEARS AND NOT EXCEEDING 10 YEARS; OR

B. IF IT APPEARS FROM THE EVIDENCE THAT THE HANDGUN WAS WORN, CARRIED, OR TRANSPORTED WITH THE DELIBERATE PURPOSE OF INJURING OR KILLING ANOTHER PERSON, TO IMPRISONMENT FOR NOT LESS THAN 5 YEARS AND NOT EXCEEDING 10 YEARS.

(II) THE COURT MAY NOT IMPOSE LESS THAN THE APPLICABLE MINIMUM SENTENCE PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36B(b) and (c).

In subsection (a)(1) of this section, the introductory language "[e]xcept as provided in subsection (c) of this section" is added for clarity.

In subsection (a)(1)(ii) of this section, the former reference to "roads or parking lots generally used by the public" is deleted in light of the references to a "public" road and parking lot.

In subsection (b)(1) of this section, the reference to wearing, carrying, or transporting "the handgun" is substituted for the former reference to wearing, carrying, or transporting "such weapon" for specificity.

Also in subsection (b)(1) of this section, the former reference to an individual being "duly" authorized is deleted as surplusage.

In subsection (b)(1)(ii) of this section, the reference to "a member" is substituted for the former reference to "members" in light of Art. 1, § 8, which provides that the singular includes the plural. Similarly, in subsection (b)(1)(v) and (vi) of this section, the references to "a sheriff or full-time assistant or deputy sheriff" and "a temporary or part-time sheriffs' deputy" are substituted for the former references to "sheriffs ... or full-time assistant or deputy sheriffs" and "temporary or part-time sheriffs' deputies".

In subsection (b)(1)(iv) of this section, the reference to a "correctional officer" is substituted for the former references to a "jailer", "prison guard", "guard", and "keeper" for consistency with usage in the Correctional Services Article.

Also in subsection (b)(1)(iv) of this section, the defined term "correctional facility" is substituted for the former reference to a "penal, correctional or detention institution" for consistency within this article.

In subsection (b)(2) of this section, the reference to a permit to wear, carry, or transport "the handgun" is substituted for the former reference to a permit to wear, carry, or transport "any such weapon" for clarity.

In subsection (b)(5) of this section, the reference to "each" handgun is added for clarity.

Also in subsection (b)(5) of this section, the former phrase "while traveling to or from any such place or event referred to in this paragraph" is deleted as unnecessary.

In subsection (c)(2) of this section, the reference to a person being "subject to imprisonment" is substituted for the former references to a person "be[ing] imprisoned in jail or sentenced to the Maryland Division of Correction" for consistency within this article. Currently inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

In subsection (c)(2), (3)(i), and (4)(i) of this section, the references to a previous conviction "under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title" are substituted for the former references to a

person who has not previously been convicted "of unlawfully wearing, carrying or transporting a handgun in violation of this section, or of unlawfully using a handgun in the commission of a crime in violation of subsection (d) of this section, or of unlawfully carrying a concealed weapon in violation of § 36 of this article [Article 27], or of unlawfully carrying a deadly weapon on public school property in violation of § 36A of this article [Article 27]" for brevity.

In subsection (c)(2)(i) of this section, the phrase "except as provided in item (ii) of this paragraph" is added for clarity.

In subsection (c)(3) of this section, the reference to a person previously being convicted "once" is added for clarity.

In subsection (c)(3)(ii) of this section, the reference to requiring the court to impose the "applicable" minimum sentence is substituted for the former reference to requiring imposition of "no less than the minimum sentence of 1 year" for clarity. The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a)(1)(ii) of this section the prohibition on wearing, carrying, or transporting a handgun in a vehicle "traveling on a road or parking lot generally used by the public" may provide an inadvertent defense in the case of a person who is parked, and arguably not traveling, on the side of the road or in the parking lot. The General Assembly may wish to address this matter in substantive legislation.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that in subsection (c)(2)(i) of this section, it is not clear whether the reference to a "fine of not less than $250" is subject to reduction under § 14-102 of this article, or is a true minimum penalty. The General Assembly may wish to clarify this matter in substantive legislation.

Defined terms: "Correctional facility" § 1-101

"County" § 1-101

"Handgun" § 4-201

"Law enforcement official" § 4-201

"Person" § 1-101

"State" § 1-101

"Vehicle" § 4-201

4-204. USE OF HANDGUN OR ANTIQUE FIREARM IN COMMISSION OF CRIME.

(A) PROHIBITED.

A PERSON MAY NOT USE AN ANTIQUE FIREARM CAPABLE OF BEING CONCEALED ON THE PERSON OR ANY HANDGUN IN THE COMMISSION OF A CRIME OF

VIOLENCE, AS DEFINED IN ARTICLE 27, § 441 OF THE CODE, OR ANY FELONY, WHETHER THE ANTIQUE FIREARM OR HANDGUN IS OPERABLE OR INOPERABLE AT THE TIME OF THE CRIME.

(B) PENALTY.

(1) (I) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND, IN ADDITION TO ANY OTHER PENALTY IMPOSED FOR THE CRIME OF VIOLENCE OR FELONY, SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 5 YEARS AND NOT EXCEEDING 20 YEARS.

(II) THE COURT MAY NOT IMPOSE LESS THAN THE MINIMUM SENTENCE OF 5 YEARS AND, EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN LESS THAN 5 YEARS.

(2) FOR EACH SUBSEQUENT VIOLATION, THE SENTENCE SHALL BE CONSECUTIVE TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED FOR THE CRIME OF VIOLENCE OR FELONY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36B(d).

In subsection (b)(1)(i) and (2) of this section, the references to the "crime of violence" are substituted for the former references to the "misdemeanor" because only a misdemeanor that is a crime of violence qualifies for a conviction under this section.

In subsection (b)(1)(i) of this section, the reference to any other "penalty" imposed is substituted for the former reference to any other "sentence" imposed for clarity because the term "penalty" encompasses not only a sentence of imprisonment that may be imposed for the underlying crime, but also a fine.

Also in subsection (b)(1)(i) of this section, the former reference to a "separate" misdemeanor is deleted as surplusage.

In subsection (b)(2) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a second or" subsequent offense for consistency within this article.

Also in subsection (b)(2) of this section, the reference to a subsequent "violation" is substituted for the former reference to a subsequent "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Antique firearm" § 4-201

"Handgun" § 4-201

"Person" § 1-101

4-205. OTHER LIMITATIONS ON SENTENCING.

(A) REDUCTION OR SUSPENSION OF MANDATORY MINIMUM SENTENCE.

NOTWITHSTANDING § 14-102 OF THIS ARTICLE OR ANY OTHER PROVISION OF LAW, EXCEPT WITH RESPECT TO A SENTENCE PRESCRIBED IN § 4-203(C)(2) OF THIS SUBTITLE, A COURT MAY NOT:

(1) ENTER A JUDGMENT FOR LESS THAN THE MANDATORY MINIMUM SENTENCE PRESCRIBED IN § 4-203 OR § 4-204 OF THIS SUBTITLE IN A CASE IN WHICH A MANDATORY MINIMUM SENTENCE IS SPECIFIED UNDER § 4-203 OR § 4-204 OF THIS SUBTITLE; OR

(2) SUSPEND A MANDATORY MINIMUM SENTENCE PRESCRIBED IN § 4-203 OR § 4-204 OF THIS SUBTITLE.

(B) PROBATION.

NOTWITHSTANDING § 14-102 OF THIS ARTICLE OR ANY OTHER PROVISION OF LAW:

(1) EXCEPT WITH RESPECT TO A SENTENCE PRESCRIBED IN § 4-203(C)(2) OF THIS SUBTITLE FOR WEARING, CARRYING, OR TRANSPORTING A HANDGUN OTHER THAN ON PUBLIC SCHOOL PROPERTY, A COURT MAY NOT ORDER PROBATION BEFORE JUDGMENT IN A CASE ARISING UNDER THIS SUBTITLE; AND

(2) EXCEPT WITH RESPECT TO A SENTENCE PRESCRIBED IN § 4-203(C)(2) OF THIS SUBTITLE, A COURT MAY NOT ORDER PROBATION WITH RESPECT TO A CASE ARISING UNDER § 4-203 OR § 4-204 OF THIS SUBTITLE THAT WOULD HAVE THE EFFECT OF REDUCING THE ACTUAL PERIOD OF IMPRISONMENT PRESCRIBED IN § 4-203 OR § 4-204 OF THIS SUBTITLE AS A MANDATORY MINIMUM SENTENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36B(e).

In subsection (a) of this section, the former reference to any other provision of law "to the contrary" is deleted as unnecessary.

In subsection (a)(1) of this section, the reference to "a case" is substituted for the former reference to "those cases" in light of Art. 1, § 8, which provides that the singular includes the plural.

In subsection (a)(1) and (2) of this section, the references to a mandatory minimum sentence under "§ 4-203 or § 4-204 of this subtitle" are substituted for the former references to a mandatory minimum sentence under "this subheading" because the only mandatory minimum sentences prescribed in the "Handguns" subheading of Article 27 are found in § 36B(b) and (d), revised as §§ 4-203 and 4-204, respectively. Similarly, in subsection (b)(2) of this section, the references to a case arising under "§ 4-203 or § 4-204 of this subtitle" are substituted for the former reference

to a case arising under "this subheading".

In subsection (b)(1) of this section, the reference to "probation before judgment" is substituted for the former reference to "probation before or without verdict" for clarity.

In subsection (b)(2) of this section, the former reference to probation "after judgment" is deleted as unnecessary.

Defined term: "Handgun" § 4-201

4-206. LIMITED SEARCH, SEIZURE, AND ARREST.

(A) LIMITED SEARCH.

(1) A LAW ENFORCEMENT OFFICER MAY MAKE AN INQUIRY AND CONDUCT A LIMITED SEARCH OF A PERSON UNDER PARAGRAPH (2) OF THIS SUBSECTION IF THE OFFICER, IN LIGHT OF THE OFFICER'S OBSERVATIONS, INFORMATION, AND EXPERIENCE, REASONABLY BELIEVES THAT:

(I) THE PERSON MAY BE WEARING, CARRYING, OR TRANSPORTING A HANDGUN IN VIOLATION OF § 4-203 OF THIS SUBTITLE;

(II) BECAUSE THE PERSON POSSESSES A HANDGUN, THE PERSON IS OR PRESENTLY MAY BE DANGEROUS TO THE OFFICER OR TO OTHERS;

(III) UNDER THE CIRCUMSTANCES, IT IS IMPRACTICABLE TO OBTAIN A SEARCH WARRANT; AND

(IV) TO PROTECT THE OFFICER OR OTHERS, SWIFT MEASURES ARE NECESSARY TO DISCOVER WHETHER THE PERSON IS WEARING, CARRYING, OR TRANSPORTING A HANDGUN.

(2) IF THE CIRCUMSTANCES SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION EXIST, A LAW ENFORCEMENT OFFICER:

(I) MAY APPROACH THE PERSON AND ANNOUNCE THE OFFICER'S STATUS AS A LAW ENFORCEMENT OFFICER;

(II) MAY REQUEST THE NAME AND ADDRESS OF THE PERSON;

(III) IF THE PERSON IS IN A VEHICLE, MAY REQUEST THE PERSON'S LICENSE TO OPERATE THE VEHICLE AND THE REGISTRATION OF THE VEHICLE;

(IV) MAY ASK ANY QUESTION AND REQUEST ANY EXPLANATION THAT MAY BE REASONABLY CALCULATED TO DETERMINE WHETHER THE PERSON IS UNLAWFULLY WEARING, CARRYING, OR TRANSPORTING A HANDGUN IN VIOLATION OF § 4-203 OF THIS SUBTITLE; AND

(V) IF THE PERSON DOES NOT OFFER AN EXPLANATION THAT DISPELS THE OFFICER'S REASONABLE BELIEFS DESCRIBED IN PARAGRAPH (1) OF

THIS SUBSECTION, MAY CONDUCT A SEARCH OF THE PERSON LIMITED TO A PATTING OR FRISKING OF THE PERSON'S CLOTHING IN SEARCH OF A HANDGUN.

(3) A LAW ENFORCEMENT OFFICER ACTING UNDER THIS SUBSECTION SHALL TAKE INTO ACCOUNT ALL CIRCUMSTANCES OF THE OCCASION, INCLUDING THE AGE, APPEARANCE, PHYSICAL CONDITION, MANNER, AND GENDER OF THE PERSON APPROACHED.

(B) SEIZURE OF HANDGUN AND ARREST.

(1) IF THE OFFICER DISCOVERS THAT THE PERSON IS WEARING, CARRYING, OR TRANSPORTING A HANDGUN, THE OFFICER MAY DEMAND EVIDENCE FROM THE PERSON OF THE PERSON'S AUTHORITY TO WEAR, CARRY, OR TRANSPORT THE HANDGUN IN ACCORDANCE WITH § 4-203(B) OF THIS ARTICLE.

(2) IF THE PERSON DOES NOT PRODUCE THE EVIDENCE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION, THE OFFICER MAY SEIZE THE HANDGUN AND ARREST THE PERSON.

(C) WRITTEN REPORT.

(1) A LAW ENFORCEMENT OFFICER WHO CONDUCTS A SEARCH OR SEIZURE IN ACCORDANCE WITH THIS SECTION SHALL FILE A WRITTEN REPORT WITH THE LAW ENFORCEMENT OFFICER'S EMPLOYER UNIT WITHIN 24 HOURS AFTER THE SEARCH OR SEIZURE.

(2) THE REPORT SHALL BE ON A FORM THAT THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES PRESCRIBES, SHALL INCLUDE THE NAME OF THE PERSON SEARCHED, AND SHALL DESCRIBE THE CIRCUMSTANCES SURROUNDING AND THE REASONS FOR THE SEARCH OR SEIZURE.

(3) A COPY OF THE REPORT SHALL BE SENT TO THE SECRETARY OF THE STATE POLICE.

(D) CIVIL ACTIONS.

ON REQUEST OF A LAW ENFORCEMENT OFFICER, THE ATTORNEY GENERAL SHALL DEFEND THE OFFICER IN A CIVIL ACTION, INCLUDING ANY APPEAL, IN WHICH THE OFFICER IS SUED FOR CONDUCTING A SEARCH OR SEIZURE UNDER THIS SECTION THAT IS ALLEGED TO BE UNREASONABLE AND UNLAWFUL.

(E) CONSTRUCTION OF SECTION.

(1) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A LAW ENFORCEMENT OFFICER TO CONDUCT ANY OTHER TYPE OF SEARCH OR SEIZURE OR MAKE AN ARREST THAT IS OTHERWISE AUTHORIZED BY LAW.

(2) THE PROVISIONS OF THIS SECTION ARE IN ADDITION TO AND NOT LIMITED BY THE PROVISIONS OF TITLE 2 OF THE CRIMINAL PROCEDURE ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36D.

In subsection (a)(1) of this section, the reference to the authority of a law enforcement officer to "make an inquiry and conduct a limited search of a person" is added for clarity.

In subsection (a)(1)(i) and (2)(iv) of this section, the references to a violation of "§ 4-203 of this subtitle" are substituted for the former references to a violation of "§ 36B" of this subtitle for clarity. Although former Art. 27, § 36B is technically broader than revised § 4-203, it seems that the legislature meant, when referring to § 36B, only the crime of illegal wearing, carrying, or transporting of a handgun specified in § 36B(b), revised in § 4-203, and not the crime of using a handgun or antique firearm in the commission of a felony or crime of violence specified in § 36B(d), revised in § 4-204.

In subsection (a)(1)(iv) and (2)(iv) of this section, the former references to a person "in fact" wearing a handgun are deleted as unnecessary.

In subsection (a)(2) of this section, the introductory language "[i]f the circumstances specified under paragraph (1) of this subsection exist" is added for clarity.

In subsection (a)(2)(i) of this section, the reference to a law enforcement officer "announc[ing] the officer's status" as a law enforcement officer is substituted for the former reference to the officer "identify[ing] himself" as a law enforcement officer for clarity.

In subsection (a)(3) of this section, the reference to a law enforcement officer being required to act under this "subsection" with regard to certain characteristics of the person approached is substituted for the former reference to the officer acting under this "section" since only the provisions of former Art. 27, § 36D(a), revised in subsection (a) of this section, refer to an officer's actions when approaching a person.

Also in subsection (a)(3) of this section, the requirement that a law enforcement officer acting under this subsection "take into account" all circumstances of the occasion is substituted for the former reference that the officer "do so with due regard" for clarity.

In subsection (b)(1) of this section, the reference to a "person's authority" to wear, carry, or transport a handgun is substituted for the former reference to a person being "entitled" to wear, carry, or transport a handgun for clarity.

In subsection (b)(2) of this section, the reference to a person "not produc[ing]" evidence is substituted for the former reference to a person being "unable to produce" evidence for clarity.

In subsection (d) of this section, the reference to an action "including any appeal" is substituted for the former reference to an action "and any appeals therefrom" for clarity because an appeal from a civil case would still be part of the same "action". *See, e.g.*, Md. Rule 1-202(a) - "`Action' means collectively all the steps by which a party seeks to enforce any right in a court or all the steps of a criminal prosecution.".

In subsection (e)(2) of this section, the former declaration that the provisions of this section are "not in substitution" of the provisions of Title 2 of the Criminal Procedure Article is deleted as included in the declaration that the provisions of this section are "in addition to" the provisions of that title.

Defined terms: "Handgun" § 4-201

"Person" § 1-101

"Vehicle" § 4-201

4-207. PERMIT HOLDER CARRYING, WEARING, OR TRANSPORTING HANDGUN UNDER THE INFLUENCE.

(A) PROHIBITED.

A PERSON TO WHOM A PERMIT HAS BEEN ISSUED OR WHOSE PERMIT HAS BEEN RENEWED UNDER ARTICLE 27, § 36E OF THE CODE MAY NOT WEAR, CARRY, OR TRANSPORT A HANDGUN WHILE THE PERSON IS UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36E(l).

In subsection (a) of this section, the reference to a permit issued or renewed under "Article 27, § 36E of the Code" is added for clarity.

In subsection (b) of this section, the reference to a fine "not exceeding" $1,000 is added to state expressly that which formerly was only implied in Art. 27, § 36E(l).

Also in subsection (b) of this section, the reference to a person being "subject to" imprisonment and a fine is substituted for the former requirement that the person "be fined ... or be imprisoned" for consistency within this article.

Defined terms: "Handgun" § 4-201

"Person" § 1-101

4-208. POSSESSION OF FIREARM AT PUBLIC DEMONSTRATION.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "DEMONSTRATION" MEANS ONE OR MORE PERSONS DEMONSTRATING, PICKETING, SPEECHMAKING, MARCHING, HOLDING A VIGIL, OR ENGAGING IN ANY OTHER SIMILAR CONDUCT THAT INVOLVES THE COMMUNICATION OR EXPRESSION OF VIEWS OR GRIEVANCES AND THAT HAS THE EFFECT, INTENT, OR PROPENSITY TO ATTRACT A CROWD OR ONLOOKERS.

(II) "DEMONSTRATION" DOES NOT INCLUDE THE CASUAL USE OF PROPERTY BY VISITORS OR TOURISTS THAT DOES NOT HAVE THE INTENT OR PROPENSITY TO ATTRACT A CROWD OR ONLOOKERS.

(3) (I) "FIREARM" MEANS A HANDGUN, RIFLE, SHOTGUN, SHORT-BARRELED RIFLE, SHORT-BARRELED SHOTGUN, OR ANY OTHER FIREARM, WHETHER LOADED OR UNLOADED.

(II) "FIREARM" DOES NOT INCLUDE AN ANTIQUE FIREARM.

(4) "HANDGUN" HAS THE MEANING STATED IN ARTICLE 27, § 441 OF THE CODE.

(5) "LAW ENFORCEMENT OFFICER" MEANS:

(I) A MEMBER OF A POLICE FORCE OR OTHER UNIT OF THE UNITED STATES, THE STATE, A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION WHO IS RESPONSIBLE FOR THE PREVENTION AND DETECTION OF CRIME AND THE ENFORCEMENT OF THE LAWS OF THE UNITED STATES, THE STATE, A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION;

(II) A PARK POLICE OFFICER OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION;

(III) A MEMBER OF THE UNIVERSITY OF MARYLAND POLICE FORCE; AND

(IV) ANY MILITARY OR MILITIA PERSONNEL DIRECTED BY CONSTITUTED AUTHORITY TO KEEP LAW AND ORDER.

(6) (I) "PUBLIC PLACE" MEANS A PLACE TO WHICH THE GENERAL PUBLIC HAS ACCESS AND A RIGHT TO RESORT FOR BUSINESS, ENTERTAINMENT, OR OTHER LAWFUL PURPOSE.

(II) "PUBLIC PLACE" IS NOT LIMITED TO A PLACE DEVOTED SOLELY TO THE USES OF THE PUBLIC.

(III) "PUBLIC PLACE" INCLUDES:

1. THE FRONT OR IMMEDIATE AREA OR PARKING LOT OF A STORE, RESTAURANT, TAVERN, SHOPPING CENTER, OR OTHER PLACE OF BUSINESS;

2. A PUBLIC BUILDING, INCLUDING ITS GROUNDS AND CURTILAGE;

3. A PUBLIC PARKING LOT;

4. A PUBLIC STREET, SIDEWALK, OR RIGHT-OF-WAY;

5. A PUBLIC PARK; AND

6. OTHER PUBLIC GROUNDS.

(B) PROHIBITED.

(1) THIS SUBSECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER.

(2) A PERSON MAY NOT HAVE A FIREARM IN THE PERSON'S POSSESSION OR ON OR ABOUT THE PERSON AT A DEMONSTRATION IN A PUBLIC PLACE OR IN A VEHICLE THAT IS WITHIN 1,000 FEET OF A DEMONSTRATION IN A PUBLIC PLACE AFTER:

(I) THE PERSON HAS BEEN ADVISED BY A LAW ENFORCEMENT OFFICER THAT A DEMONSTRATION IS OCCURRING AT THE PUBLIC PLACE; AND

(II) THE PERSON HAS BEEN ORDERED BY THE LAW ENFORCEMENT OFFICER TO LEAVE THE AREA OF THE DEMONSTRATION UNTIL THE PERSON DISPOSES OF THE FIREARM.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36G(a)(1) through (5) and (7) and (b) and (c).

In subsection (a)(2)(i) of this section, the reference to "attract[ing]" a crowd or onlookers is substituted for the former reference to "draw[ing]" a crowd or onlookers for clarity and for consistency with subsection (a)(2)(ii) of this section.

Also in subsection (a)(2)(i) of this section, the reference to holding a "vigil" is substituted for the former reference to holding "vigils" in light of Art. 1, § 8, which provides that the singular includes the plural.

In subsection (a)(3)(ii) of this section, the reference to "antique firearm" is substituted for the former reference to "antique firearms" in light of Art. 1, § 8, which provides that the singular includes the plural.

In subsection (a)(5)(i), (ii), and (iii) of this section, the former references to a "duly appointed" member or officer are deleted as surplusage.

In subsection (a)(5)(i) of this section, the reference to a "unit" is substituted for the former reference to an "agency" for consistency within this article. *See* General Revisor's Note to article.

Also in subsection (a)(5)(i) of this section, the references to a "municipal corporation" are substituted for the former references to a "municipality" for consistency with the usage in Md. Constitution, Art. XI-E.

In subsection (c) of this section, the reference to a fine "not exceeding" $1,000 is added to state expressly that which formerly was only implied in Art. 27, § 36G(c).

Former Art. 27, § 36G(a)(6), which provided that the definitions of a "rifle", "shotgun", "short-barreled rifle", and "short-barreled shotgun" of § 4-201 of this subtitle also apply to this section, is deleted as redundant of the subtitle-wide definitions of the same terms in § 4-201 of this subtitle.

Defined terms: "Antique firearm" § 4-201

"County" § 1-101

"Person" § 1-101

"Rifle" § 4-201

"Short-barreled rifle" § 4-201

"Short-barreled shotgun" § 4-201

"Shotgun" § 4-201

"Vehicle" § 4-201

4-209. REGULATION OF WEAPONS AND AMMUNITION.

(A) STATE PREEMPTION.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE STATE PREEMPTS THE RIGHT OF A COUNTY, MUNICIPAL CORPORATION, OR SPECIAL TAXING DISTRICT TO REGULATE THE PURCHASE, SALE, TAXATION, TRANSFER, MANUFACTURE, REPAIR, OWNERSHIP, POSSESSION, AND TRANSPORTATION OF:

(1) A HANDGUN, RIFLE, OR SHOTGUN; AND

(2) AMMUNITION FOR AND COMPONENTS OF A HANDGUN, RIFLE, OR SHOTGUN.

(B) EXCEPTIONS.

(1) A COUNTY, MUNICIPAL CORPORATION, OR SPECIAL TAXING DISTRICT MAY REGULATE THE PURCHASE, SALE, TRANSFER, OWNERSHIP, POSSESSION, AND TRANSPORTATION OF THE ITEMS LISTED IN SUBSECTION (A) OF THIS SECTION:

(I) WITH RESPECT TO MINORS;

(II) WITH RESPECT TO LAW ENFORCEMENT OFFICIALS OF THE SUBDIVISION; AND

(III) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 100 YARDS OF OR IN A PARK, CHURCH, SCHOOL, PUBLIC BUILDING, AND OTHER PLACE OF PUBLIC ASSEMBLY.

(2) A COUNTY, MUNICIPAL CORPORATION, OR SPECIAL TAXING DISTRICT MAY NOT PROHIBIT THE TEACHING OF OR TRAINING IN FIREARMS SAFETY, OR OTHER EDUCATIONAL OR SPORTING USE OF THE ITEMS LISTED IN SUBSECTION (A) OF THIS SECTION.

(C) PREEXISTING LOCAL LAWS.

TO THE EXTENT THAT A LOCAL LAW DOES NOT CREATE AN INCONSISTENCY WITH THIS SECTION OR EXPAND EXISTING REGULATORY CONTROL, A COUNTY, MUNICIPAL CORPORATION, OR SPECIAL TAXING DISTRICT MAY EXERCISE ITS EXISTING AUTHORITY TO AMEND ANY LOCAL LAW THAT EXISTED ON OR BEFORE DECEMBER 31, 1984.

(D) DISCHARGE OF FIREARMS.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IN ACCORDANCE WITH LAW, A COUNTY, MUNICIPAL CORPORATION, OR SPECIAL TAXING DISTRICT MAY REGULATE THE DISCHARGE OF HANDGUNS, RIFLES, AND SHOTGUNS.

(2) A COUNTY, MUNICIPAL CORPORATION, OR SPECIAL TAXING DISTRICT MAY NOT PROHIBIT THE DISCHARGE OF FIREARMS AT ESTABLISHED RANGES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H.

In subsection (a) of this section, the reference to the "right" of a county, municipal corporation, or special taxing district to regulate is substituted for the former reference to the "rights" of a county, municipal corporation, or special taxing district to regulate in light of Art. 1, § 8, which provides that the singular includes the plural.

Also in subsection (a) of this section, the former reference to the authority to regulate "whether by law, ordinance, or regulation" is deleted as implicit.

Also in subsection (a) of this section, the former references to a handgun "as defined in § 36F(b) of this article", a rifle "as defined in § 36F(d) of this

article", and a shotgun "as defined in § 36F(g) of this article" are deleted as redundant of the subtitle-wide definitions of the same terms in § 4-201 of this subtitle.

In subsection (b)(1)(iii) of this section, the former phrase "[w]ith respect to these activities" is deleted as surplusage.

In subsection (c) of this section, as to the deletion of the former reference to "regulations", *see* General Revisor's Note to article.

In subsection (d)(1) of this section, the former reference to a county, municipal corporation, or special taxing district "continu[ing]" to regulate is deleted as surplusage.

Defined terms: "County" § 1-101

"Handgun" § 4-201

"Law enforcement official" § 4-201

"Minor" § 1-101

"Rifle" § 4-201

"Shotgun" § 4-201

SUBTITLE 3. ASSAULT PISTOLS AND DETACHABLE MAGAZINES.

4-301. "ASSAULT PISTOL" DEFINED.

IN THIS SUBTITLE, "ASSAULT PISTOL" MEANS ANY OF THE FOLLOWING FIREARMS OR A COPY REGARDLESS OF THE PRODUCER OR MANUFACTURER:

(1) AA ARMS AP-9 SEMIAUTOMATIC PISTOL;

(2) BUSHMASTER SEMIAUTOMATIC PISTOL;

(3) CLARIDGE HI-TEC SEMIAUTOMATIC PISTOL;

(4) D MAX INDUSTRIES SEMIAUTOMATIC PISTOL;

(5) ENCOM MK-IV, MP-9, OR MP-45 SEMIAUTOMATIC PISTOL;

(6) HECKLER AND KOCH SEMIAUTOMATIC SP-89 PISTOL;

(7) HOLMES MP-83 SEMIAUTOMATIC PISTOL;

(8) INGRAM MAC 10/11 SEMIAUTOMATIC PISTOL AND VARIATIONS INCLUDING THE PARTISAN AVENGER AND THE SWD COBRAY;

(9) INTRATEC TEC-9/DC-9 SEMIAUTOMATIC PISTOL IN ANY CENTERFIRE VARIATION;

(10) P.A.W.S. TYPE SEMIAUTOMATIC PISTOL;

(11) SKORPION SEMIAUTOMATIC PISTOL;

(12) SPECTRE DOUBLE ACTION SEMIAUTOMATIC PISTOL (SILE, F.I.E., MITCHELL);

(13) UZI SEMIAUTOMATIC PISTOL;

(14) WEAVER ARMS SEMIAUTOMATIC NIGHTHAWK PISTOL; OR

(15) WILKINSON SEMIAUTOMATIC "LINDA" PISTOL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H-1.

In the introductory language of this section, the former word "specified" is deleted as surplusage.

Also in the introductory language of this section, the reference to the "producer or manufacturer" is substituted for the former reference to the "company [which] produced and manufactured the firearm" for brevity.

4-302. SCOPE OF SUBTITLE.

THIS SUBTITLE DOES NOT APPLY TO:

(1) IF ACTING WITHIN THE SCOPE OF OFFICIAL BUSINESS, PERSONNEL OF THE UNITED STATES GOVERNMENT OR A UNIT OF THAT GOVERNMENT, MEMBERS OF THE ARMED FORCES OF THE UNITED STATES OR OF THE NATIONAL GUARD, OR LAW ENFORCEMENT PERSONNEL OF THE STATE OR A LOCAL UNIT IN THE STATE;

(2) A FIREARM MODIFIED TO RENDER IT PERMANENTLY INOPERATIVE;

(3) PURCHASES, SALES, AND TRANSPORT TO OR BY A LICENSED FIREARMS DEALER OR MANUFACTURER WHO IS:

(I) PROVIDING OR SERVICING AN ASSAULT PISTOL OR DETACHABLE MAGAZINE FOR A LAW ENFORCEMENT UNIT OR FOR PERSONNEL EXEMPTED UNDER ITEM (1) OF THIS SECTION; OR

(II) ACTING TO SELL OR TRANSFER AN ASSAULT PISTOL OR DETACHABLE MAGAZINE TO A LICENSED FIREARM DEALER IN ANOTHER STATE;

(4) ORGANIZATIONS THAT ARE REQUIRED OR AUTHORIZED BY FEDERAL LAW GOVERNING THEIR SPECIFIC BUSINESS OR ACTIVITY TO MAINTAIN ASSAULT PISTOLS AND APPLICABLE AMMUNITION AND DETACHABLE MAGAZINES;

(5) THE RECEIPT OF AN ASSAULT PISTOL OR DETACHABLE MAGAZINE BY INHERITANCE IF THE DECEDENT LAWFULLY POSSESSED THE ASSAULT PISTOL; OR

(6) THE RECEIPT OF AN ASSAULT PISTOL OR DETACHABLE MAGAZINE BY A PERSONAL REPRESENTATIVE OF AN ESTATE FOR PURPOSES OF EXERCISING THE POWERS AND DUTIES OF A PERSONAL REPRESENTATIVE OF AN ESTATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H-2.

In item (1) of this section, the reference to "a unit" of the United States government is substituted for the former reference to "any agency or department of the United States" for brevity.

In the introductory language of item (3) and in item (3)(ii) of this section, the reference to a licensed "firearm[s]" dealer is substituted for the former incorrect reference to a licensed "gun" dealer.

In items (3)(i) and (ii), (4), (5), and (6) of this section, the references to an assault pistol "or detachable magazine[s]" are added for consistency within this subtitle.

In item (3)(i) of this section, the reference to "personnel" is substituted for the former reference to "entity" to conform with the term used in item (1) of this section.

Also in item (3)(i) of this section, the word "unit" is substituted for the former word "agency" to conform with standard terminology used to describe governmental bodies. *See* General Revisor's Note to article.

In item (4) of this section, the former reference to federal law "or regulations" is deleted in light of the comprehensive reference to "federal law" which includes regulations.

Former Art. 27, § 36H-5(a), which exempted certain personnel, units, and transfers from the prohibition against manufacturing, selling, receiving, or transferring certain magazines under § 4-305 of this subtitle [former § 36H-5(b)], is deleted as redundant of this section.

Defined terms: "Assault pistol" § 4-301

"State" § 1-101

4-303. ASSAULT PISTOLS -- PROHIBITED.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON MAY NOT:

(1) TRANSPORT AN ASSAULT PISTOL INTO THE STATE; OR

(2) POSSESS, SELL, OFFER TO SELL, TRANSFER, PURCHASE, OR RECEIVE AN ASSAULT PISTOL.

(B) EXCEPTION.

A PERSON WHO LAWFULLY POSSESSED AN ASSAULT PISTOL BEFORE JUNE 1, 1994 AND WHO REGISTERED THE ASSAULT PISTOL WITH THE SECRETARY OF THE

STATE POLICE BEFORE AUGUST 1, 1994 MAY CONTINUE TO POSSESS THE ASSAULT PISTOL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H-3.

In the introductory language of subsection (a) of this section, the former phrase "[s]ubject to the provisions of this subheading" is deleted as redundant of § 4-302 of this subtitle, which specifies that the exemptions contained in that section apply to the entire subtitle.

Also in the introductory language of subsection (a) of this section, the former effective date "June 1, 1994" is deleted as obsolete.

In subsection (a)(2) of this section, the former phrase "in the State" is deleted because the State's jurisdiction is limited to activities within the State.

Defined terms: "Assault pistol" § 4-301

"Person" § 1-101

4-304. SAME -- SEIZURE AND DISPOSITION.

A LAW ENFORCEMENT UNIT MAY SEIZE AS CONTRABAND AND DISPOSE OF ACCORDING TO REGULATION AN ASSAULT PISTOL TRANSPORTED, SOLD, TRANSFERRED, PURCHASED, RECEIVED, OR POSSESSED IN VIOLATION OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H-4.

The word "unit" is substituted for the former word "agency" to conform with standard terminology used to describe governmental bodies. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that it is unclear which "regulation" on contraband and disposal the law enforcement unit may use - that of the State, the United States, or a local government.

Defined term: "Assault pistol" § 4-301

4-305. DETACHABLE MAGAZINES -- PROHIBITED.

(A) SCOPE.

THIS SECTION DOES NOT APPLY TO A .22 CALIBER RIFLE WITH A TUBULAR MAGAZINE.

(B) PROHIBITED.

A PERSON MAY NOT MANUFACTURE, SELL, OFFER FOR SALE, PURCHASE, RECEIVE, OR TRANSFER A DETACHABLE MAGAZINE THAT HAS A CAPACITY OF MORE THAN 20 ROUNDS OF AMMUNITION FOR A FIREARM.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H-5(b).

The former reference to "any type of" firearm is deleted as surplusage.

Defined term: "Person" § 1-101

4-306. PENALTIES.

(A) IN GENERAL.

A PERSON WHO VIOLATES THIS SUBTITLE 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.

(B) USE IN A FELONY OR CRIME OF VIOLENCE.

(1) A PERSON WHO USES AN ASSAULT PISTOL, OR A MAGAZINE THAT HAS A CAPACITY OF MORE THAN 20 ROUNDS OF AMMUNITION, IN THE COMMISSION OF A FELONY OR A CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27, § 441 OF THE CODE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION, IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR THE FELONY OR CRIME OF VIOLENCE, SHALL BE SENTENCED UNDER THIS SUBSECTION.

(2) (I) FOR A FIRST VIOLATION, THE PERSON SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 5 AND NOT EXCEEDING 20 YEARS.

(II) THE COURT MAY NOT IMPOSE LESS THAN THE MINIMUM SENTENCE OF 5 YEARS.

(III) THE MANDATORY MINIMUM SENTENCE OF 5 YEARS MAY NOT BE SUSPENDED.

(IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN LESS THAN 5 YEARS.

(3) (I) FOR EACH SUBSEQUENT VIOLATION, THE PERSON SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 10 AND NOT EXCEEDING 20 YEARS.

(II) THE COURT MAY NOT IMPOSE LESS THAN THE MINIMUM SENTENCE OF 10 YEARS.

(III) A SENTENCE IMPOSED UNDER THIS PARAGRAPH SHALL BE CONSECUTIVE TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED FOR THE FELONY OR CRIME OF VIOLENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H-6.

In subsection (b) of this section, the references to "crime of violence" are substituted for the former references to "misdemeanor" to state explicitly that this provision only applies to misdemeanors that are crimes of violence.

In subsection (b)(1) of this section, the former reference to a "separate" misdemeanor is deleted as surplusage.

In subsection (b)(2)(i) and (3)(i) of this section, the former references to a sentence to the "Maryland Division of Correction" are deleted for consistency within this article. Currently, inmates are sentenced to the custody of an agency such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

In subsection (c)(3)(i) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a second or" subsequent violation for consistency within this article.

Defined terms: "Assault pistol" § 4-301

"Person" § 1-101

SUBTITLE 4. UNIFORM MACHINE GUN ACT.

4-401. DEFINITIONS.

(A) IN GENERAL.

IN 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) CRIME OF VIOLENCE.

(1) "CRIME OF VIOLENCE" MEANS:

(I) MURDER IN ANY DEGREE;

(II) MANSLAUGHTER;

(III) KIDNAPPING;

(IV) RAPE IN ANY DEGREE;

(V) ASSAULT IN THE FIRST DEGREE;

(VI) ROBBERY UNDER § 3-402 OR § 3-403 OF THIS ARTICLE;

(VII) BURGLARY IN ANY DEGREE;

(VIII) ESCAPE IN THE FIRST DEGREE; OR

(IX) THEFT.

(2) "CRIME OF VIOLENCE" INCLUDES AN ATTEMPT TO COMMIT A CRIME LISTED IN PARAGRAPH (1) OF THIS SUBSECTION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 372.

The former phrase "applies to and includes any of the following crimes or an attempt to commit any of the same" is deleted to distinguish between primary crimes and attempted crimes for clarity.

In paragraph (1) of this subsection, the conjunction "or" is substituted for the former conjunction "and" for accuracy and consistency in describing the qualifying crimes.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that although "rape in any degree" is listed as a "crime of violence" in paragraph (1)(iv) of this subsection, the related crimes of "sexual offense in the first degree" and "sexual offense in the second degree", §§ 3-304 and 3-305 of this article, respectively, are not included. The General Assembly may wish to consider whether any of the "sexual offenses" codified in Title 3, Subtitle 3 of this article should be added to the definition of "crime of violence" in this subsection.

(C) MACHINE GUN.

"MACHINE GUN" MEANS A LOADED OR UNLOADED WEAPON THAT IS CAPABLE OF AUTOMATICALLY DISCHARGING MORE THAN ONE SHOT OR BULLET FROM A MAGAZINE BY A SINGLE FUNCTION OF THE FIRING DEVICE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 372.

The former phrase "of any description, by whatever name known," is deleted as surplusage in light of the common reference to the undefined term "weapon".

4-402. POSSESSION OF MACHINE GUN.

(A) EVIDENCE OF POSSESSION.

THE PRESENCE OF A MACHINE GUN IN A ROOM, BOAT, OR VEHICLE IS EVIDENCE OF THE POSSESSION OR USE OF THE MACHINE GUN BY EACH PERSON OCCUPYING THE ROOM, BOAT, OR VEHICLE.

(B) EXCEPTIONS.

THIS SUBTITLE DOES NOT PROHIBIT OR INTERFERE WITH:

(1) THE MANUFACTURE, SALE, AND TRANSPORTATION OF A MACHINE GUN FOR OR TO A MILITARY FORCE OR PEACE OFFICER OF THE UNITED STATES, A STATE, OR A POLITICAL SUBDIVISION OF A STATE;

(2) THE POSSESSION OF A MACHINE GUN FOR A SCIENTIFIC PURPOSE;

(3) THE POSSESSION, AS A CURIOSITY, ORNAMENT, OR KEEPSAKE, OF A MACHINE GUN THAT CANNOT BE USED AS A WEAPON; OR

(4) THE POSSESSION OF A MACHINE GUN FOR A PURPOSE THAT IS MANIFESTLY NOT AGGRESSIVE OR OFFENSIVE.

(C) SEIZURE AND CONFISCATION.

(1) A COURT MAY ISSUE A WARRANT TO SEARCH FOR AND SEIZE A MACHINE GUN POSSESSED IN VIOLATION OF THIS SUBTITLE UNDER THE SAME PROCEDURE AS FOR ISSUANCE OF A WARRANT FOR STOLEN PROPERTY.

(2) ON APPLICATION BY THE STATE'S ATTORNEY, A COURT MAY ORDER THE CONFISCATION OR DESTRUCTION OF A LEGALLY SEIZED MACHINE GUN OR THE TRANSFER OF THE MACHINE GUN TO A PEACE OFFICER OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 376, 377, and 380.

In subsection (a) of this section, the former phrase "where the weapon is found" is deleted as implicit in the reference to the "presence of a machine gun in a room, boat, or vehicle".

In the introductory language of subsection (b) of this section, the phrase "[t]his subtitle does not prohibit or interfere with" is substituted for the former phrase "[n]othing contained in this subtitle shall" for clarity.

In subsection (c) of this section, the former reference to a "house or place" is deleted as implicit in the requirement that a search warrant must follow the same procedures as a warrant issued for stolen property.

Also in subsection (c) of this section, the phrase "under the same procedure as for issuance of a warrant" is substituted for the former phrase "in the same manner and under the same restrictions as provided by law" for clarity.

In subsection (c)(2) of this section, the word "may" is substituted for the former phrase "shall have jurisdiction and power to" for brevity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section excepts

"manufacture", "sale", and "transportation" of machine guns for use by military personnel and peace officers from this subtitle, but does not except "possession" by these individuals, even when on official duty. The General Assembly may wish to address the possession of machine guns by these individuals, and any limitation on possession such as "in the course of the [individuals'] official duties", in substantive legislation.

Defined terms: "Machine gun" § 4-401

"Person" § 1-101

"State" § 1-101

4-403. REGISTRATION OF MACHINE GUN.

(A) MANUFACTURER REGISTRATION.

(1) A MANUFACTURER OF A MACHINE GUN SHALL KEEP A REGISTER OF EACH MACHINE GUN MANUFACTURED OR HANDLED BY THE MANUFACTURER.

(2) THE REGISTER SHALL CONTAIN:

(I) THE METHOD OF MANUFACTURE AND SERIAL NUMBER OF THE MACHINE GUN;

(II) THE DATE OF MANUFACTURE, SALE, LOAN, GIFT, DELIVERY, AND RECEIPT OF THE MACHINE GUN FROM THE MANUFACTURER; AND

(III) THE NAME, ADDRESS, AND OCCUPATION OF THE PERSON TO WHOM THE MACHINE GUN WAS SOLD, LOANED, GIVEN OR DELIVERED, OR FROM WHOM THE MACHINE GUN WAS RECEIVED, AND THE PURPOSE FOR WHICH THE MACHINE GUN WAS ACQUIRED.

(3) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $100.

(B) INSPECTION OF MANUFACTURER STOCK.

(1) ON DEMAND, A MANUFACTURER OF A MACHINE GUN SHALL ALLOW A MARSHAL, SHERIFF, OR POLICE OFFICER TO INSPECT THE MANUFACTURER'S ENTIRE STOCK OF MACHINE GUNS, PARTS, AND SUPPLIES AND THE REGISTER REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $100.

(C) REGISTRATION OF POSSESSION.

(1) A PERSON WHO ACQUIRES A MACHINE GUN SHALL REGISTER THE MACHINE GUN WITH THE SECRETARY OF THE STATE POLICE:

(I) WITHIN 24 HOURS AFTER ACQUIRING THE MACHINE GUN; AND

(II) IN EACH SUCCEEDING YEAR DURING THE MONTH OF MAY.

(2) THE SECRETARY OF THE STATE POLICE SHALL PREPARE AND, ON REQUEST OF AN APPLICANT, FURNISH AN APPLICATION FORM FOR REGISTRATION UNDER THIS SUBSECTION.

(3) AN APPLICATION FOR REGISTRATION SHALL CONTAIN:

(I) THE MAKE, MODEL, SERIAL NUMBER, CALIBER, TYPE, BARREL LENGTH, FINISH, AND COUNTRY OF ORIGIN OF THE MACHINE GUN;

(II) THE NAME, ADDRESS, RACE, GENDER, DATE OF BIRTH, MARYLAND DRIVER'S LICENSE NUMBER, AND OCCUPATION OF THE PERSON IN POSSESSION OF THE MACHINE GUN; AND

(III) THE NAME OF THE PERSON FROM WHOM THE MACHINE GUN WAS ACQUIRED AND THE PURPOSE FOR ACQUIRING THE MACHINE GUN.

(4) EACH APPLICATION FOR REGISTRATION FILED WITH THE SECRETARY OF THE STATE POLICE SHALL BE ACCOMPANIED BY A NONREFUNDABLE REGISTRATION FEE OF $10.

(5) REGISTRATION DATA PROVIDED UNDER THIS SECTION IS NOT OPEN TO PUBLIC INSPECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 378 and 379.

In subsections (a)(3) and (b)(2) of this section, the references to being "guilty of a misdemeanor and on conviction" being subject to a fine are 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. 483, 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 (1968).

In subsection (c)(3)(ii) of this section, the reference to "gender" is substituted for the former reference to "sex" for clarity.

The sixth sentence of former Art. 27, § 379(a), which established a presumption that a person possessing an unregistered machine gun did so for an offensive or aggressive purpose, is deleted as redundant of § 4-405 (a)(1)(iii) of this subtitle.

Defined terms: "Machine gun" § 4-401

"Person" § 1-101

4-404. USE OF MACHINE GUN IN CRIME OF VIOLENCE.

(A) PROHIBITED.

A PERSON MAY NOT USE OR POSSESS A MACHINE GUN IN THE COMMISSION OR ATTEMPTED COMMISSION OF A CRIME OF VIOLENCE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 373.

In subsection (a) of this section, the references to "commission" of a crime of violence are substituted for the former references to "perpetration" of a crime of violence for consistency within this article.

In subsection (b) of this section, the former reference to imprisonment "in the State penitentiary" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* § 9-103.

Defined terms: "Crime of violence" § 4-401

"Machine gun" § 4-401

"Person" § 1-101

4-405. USE OF MACHINE GUN FOR AGGRESSIVE PURPOSE.

(A) PRESUMPTION OF OFFENSIVE OR AGGRESSIVE PURPOSE.

POSSESSION OR USE OF A MACHINE GUN IS PRESUMED TO BE FOR AN OFFENSIVE OR AGGRESSIVE PURPOSE WHEN:

(1) THE MACHINE GUN:

(I) IS ON PREMISES NOT OWNED OR RENTED FOR BONA FIDE PERMANENT RESIDENCE OR BUSINESS OCCUPANCY BY THE PERSON IN WHOSE POSSESSION THE MACHINE GUN IS FOUND;

(II) IS IN THE POSSESSION OF, OR USED BY, AN UNNATURALIZED FOREIGN-BORN PERSON OR A PERSON WHO HAS BEEN CONVICTED OF A CRIME OF VIOLENCE IN ANY STATE OR FEDERAL COURT OF THE UNITED STATES; OR

(III) IS NOT REGISTERED AS REQUIRED UNDER § 4-403 OF THIS SUBTITLE; OR

(2) EMPTY OR LOADED SHELLS THAT HAVE BEEN USED OR ARE SUSCEPTIBLE OF BEING USED IN THE MACHINE GUN ARE FOUND IN THE IMMEDIATE VICINITY OF THE MACHINE GUN.

(B) PROHIBITED.

A PERSON MAY NOT POSSESS OR USE A MACHINE GUN FOR AN OFFENSIVE OR AGGRESSIVE PURPOSE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

(D) 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, §§ 374 and 375.

In subsection (a)(1)(ii) of this section, the former reference to a "territory or possession" of the United States is deleted as included in the defined term "state".

In subsection (a)(1)(iii) of this section, the former reference to a machine gun that "is of the kind described in [former] § 379 is deleted as unnecessary in light of the fact that former § 379, which is revised as § 4-403(b) of this subtitle, required all machine guns to be registered when acquired, and annually thereafter.

In subsection (c) 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. 483, 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 (1968).

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the presumption of offensive or aggressive purpose based on alienage revised in subsection (a)(1)(ii) of this section appears to be unconstitutional. The presumption attaches to any

"unnaturalized foreign-born person" who possesses or uses a machine gun. According to the Attorney General, there does not appear to be any rational connection between the proved fact of foreign birth and the presumed fact of an offensive or aggressive purpose in possessing a machine gun. In the absence of such a rational basis, the provision violates both the Equal Protection and Due Process clauses of the U.S. Constitution. Although there is no direct Maryland case law construing subsection (a)(1)(ii) of this section, [former § 375(b)] the Attorney General cites a case under the similar Virginia statute finding that the presumption based on alienage violates both clauses. *Sandiford v. Commonwealth*, 225 S.E.2d 409, 410 (Va. 1976), citing *Graham v. Richardson*, 403 U.S. 365, 371-372 and 375 (1971) and *Leary v. U.S.*, 395 U.S. 6, 32-36 (1969). The General Assembly may wish to address this matter in substantive legislation. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 8-9 (May 21, 2001).

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that the presumption of offensive or aggressive purpose based on conviction of a "crime of violence" revised in subsection (a)(1)(ii) of this section appears to be of doubtful constitutionality. The presumption attaches to any person who has been convicted of a "crime of violence" and possesses or uses a machine gun. According to the Attorney General, although the fact of conviction of a crime of violence may suggest an offensive or aggressive purpose, it may not do so with the requisite "substantial assurance" that such a purpose is "more likely than not" to flow from the fact of such a conviction. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, p. 9 (May 21, 2001). In the absence of such a rational basis, the provision may violate the Due Process clauses of the U.S. Constitution. The General Assembly may wish to address this matter as well in substantive legislation. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 8-9 (May 21, 2001).

Defined terms: "Crime of violence" § 4-401

"Machine gun" § 4-401

"Person" § 1-101

"State" § 1-101

4-406. UNIFORMITY.

THIS SUBTITLE SHALL BE INTERPRETED AND CONSTRUED AS TO EFFECTUATE ITS GENERAL PURPOSE TO MAKE UNIFORM THE LAW OF THOSE STATES THAT ENACT IT.

REVISOR'S NOTE: This section formerly was Art. 27, § 382.

The only changes are in style.

4-407. SHORT TITLE.

THIS SUBTITLE MAY BE CITED AS THE UNIFORM MACHINE GUN ACT.

REVISOR'S NOTE: This section formerly was Art. 27, § 383.

No changes are made.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that although Maryland adopted the Machine Gun Act as a uniform law, the act is no longer designated as such by the National Conference of Commissioners on Uniform State Laws. The Commissioners placed the act on inactive status in 1954, later declaring it "obsolete" as of that year. At that time, the act had been adopted in nine states.

In light of the Commissioners' action, it is unclear whether this subtitle should retain its "uniform" designation.

The Uniform Machine Gun Act was never widely adopted. Of the eight other states that had ever adopted the Uniform Machine Gun Act, five have repealed or substantially modified it, removing any reference to uniformity: Connecticut, Ohio, South Carolina, South Dakota, and Wisconsin.

Montana has repealed the registration and manufacturers' provisions, but retains the crime of possessing or using a machine gun for an offensive or aggressive purpose, and certain presumptions. It also retains the prohibition against using a machine gun in a crime of violence. However, for the remaining crimes Montana retains "uniformity" language similar to § 4-406 of this subtitle. MT. CODE ANN. §§ 45-8-301 through 45-8-307.

Virginia and Arkansas have both retained the Uniform Machine Gun Act largely intact. VA. CODE ANN. §§ 18.2-288 through 18.2-298; AR. CODE ANN. §§ 5-73-201 through 5-73-211. Although Arkansas has never filled in the blank for the amount of the fine imposed on a manufacturer that fails to register a machine gun, it repealed the requirement for an owner to register a machine gun during its 2001 Legislative Session. §§ 5-73-208 and 5-73-209.

It is unclear to what extent there has ever been an occasion to construe any provision of this subtitle "uniformly" with regard to the corresponding statute of any other adopting state. The General Assembly may wish to consider removing the "uniform" designation of this subtitle, and perhaps the uniform construction provision of § 4-406 of this subtitle.

GENERAL REVISOR'S NOTE TO SUBTITLE

Former Art. 27, § 381, which provided for severability of any invalid provision of the subtitle, is deleted as surplusage in light of the application of Art. 1, § 23, which provides for the severability of all statutes enacted after July 1, 1973.

SUBTITLE 5. DESTRUCTIVE DEVICES.

4-501. 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, § 139A(a).

(B) DESTRUCTIVE DEVICE.

(1) "DESTRUCTIVE DEVICE" MEANS EXPLOSIVE MATERIAL, INCENDIARY MATERIAL, OR TOXIC MATERIAL THAT IS:

(I) COMBINED WITH A DELIVERY OR DETONATING APPARATUS SO AS TO BE CAPABLE OF INFLICTING INJURY TO PERSONS OR DAMAGE TO PROPERTY; OR

(II) DELIBERATELY MODIFIED, CONTAINERIZED, OR OTHERWISE EQUIPPED WITH A SPECIAL DELIVERY, ACTIVATION, OR DETONATION COMPONENT THAT GIVES THE MATERIAL DESTRUCTIVE CHARACTERISTICS OF A MILITARY ORDINANCE.

(2) "DESTRUCTIVE DEVICE" INCLUDES A BOMB, GRENADE, MINE, SHELL, MISSILE, FLAMETHROWER, POISON GAS, MOLOTOV COCKTAIL, PIPE BOMB, AND PETROLEUM-SOAKED AMMONIUM NITRATE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 139A(c).

In paragraph (1) of this subsection, the word "is" is substituted for the former phrase "has been" for consistency in tense.

In paragraph (1)(i) of this subsection, the former reference to "[d]evices which are primarily designed and manufactured for military purposes as instrumentalities of destruction" is deleted as included in the reference to a material that is combined with apparatus "so as to be capable of inflicting injury to persons or damage to property".

In paragraph (1)(ii) of this subsection, the phrase "that gives the material" is substituted for the former phrase "so as to give it the" for clarity.

In paragraph (2) of this subsection, the conjunction "and" is substituted for the former conjunction "or" as the standard conjunction used in an

inclusive definition.

Defined terms: "Explosive material" § 4-501

"Incendiary material" § 4-501

"Person" § 1-101

"Toxic material" § 4-501

(C) EXPLOSIVE MATERIAL.

(1) "EXPLOSIVE MATERIAL" MEANS MATERIAL THAT EXPLODES WHEN DETONATED AND HAS A DESTRUCTIVE CAPABILITY.

(2) "EXPLOSIVE MATERIAL" INCLUDES:

(I) EXPLOSIVES AS DEFINED IN ARTICLE 38A, § 26 OF THE CODE; AND

(II) DYNAMITE FOR CONSTRUCTION WORK, AMMONIUM NITRATE, NATURAL GAS IN PIPELINES OR STORAGE TANKS, ETHER, AND CANNISTERIZED OXYGEN FOR HEALTH CARE FACILITIES.

(3) "EXPLOSIVE MATERIAL" DOES NOT INCLUDE ITEMS EXCLUDED FROM EXPLOSIVES IN ARTICLE 38A, § 26 OF THE CODE WHEN THE ITEMS ARE USED IN THEIR ORIGINAL CONFIGURATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 139A(d).

In paragraph (2)(ii) of this subsection, the conjunction "or" is substituted for the former conjunction "and" to clarify that the reference to "natural gas" applies either to gas in pipelines or to gas in storage tanks.

(D) INCENDIARY MATERIAL.

(1) "INCENDIARY MATERIAL" MEANS A FLAMMABLE OR COMBUSTIBLE LIQUID.

(2) "INCENDIARY MATERIAL" INCLUDES GASOLINE, ACETONE, BENZENE, BUTANE, JET FUEL, FUEL OIL, KEROSENE, AND DIESEL FUEL.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 139A(e).

No changes are made.

(E) TOXIC MATERIAL.

(1) "TOXIC MATERIAL" MEANS MATERIAL THAT IS CAPABLE OF CAUSING DEATH OR SERIOUS BODILY INJURY ALMOST IMMEDIATELY ON BEING ABSORBED THROUGH THE SKIN, INHALED, OR INGESTED.

(2) "TOXIC MATERIAL" INCLUDES:

(I) NERVE GAS, MUSTARD GAS, CYANIDE GAS, CHLORINE GAS, SULPHURIC ACID, OR THEIR PRECURSORS; AND

(II) A BIOLOGICAL SUBSTANCE CONTAINING A DISEASE ORGANISM OR MICROORGANISM.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 139A(f).

In paragraph (2) of this subsection, the former phrase "but is not limited to" is deleted in light of Art. 1, § 30, which provides that the term "includes" is used "by way of illustration and not by way of limitation".

REVISOR'S NOTE TO SECTION: Former Art. 27, § 139A(b), which defined "child" to be a person under the age of 18 years, is deleted because the term is not used in the revision. Instead, the revision uses the article-wide term "minor" defined in § 1-101 of this article.

4-502. SCOPE OF SUBTITLE.

THIS SUBTITLE DOES NOT APPLY TO:

(1) A MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR OF THE NATIONAL GUARD OR LAW ENFORCEMENT PERSONNEL OF THE UNITED STATES, THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE WHILE ACTING WITHIN THE SCOPE OF OFFICIAL DUTIES;

(2) AN OFFICER OR EMPLOYEE OF THE UNITED STATES, THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE WHO IS AUTHORIZED TO HANDLE A DESTRUCTIVE DEVICE WITHIN THE SCOPE OF OFFICIAL DUTIES AND WHO IS ACTING WITHIN THE SCOPE OF THOSE DUTIES;

(3) A PERSON AUTHORIZED BY LAW TO POSSESS EXPLOSIVE MATERIAL, INCENDIARY MATERIAL, OR TOXIC MATERIAL WHO IS ACTING WITHIN THE SCOPE OF AUTHORITY IF THE POSSESSION OF THE MATERIAL IS SPECIFICALLY REGULATED OR LICENSED BY LAW; OR

(4) A PERSON WHO POSSESSES SMOKELESS OR BLACK GUNPOWDER UNDER ARTICLE 38A OF THE CODE AND USES THE GUNPOWDER FOR LOADING OR RELOADING SMALL ARMS AMMUNITION, ANTIQUE FIREARMS, OR REPLICAS OF ANTIQUE FIREARMS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 139B.

In items (2) and (3) of this section, the former references to being licensed are deleted as included in the references to being "authorized" by law or acting under "authority".

Defined terms: "Destructive device" § 4-501

"Explosive material" § 4-501

"Incendiary material" § 4-501

"Person" § 1-101

"Toxic material" § 4-501

4-503. MANUFACTURE OR POSSESSION OF DESTRUCTIVE DEVICE.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY:

(1) MANUFACTURE, TRANSPORT, POSSESS, CONTROL, STORE, SELL, DISTRIBUTE, OR USE A DESTRUCTIVE DEVICE; OR

(2) POSSESS EXPLOSIVE MATERIAL, INCENDIARY MATERIAL, OR TOXIC MATERIAL WITH INTENT TO CREATE A DESTRUCTIVE DEVICE.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 25 YEARS OR A FINE NOT EXCEEDING $250,000 OR BOTH.

(2) A SENTENCE IMPOSED UNDER THIS SUBSECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR A CRIME BASED ON THE ACT OR ACTS ESTABLISHING THE VIOLATION OF THIS SECTION.

(3) IN ADDITION TO ANY OTHER PENALTY AUTHORIZED BY LAW, IF THE PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER THIS SECTION IS A MINOR, THE COURT MAY ORDER THE MOTOR VEHICLE ADMINISTRATION TO INITIATE AN ACTION, UNDER THE MOTOR VEHICLE LAWS, TO SUSPEND THE DRIVING PRIVILEGE OF THE MINOR FOR A SPECIFIED PERIOD NOT TO EXCEED:

(I) FOR A FIRST VIOLATION, 6 MONTHS; AND

(II) FOR EACH SUBSEQUENT VIOLATION, 1 YEAR OR UNTIL THE PERSON IS 21 YEARS OLD, WHICHEVER IS LONGER.

(C) RESTITUTION.

(1) IN ADDITION TO ANY PENALTY PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER THIS SECTION MAY BE ORDERED BY THE COURT TO PAY RESTITUTION TO:

(I) THE STATE, COUNTY, MUNICIPAL CORPORATION, BICOUNTY AGENCY, OR SPECIAL TAXING DISTRICT FOR ACTUAL COSTS REASONABLY INCURRED DUE TO THE PLACEMENT, DELIVERY, OR DETONATION OF A DESTRUCTIVE DEVICE,

INCLUDING THE SEARCH FOR, REMOVAL OF, AND DAMAGES CAUSED BY A DESTRUCTIVE DEVICE; AND

(II) THE OWNER OR TENANT OF A PROPERTY FOR THE ACTUAL VALUE OF ANY GOODS, SERVICES, OR INCOME LOST AS A RESULT OF THE EVACUATION OF THE PROPERTY OR DAMAGE SUSTAINED DUE TO THE PLACEMENT, DELIVERY, OR DETONATION OF A DESTRUCTIVE DEVICE.

(2) (I) IF A PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER THIS SECTION IS A MINOR, THE COURT MAY ORDER THE MINOR, THE MINOR'S PARENT, OR BOTH TO PAY THE RESTITUTION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(II) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE PROVISIONS OF TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE APPLY TO AN ORDER OF RESTITUTION UNDER THIS PARAGRAPH.

(3) THIS SUBSECTION DOES NOT LIMIT THE RIGHT OF A PERSON TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 139C and 139D.

In subsections (b)(3) and (c)(2) of this section, the defined term "minor" is substituted for the former defined term "child" for consistency within this article. *See* § 1-101 of this article.

For provisions on threats involving destructive devices and imitations of destructive devices, *see* §§ 9-504 and 9-505 of this article.

Defined terms: "County" § 1-101

"Destructive device" § 4-501

"Explosive material" § 4-501

"Incendiary material" § 4-501

"Minor" § 1-101

"Person" § 1-101

"Toxic material" § 4-501

TITLE 5. CONTROLLED DANGEROUS SUBSTANCES, PRESCRIPTIONS, AND OTHER SUBSTANCES.

SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

5-101. 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 the introductory language of former Art. 27, § 277.

The former reference to "phrases" is deleted as implicit in the reference to "words".

The former qualification "unless the context otherwise requires" is deleted as an unnecessary statement of a standard rule of statutory construction that applies to all definitions.

(B) ADMINISTER.

"ADMINISTER" MEANS TO INTRODUCE A SUBSTANCE INTO THE SYSTEM OF A HUMAN OR ANIMAL BY INJECTION, INHALATION, INGESTION, APPLICATION TO THE SKIN, OR ANY COMBINATION OF THOSE METHODS OR BY ANY OTHER MEANS.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 277(a).

The only changes are in style.

(C) AGENT.

(1) "AGENT" MEANS AN EMPLOYEE OR OTHER AUTHORIZED PERSON WHO ACTS FOR OR AT THE DIRECTION OF A MANUFACTURER, DISTRIBUTOR, OR AUTHORIZED PROVIDER.

(2) "AGENT" DOES NOT INCLUDE:

(I) A COMMON CARRIER, CONTRACT CARRIER, OR PUBLIC WAREHOUSEMAN; OR

(II) AN EMPLOYEE OF A COMMON CARRIER, CONTRACT CARRIER, OR PUBLIC WAREHOUSEMAN.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(b).

In item (1) of this subsection, the reference to acting "for" or at the direction of a manufacturer is substituted for the former reference to acting "on behalf of or at the direction of a manufacturer" for brevity.

Defined term: "Person" § 1-101

(D) AUTHORIZED PROVIDER.

(1) "AUTHORIZED PROVIDER" MEANS:

(I) A PERSON LICENSED, REGISTERED, OR OTHERWISE ALLOWED TO ADMINISTER, DISTRIBUTE, DISPENSE, OR CONDUCT RESEARCH ON A

CONTROLLED DANGEROUS SUBSTANCE IN THE STATE IN THE COURSE OF PROFESSIONAL PRACTICE OR RESEARCH; OR

(II) A PHARMACY, LABORATORY, HOSPITAL, OR OTHER INSTITUTION LICENSED, REGISTERED, OR OTHERWISE ALLOWED TO ADMINISTER, DISTRIBUTE, DISPENSE, OR CONDUCT RESEARCH ON A CONTROLLED DANGEROUS SUBSTANCE IN THE STATE IN THE COURSE OF PROFESSIONAL PRACTICE OR RESEARCH.

(2) "AUTHORIZED PROVIDER" INCLUDES A SCIENTIFIC INVESTIGATOR AND AN INDIVIDUAL AUTHORIZED BY THE STATE TO PRACTICE MEDICINE, DENTISTRY, OR VETERINARY MEDICINE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(t)(1) and the first sentence of (2).

The term "authorized provider" is substituted for the former term "practitioner" to clarify that the term refers both to individuals and to facilities that are authorized to administer, dispense, distribute, or conduct research about a controlled dangerous substance.

The second sentence of former Art. 27, § 277(t)(2), which defined "hospital" as "an institution for the care and treatment of the sick and injured approved by the Department, as proper to be entrusted with the custody of controlled dangerous substances under the direction of a physician, dentist, or veterinarian" is deleted as redundant in light of paragraph (1)(ii) of this subsection, because the entities to which the term "hospital" referred are included in the defined term "person", and because it did not add anything to the ordinary meaning of the word "hospital". No substantive change is intended.

In paragraph (2) of this subsection, the former references to a physician, dentist, and veterinarian authorized "by law" to practice in this State are deleted as included in the reference to being "authorized by the State" to practice.

(E) COCA LEAF.

(1) "COCA LEAF" INCLUDES A LEAF CONTAINING COCAINE, THE OPTICAL AND GEOMETRIC ISOMERS OF COCAINE, AND ANY COMPOUND, MANUFACTURED SUBSTANCE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF A COCA LEAF.

(2) "COCA LEAF" DOES NOT INCLUDE A DERIVATIVE OF A COCA LEAF THAT DOES NOT CONTAIN COCAINE, ECGONINE, OR A SUBSTANCE FROM WHICH COCAINE OR ECGONINE MAY BE SYNTHESIZED OR MADE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(q)(1) as it defined "coca

leaves".

In paragraph (1) of this subsection, the term "includes" is substituted for the former term "means" to clarify that the definition is broader than the commonly understood meaning of a leaf. *See* Art. 1, § 30.

(F) CONTROLLED DANGEROUS SUBSTANCE.

(1) "CONTROLLED DANGEROUS SUBSTANCE" MEANS:

(I) A DRUG OR SUBSTANCE LISTED IN SCHEDULE I THROUGH SCHEDULE V; OR

(II) AN IMMEDIATE PRECURSOR TO A DRUG OR SUBSTANCE LISTED IN SCHEDULE I THROUGH SCHEDULE V THAT:

1. BY REGULATION THE DEPARTMENT DESIGNATES AS BEING THE PRINCIPAL COMPOUND COMMONLY USED OR PRODUCED PRIMARILY FOR USE TO MANUFACTURE A DRUG OR SUBSTANCE LISTED IN SCHEDULE I THROUGH SCHEDULE V;

2. IS AN IMMEDIATE CHEMICAL INTERMEDIARY USED OR LIKELY TO BE USED TO MANUFACTURE A DRUG OR SUBSTANCE LISTED IN SCHEDULE I THROUGH SCHEDULE V; AND

3. MUST BE CONTROLLED TO PREVENT OR LIMIT THE MANUFACTURE OF A DRUG OR SUBSTANCE LISTED IN SCHEDULE I THROUGH SCHEDULE V.

(2) "CONTROLLED DANGEROUS SUBSTANCE" DOES NOT INCLUDE DISTILLED SPIRITS, WINE, MALT BEVERAGES, OR TOBACCO.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(f) and (v).

In paragraph (1)(ii)1 of this subsection, the former phrase "found to be" a specified kind of substance is deleted as implicit in the reference to a designation as that kind of substance.

In paragraph (1)(ii)3 of this subsection, the former reference to "curtail[ing]" manufacture is deleted in light of the references to "prevent[ing] or limit[ing]" manufacture.

In paragraph (2) of this subsection, the former reference to substances "as ... set in Article 2B of the Code" is deleted as unnecessary and to clarify that none of the listed substances is a "controlled dangerous substance".

(G) CONTROLLED PARAPHERNALIA.

"CONTROLLED PARAPHERNALIA" MEANS:

(1) A HYPODERMIC SYRINGE, NEEDLE, OR ANY OTHER OBJECT OR COMBINATION OF OBJECTS ADAPTED TO ADMINISTER A CONTROLLED DANGEROUS SUBSTANCE BY HYPODERMIC INJECTION;

(2) A GELATIN CAPSULE, GLASSINE ENVELOPE, OR OTHER CONTAINER SUITABLE FOR PACKAGING INDIVIDUAL QUANTITIES OF A CONTROLLED DANGEROUS SUBSTANCE; OR

(3) LACTOSE, QUININE, MANNITE, MANNITOL, DEXTROSE, SUCROSE, PROCAINE HYDROCHLORIDE, OR ANY OTHER SUBSTANCE SUITABLE AS A DILUENT OR ADULTERANT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 287(d), as it defined controlled paraphernalia.

As to the balance of former Art. 27, § 287(d), relating to evidence of controlled paraphernalia, *see* § 5-611(b)(1) and (2).

In item (1) of this subsection, the reference to an "object" is substituted for the former reference to an "instrument or implement" for brevity.

(H) DELIVER.

"DELIVER" MEANS TO MAKE AN ACTUAL, CONSTRUCTIVE, OR ATTEMPTED TRANSFER OR EXCHANGE FROM ONE PERSON TO ANOTHER WHETHER OR NOT REMUNERATION IS PAID OR AN AGENCY RELATIONSHIP EXISTS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(i).

The former defined term "delivery" is deleted as unnecessary in light of the defined term "deliver".

The former reference to "a controlled dangerous substance" is deleted as misleading because the term "deliver" in this title is not used solely in connection with controlled dangerous substances.

Defined term: "Person" § 1-101

(I) DEPARTMENT.

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

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(h).

The former reference to the Department being "of this State" is deleted as unnecessary.

(J) DEPRESSANT OR STIMULANT DRUG.

"DEPRESSANT OR STIMULANT DRUG" MEANS A DRUG THAT CONTAINS ANY QUANTITY OF A SUBSTANCE THAT THE ATTORNEY GENERAL OF THE UNITED STATES BY REGULATION DESIGNATES AS HAVING A POTENTIAL FOR ABUSE BECAUSE OF:

(1) A DEPRESSANT OR STIMULANT EFFECT ON THE CENTRAL NERVOUS SYSTEM; OR

(2) A HALLUCINOGENIC EFFECT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(j)(4).

The former reference to the Attorney General "after investigation, ha[ving] found to have, and by regulation" designated as having a potential for abuse is deleted as included in the reference to "designat[ing]" the substance as a "depressant or stimulant drug".

(K) DISPENSE.

(1) "DISPENSE" MEANS TO DELIVER TO THE ULTIMATE USER OR THE HUMAN RESEARCH SUBJECT BY OR IN ACCORDANCE WITH THE LAWFUL ORDER OF AN AUTHORIZED PROVIDER.

(2) "DISPENSE" INCLUDES TO PRESCRIBE, ADMINISTER, PACKAGE, LABEL, OR COMPOUND A SUBSTANCE FOR DELIVERY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the first sentence of former Art. 27, § 277(k).

In paragraph (1) of this subsection, the former reference to "a controlled dangerous substance" is deleted as misleading because the term "dispense" in this title is not used solely in connection with controlled dangerous substances.

The second sentence of former Art. 27, § 277(k), which defined "dispenser" as "a practitioner who dispenses", is deleted as unnecessary.

(L) DISTRIBUTE.

"DISTRIBUTE" MEANS, WITH RESPECT TO A CONTROLLED DANGEROUS SUBSTANCE, TO DELIVER OTHER THAN BY DISPENSING.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the first sentence of former Art. 27, § 277(l).

The phrase "with respect to a controlled dangerous substance" is added because the term "distribute" is used in this title not only in connection with controlled dangerous substances but with other items as well.

The second sentence of former Art. 27, § 277(l), which defined "distributor" as "a person who distributes", is deleted as unnecessary.

(M) DRUG.

(1) "DRUG" MEANS:

(I) A SUBSTANCE RECOGNIZED IN THE OFFICIAL UNITED STATES PHARMACOPOEIA, OFFICIAL HOMEOPATHIC PHARMACOPOEIA OF THE UNITED STATES, OR OFFICIAL NATIONAL FORMULARY;

(II) A SUBSTANCE INTENDED FOR USE IN THE DIAGNOSIS, CURE, MITIGATION, TREATMENT, OR PREVENTION OF DISEASE IN HUMANS OR OTHER ANIMALS;

(III) EXCEPT FOR FOOD, A SUBSTANCE INTENDED TO AFFECT THE STRUCTURE OR FUNCTION OF THE BODY OF HUMANS OR OTHER ANIMALS; OR

(IV) A SUBSTANCE INTENDED FOR USE AS A COMPONENT OF ANY SUBSTANCE SPECIFIED IN ITEM (I), (II), OR (III) OF THIS PARAGRAPH.

(2) "DRUG" DOES NOT INCLUDE A DEVICE OR AN ACCESSORY, PART, OR COMPONENT OF A DEVICE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(m).

In paragraph (1)(i) of this subsection, the former reference to a "supplement" to books that are the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary is deleted as implicit in the references to those books. *See* Art. 1, § 21 (reference in statute or other law includes amendments).

In paragraph (1)(iv) of this subsection, the term "substance" is substituted for the former term "article" for consistency within this subsection.

(N) DRUG DEPENDENT PERSON.

"DRUG DEPENDENT PERSON" MEANS A PERSON WHO:

(1) IS USING A CONTROLLED DANGEROUS SUBSTANCE; AND

(2) IS IN A STATE OF PSYCHOLOGICAL OR PHYSICAL DEPENDENCE, OR BOTH, THAT:

(I) ARISES FROM ADMINISTRATION OF THAT CONTROLLED DANGEROUS SUBSTANCE ON A CONTINUOUS BASIS; AND

(II) IS CHARACTERIZED BY BEHAVIORAL AND OTHER RESPONSES THAT INCLUDE A STRONG COMPULSION TO TAKE THE SUBSTANCE ON A CONTINUOUS BASIS IN ORDER TO EXPERIENCE ITS PSYCHOLOGICAL EFFECTS OR TO AVOID THE DISCOMFORT OF ITS ABSENCE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(n).

In item (2) of this subsection, the references to "psychological" dependence are substituted for the former references to "psychic" dependence for clarity.

Defined term: "Person" § 1-101

(O) MANUFACTURE.

(1) "MANUFACTURE", WITH RESPECT TO A CONTROLLED DANGEROUS SUBSTANCE, MEANS TO PRODUCE, PREPARE, PROPAGATE, COMPOUND, CONVERT, OR PROCESS A CONTROLLED DANGEROUS SUBSTANCE:

(I) DIRECTLY OR INDIRECTLY BY EXTRACTION FROM SUBSTANCES OF NATURAL ORIGIN;

(II) INDEPENDENTLY BY CHEMICAL SYNTHESIS; OR

(III) BY A COMBINATION OF EXTRACTION AND CHEMICAL SYNTHESIS.

(2) "MANUFACTURE" INCLUDES TO PACKAGE AND REPACKAGE A CONTROLLED DANGEROUS SUBSTANCE AND LABEL AND RELABEL ITS CONTAINERS.

(3) "MANUFACTURE" DOES NOT INCLUDE:

(I) TO PREPARE OR COMPOUND A CONTROLLED DANGEROUS SUBSTANCE BY AN INDIVIDUAL FOR THE INDIVIDUAL'S OWN USE; OR

(II) TO PREPARE, COMPOUND, PACKAGE, OR LABEL A CONTROLLED DANGEROUS SUBSTANCE:

1. BY AN AUTHORIZED PROVIDER INCIDENTAL TO ADMINISTERING OR DISPENSING A CONTROLLED DANGEROUS SUBSTANCE IN THE COURSE OF PROFESSIONAL PRACTICE; OR

2. IF THE CONTROLLED DANGEROUS SUBSTANCE IS NOT FOR SALE BY AN AUTHORIZED PROVIDER, OR BY THE AUTHORIZED PROVIDER'S AGENT UNDER THE AUTHORIZED PROVIDER'S SUPERVISION, FOR OR INCIDENTAL TO RESEARCH, TEACHING, OR CHEMICAL ANALYSIS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(p).

In paragraph (1) of this subsection, the phrase "with respect to a controlled dangerous substance" is added for clarity because the term "manufacture" is used in this title not only in connection with controlled dangerous substances but with other items as well. *See, e.g.*, §§ 5-604(c) ("to manufacture ... equipment") and 5-619(e) ("to manufacture ... drug

paraphernalia").

(P) MARIJUANA.

(1) "MARIJUANA" MEANS:

(I) ALL PARTS OF ANY PLANT OF THE GENUS CANNABIS, WHETHER OR NOT THE PLANT IS GROWING;

(II) THE SEEDS OF THE PLANT;

(III) THE RESIN EXTRACTED FROM THE PLANT; AND

(IV) EACH COMPOUND, MANUFACTURED PRODUCT, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS SEEDS, OR ITS RESIN.

(2) "MARIJUANA" DOES NOT INCLUDE:

(I) THE MATURE STALKS OF THE PLANT;

(II) FIBER PRODUCED FROM THE MATURE STALKS;

(III) OIL OR CAKE MADE FROM THE SEEDS OF THE PLANT;

(IV) EXCEPT FOR RESIN, ANY OTHER COMPOUND, MANUFACTURED PRODUCT, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE MATURE STALKS, FIBER, OIL, OR CAKE; OR

(V) THE STERILIZED SEED OF THE PLANT THAT IS INCAPABLE OF GERMINATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(o).

(Q) NARCOTIC DRUG.

(1) "NARCOTIC DRUG" MEANS A SUBSTANCE:

(I) THAT HAS BEEN FOUND TO PRESENT AN EXTREME DANGER TO THE HEALTH AND WELFARE OF THE COMMUNITY BECAUSE OF ADDICTION-FORMING AND ADDICTION-SUSTAINING QUALITIES;

(II) THAT IS:

1. AN OPIATE;

2. A COMPOUND, MANUFACTURED SUBSTANCE, SALT, DERIVATIVE, OR PREPARATION OF OPIUM, COCA LEAF, OR AN OPIATE; OR

3. A SUBSTANCE AND ANY COMPOUND, MANUFACTURED SUBSTANCE, SALT, DERIVATIVE, OR PREPARATION THAT IS CHEMICALLY IDENTICAL WITH A SUBSTANCE LISTED IN ITEMS 1 AND 2 OF THIS ITEM; AND

(III) THAT IS PRODUCED:

1. DIRECTLY OR INDIRECTLY BY EXTRACTION FROM SUBSTANCES OF VEGETABLE ORIGIN;

2. INDEPENDENTLY BY CHEMICAL SYNTHESIS; OR

3. BY A COMBINATION OF EXTRACTION AND CHEMICAL SYNTHESIS.

(2) "NARCOTIC DRUG" INCLUDES DECOCAINIZED COCA LEAF OR AN EXTRACT OF COCA LEAF THAT DOES NOT CONTAIN COCAINE OR ECGONINE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the introductory language of former Art. 27, § 277(q), (q)(2) and (3) and the first word of (1).

In paragraph (1)(i) of this subsection, the reference to "qualities" is substituted for the former reference to "liabilities" for clarity.

(R) NONCONTROLLED SUBSTANCE.

"NONCONTROLLED SUBSTANCE" MEANS A SUBSTANCE THAT IS NOT CLASSIFIED AS A CONTROLLED DANGEROUS SUBSTANCE UNDER SUBTITLE 4 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, §§ 286B(a)(1) and 287B(a).

The specific reference to "Subtitle 4 of this title" is substituted for the former reference to "State law or regulation" for clarity.

The former references to "this section" are deleted as unnecessary in light of the reorganization of material concerning noncontrolled substances in this revision.

(S) OPIATE.

(1) "OPIATE" MEANS A SUBSTANCE THAT HAS AN ADDICTION-FORMING OR ADDICTION-SUSTAINING QUALITY SIMILAR TO MORPHINE OR THAT CAN BE CONVERTED INTO A DRUG THAT HAS THIS ADDICTION-FORMING OR ADDICTION-SUSTAINING QUALITY.

(2) "OPIATE" INCLUDES:

(I) THE RACEMIC AND LEVOROTATORY FORMS OF AN OPIATE;

(II) EXCEPT FOR SEEDS, THE OPIUM POPPY, THE PLANT OF THE SPECIES PAPAVER SOMNIFERUM L.;

(III) THE POPPY STRAW CONSISTING OF THE OPIUM POPPY AFTER MOWING EXCEPT THE SEEDS; AND

(IV) COCA LEAF.

(3) "OPIATE" DOES NOT INCLUDE, UNLESS SPECIFICALLY DESIGNATED AS CONTROLLED UNDER § 5-202 OF THIS TITLE, THE DEXTROROTATORY ISOMER OF 3-METHOXY-N-METHYL-MORPHINAN AND ITS SALTS (DEXTROMETHORPHAN).

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(q)(1) except as it defined "coca leaves".

In paragraph (1) of this subsection, the reference to "quality" is substituted for the former reference to "liability" for clarity.

(T) POSSESS.

"POSSESS" MEANS TO EXERCISE ACTUAL OR CONSTRUCTIVE DOMINION OR CONTROL OVER A THING BY ONE OR MORE PERSONS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(s).

Defined term: "Person" § 1-101

(U) PRESCRIPTION DRUG.

(1) "PRESCRIPTION DRUG" MEANS A DRUG THAT:

(I) IS INTENDED TO BE USED BY AN INDIVIDUAL; AND

(II) BECAUSE OF ITS TOXICITY, OTHER POTENTIALITY FOR HARMFUL EFFECT, METHOD OF USE, OR COLLATERAL MEASURES NECESSARY FOR ITS USE:

1. BEARS A CAUTIONARY LABEL WARNING A PERSON THAT UNDER FEDERAL LAW THE DRUG MAY NOT BE DISPENSED WITHOUT A PRESCRIPTION; OR

2. IS DESIGNATED BY THE DEPARTMENT AS NOT SAFE FOR USE EXCEPT UNDER THE SUPERVISION OF A PERSON LICENSED BY THE STATE TO ADMINISTER A PRESCRIPTION DRUG.

(2) "PRESCRIPTION DRUG" DOES NOT INCLUDE A CONTROLLED DANGEROUS SUBSTANCE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 300(a).

In the introductory language to paragraph (1) of this subsection, the former reference to "includ[ing]" is deleted as unnecessary in light of the reference to "mean[ing]".

In paragraph (1)(ii)2 of this subsection, the reference to a "person licensed by the State" to administer a prescription drug is substituted for the former reference to a "practitioner licensed by law" to administer the drug for clarity.

In paragraph (2) of this subsection, the former reference to a controlled dangerous substance "as defined in this subheading" is deleted in light of subsection (a) of this section to the same effect.

Former Art. 27, § 305(a), which provided that the definition in this subsection applied to former Art. 27, § 305, is deleted as unnecessary in light of the reorganization of material relating to prescription drugs in this revision.

Defined term: "Person" § 1-101

(V) PRODUCE.

"PRODUCE", WITH RESPECT TO A CONTROLLED DANGEROUS SUBSTANCE, INCLUDES TO MANUFACTURE, PLANT, CULTIVATE, GROW, AND HARVEST.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(u).

The only changes are in style.

(W) REGISTRANT.

"REGISTRANT" MEANS A PERSON WHO IS REGISTERED BY THE DEPARTMENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE A CONTROLLED DANGEROUS SUBSTANCE IN THE STATE.

REVISOR'S NOTE: This subsection is new language added to create a convenient reference to a person who is registered by the Department under this title.

Defined term: "Person" § 1-101

(X) SCHEDULE I.

"SCHEDULE I" MEANS A LIST OF CONTROLLED DANGEROUS SUBSTANCES THAT APPEARS IN § 5-402 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language added to create a convenient reference to the list of controlled dangerous substances in § 5-402 of this title.

(Y) SCHEDULE II.

"SCHEDULE II" MEANS A LIST OF CONTROLLED DANGEROUS SUBSTANCES THAT APPEARS IN § 5-403 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language added to create a convenient reference to the list of controlled dangerous substances in § 5-403 of this title.

(Z) SCHEDULE III.

"SCHEDULE III" MEANS A LIST OF CONTROLLED DANGEROUS SUBSTANCES THAT APPEARS IN § 5-404 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language added to create a convenient reference to the list of controlled dangerous substances in § 5-404 of this title.

(AA) SCHEDULE IV.

"SCHEDULE IV" MEANS A LIST OF CONTROLLED DANGEROUS SUBSTANCES THAT APPEARS IN § 5-405 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language added to create a convenient reference to the list of controlled dangerous substances in § 5-405 of this title.

(BB) SCHEDULE V.

"SCHEDULE V" MEANS A LIST OF CONTROLLED DANGEROUS SUBSTANCES THAT APPEARS IN § 5-406 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language added to create a convenient reference to the list of controlled dangerous substances in § 5-406 of this title.

(CC) SECRETARY.

"SECRETARY" MEANS THE SECRETARY OF THE DEPARTMENT.

REVISOR'S NOTE: This subsection is new language added to allow concise reference to the Secretary of the Department of Health and Mental Hygiene.

(DD) ULTIMATE USER.

"ULTIMATE USER" MEANS A PERSON WHO LAWFULLY POSSESSES A CONTROLLED DANGEROUS SUBSTANCE FOR THE PERSON'S OWN USE, FOR THE USE OF A MEMBER OF THE PERSON'S HOUSEHOLD, OR FOR ADMINISTRATION TO AN ANIMAL OWNED BY THE PERSON OR BY A MEMBER OF THE PERSON'S HOUSEHOLD.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 277(x).

Defined term: "Person" § 1-101

REVISOR'S NOTE TO SECTION

Former Art. 27, § 277(d), which defined "Bureau of Narcotics and Dangerous Drugs" as the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice, is deleted as obsolete. In 1973, the Bureau of Narcotics and Dangerous Drugs was abolished by Executive Order, and its functions were taken over by the federal Drug Enforcement Administration (DEA), which is unnecessary to define in this title. *See* §§ 3 and 4 of Reorganization Plan No. 2 of 1973 in U.S.C. Title 5, Appendix 1.

Former Art. 27, § 277(w), which defined "State" as the "State of Maryland", is deleted as an unnecessary statement of a standard rule of statutory construction that applies to all revised articles of the Code and to avoid confusion with the term "state", which is defined article-wide to mean a state, possession, territory, commonwealth, or district of the United States. *See* § 1-101 of this article.

5-102. LEGISLATIVE FINDINGS AND PURPOSE OF TITLE.

(A) FINDINGS.

THE GENERAL ASSEMBLY FINDS THAT:

(1) MANY OF THE SUBSTANCES LISTED IN THIS TITLE HAVE A USEFUL AND LEGITIMATE MEDICAL PURPOSE AND ARE NECESSARY TO MAINTAIN THE HEALTH AND GENERAL WELFARE OF THE PEOPLE OF THE STATE; BUT

(2) THE ILLEGAL MANUFACTURE, DISTRIBUTION, POSSESSION, AND ADMINISTRATION OF CONTROLLED DANGEROUS SUBSTANCES HAVE A SUBSTANTIAL AND DETRIMENTAL EFFECT ON THE HEALTH AND GENERAL WELFARE OF THE PEOPLE OF THE STATE.

(B) PURPOSE.

(1) THE PURPOSE OF THIS TITLE IS TO ESTABLISH A UNIFORM LAW TO CONTROL THE MANUFACTURE, DISTRIBUTION, POSSESSION, AND ADMINISTRATION OF CONTROLLED DANGEROUS SUBSTANCES AND RELATED PARAPHERNALIA TO:

(I) ENSURE THEIR AVAILABILITY FOR LEGITIMATE MEDICAL AND SCIENTIFIC PURPOSES; BUT

(II) PREVENT THEIR ABUSE, WHICH RESULTS IN A SERIOUS HEALTH PROBLEM TO THE INDIVIDUAL AND REPRESENTS A SERIOUS DANGER TO THE WELFARE OF THE PEOPLE OF THE STATE.

(2) THIS TITLE SHALL BE LIBERALLY CONSTRUED TO ACCOMPLISH THIS PURPOSE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 276.

In the introductory language of subsection (a) of this section, the former reference to "declar[ing]" is deleted as unnecessary in light of the reference to "find[ing]".

In subsection (b)(2) of this section, the former reference to how this title is to be "interpreted" is deleted as unnecessary in light of the reference to how it is to be "construed".

Defined terms: "Administer" § 5-101

"Controlled dangerous substance" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Possess" § 5-101

5-103. SCOPE OF TITLE.

(A) SALES OF PRESCRIPTION DRUG.

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS TITLE DOES NOT APPLY TO THE SALE OF A PRESCRIPTION DRUG:

(I) MADE TO AN AUTHORIZED PROVIDER; OR

(II) MADE BY A MANUFACTURER, WHOLESALE DISTRIBUTOR, OR PHARMACIST LICENSED BY THE STATE TO:

1. ANOTHER MANUFACTURER, WHOLESALE DISTRIBUTOR, OR PHARMACIST LICENSED BY THE STATE; OR

2. A HOSPITAL OR INSTITUTION THAT OPERATES A DISPENSARY IN WHICH AN AUTHORIZED PROVIDER LICENSED TO ADMINISTER PRESCRIPTION DRUGS IS IN CHARGE.

(2) A SALE IS EXEMPT FROM THIS TITLE ONLY IF A RECORD OF THE SALE:

(I) IS MAINTAINED AND AVAILABLE FOR INSPECTION; AND

(II) SHOWS THE DATE OF SALE, THE NAME AND ADDRESS OF THE PURCHASER, AND THE QUANTITY PURCHASED.

(B) DRUG FOR FARM USE; CERTAIN DRUGS PREVIOUSLY AVAILABLE WITHOUT PRESCRIPTION.

THIS TITLE DOES NOT APPLY TO:

(1) THE DISTRIBUTION OF A PRESCRIPTION DRUG, DEVICE, OR SUPPLY FOR THE TREATMENT, CARE, OR CURE OF FARM ANIMALS, POULTRY, FOWL, OR OTHER ANIMALS USED IN FURTHERANCE OF FARMING ACTIVITIES;

(2) THE SALE OR OFFERING FOR SALE, OR THE DISTRIBUTION OF SEEDS, FEED FOR LIVESTOCK AND POULTRY, FERTILIZERS, LIME, LAND PLASTER, FUNGICIDES, AND INSECTICIDES; OR

(3) A DRUG THAT ON JUNE 1, 1961, COULD BE SOLD WITHOUT A PRESCRIPTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 300(d) and (f).

In subsection (a)(1)(ii)1 and 2 of this section, the references to a wholesale "distributor" are substituted for the former references to a wholesale "druggist" to reflect current nomenclature.

In subsection (a)(1)(ii)2 of this section, the former reference to being licensed "by law" is deleted as implicit in the requirement to be "licensed".

In the introductory language of subsection (b) of this section, the reference to "[t]his title" is substituted for the former reference to "this subsection" to correct an apparent error in Ch. 403, Acts of l970.

In subsection (b)(1) of this section, the former reference to drugs, devices, or supplies "of any kind whatsoever" is deleted as surplusage.

Defined terms: "Administer" § 5-101

"Authorized provider" § 5-101

"Distribute" § 5-101

"Drug" § 5-101

"Prescription drug" § 5-101

SUBTITLE 2. POWERS AND RESPONSIBILITIES OF DEPARTMENT.

5-201. ENFORCEMENT OF TITLE.

(A) IN GENERAL.

THE DEPARTMENT, THOSE OF ITS OFFICERS, AGENTS, INSPECTORS, AND REPRESENTATIVES WHOM THE SECRETARY DESIGNATES, AND EACH POLICE OFFICER AND STATE'S ATTORNEY IN THE STATE SHALL:

(1) ENFORCE THE PROVISIONS OF THIS TITLE THAT ARE NOT SPECIFICALLY DELEGATED; AND

(2) COOPERATE WITH EACH UNIT THAT ENFORCES ANY FEDERAL, STATE, OR LOCAL LAW RELATING TO CONTROLLED DANGEROUS SUBSTANCES.

(B) OPTIONAL PROGRAMS.

THE DEPARTMENT MAY:

(1) ARRANGE FOR THE EXCHANGE OF INFORMATION BETWEEN GOVERNMENTAL OFFICIALS CONCERNING THE USE AND ABUSE OF DANGEROUS SUBSTANCES;

(2) COORDINATE AND COOPERATE IN TRAINING PROGRAMS ON DANGEROUS SUBSTANCE LAW ENFORCEMENT AT THE LOCAL AND STATE LEVELS;

(3) ERADICATE WILD OR UNLAWFULLY GROWN PLANTS FROM WHICH CONTROLLED DANGEROUS SUBSTANCES MAY BE EXTRACTED; AND

(4) COOPERATE WITH THE FEDERAL DRUG ENFORCEMENT ADMINISTRATION BY ESTABLISHING A CENTRALIZED UNIT THAT WILL:

(I) ACCEPT, CATALOGUE, FILE, AND COLLECT STATISTICS OBTAINED FROM LAW-ENFORCEMENT UNITS, INCLUDING RECORDS OF DRUG DEPENDENT PERSONS CONVICTED OF DRUG CRIMES AND OF OTHER OFFENDERS WHO VIOLATE DANGEROUS SUBSTANCE LAWS IN THE STATE; AND

(II) MAKE THE STATISTICS AVAILABLE FOR FEDERAL, STATE, AND LOCAL LAW-ENFORCEMENT PURPOSES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 296.

In subsection (a)(2) of this section, the reference to a "local law" is substituted for the former reference to the "laws ... of any political subdivision of this State ... or political subdivisions [of other states]" for brevity.

In the introductory language to subsection (b) of this section, the former phrase "[t]o this end" is deleted as surplusage.

In subsection (b)(3) of this section, the reference to "eradicat[ing] wild or unlawfully grown plants" is substituted for the former reference to "[c]onduct[ing] programs of eradication aimed at destroying wild or illicit growth of plant species" for brevity.

In the introductory language of subsection (b)(4) of this section, the reference to the "federal Drug Enforcement Administration" is substituted for the former obsolete reference to the "federal Bureau of Narcotics and

Dangerous Drugs". In 1973, the Bureau of Narcotics and Dangerous Drugs was abolished by Executive Order, and its functions were taken over by the federal Drug Enforcement Administration (DEA). *See* §§ 3 and 4 of Reorganization Plan No. 2 of 1973 in U.S.C. Title 5, Appendix 1.

Defined terms: "Agent" § 5-101

"Controlled dangerous substance" § 5-101

"Department" § 5-101

"Drug" § 5-101

"Drug dependent person" § 5-101

"Secretary" § 5-101

"State" § 1-101

5-202. CONTROL OF SUBSTANCES.

(A) IN GENERAL.

THE DEPARTMENT SHALL CONTROL ALL SUBSTANCES LISTED IN SUBTITLE 4 OF THIS TITLE.

(B) ADDITIONAL SUBSTANCES.

IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT, THE DEPARTMENT MAY ADD A SUBSTANCE AS A CONTROLLED DANGEROUS SUBSTANCE ON ITS OWN INITIATIVE OR ON THE PETITION OF AN INTERESTED PARTY.

(C) FACTORS FOR CONSIDERATION.

TO DETERMINE WHETHER TO ADD A SUBSTANCE AS A CONTROLLED DANGEROUS SUBSTANCE, THE DEPARTMENT SHALL CONSIDER:

(1) THE ACTUAL OR RELATIVE POTENTIAL FOR ABUSE OF THE SUBSTANCE;

(2) IF KNOWN, SCIENTIFIC EVIDENCE OF THE PHARMACOLOGICAL EFFECT OF THE SUBSTANCE;

(3) THE STATE OF CURRENT SCIENTIFIC KNOWLEDGE REGARDING THE SUBSTANCE;

(4) THE HISTORY AND CURRENT PATTERN OF ABUSE OF THE SUBSTANCE;

(5) THE SCOPE, DURATION, AND SIGNIFICANCE OF ABUSE OF THE SUBSTANCE;

(6) ANY RISK THAT THE SUBSTANCE POSES TO THE PUBLIC HEALTH;

(7) THE ABILITY OF THE SUBSTANCE TO CAUSE PSYCHOLOGICAL OR PHYSIOLOGICAL DEPENDENCE; AND

(8) WHETHER THE SUBSTANCE IS AN IMMEDIATE PRECURSOR OF A CONTROLLED DANGEROUS SUBSTANCE.

(D) FINDINGS AND ORDER.

AFTER CONSIDERING THE FACTORS LISTED IN SUBSECTION (C) OF THIS SECTION, THE DEPARTMENT SHALL:

(1) MAKE FINDINGS WITH RESPECT TO THOSE FACTORS; AND

(2) ISSUE AN ORDER TO CONTROL THE SUBSTANCE IF THE DEPARTMENT FINDS THAT THE SUBSTANCE HAS A POTENTIAL FOR ABUSE.

(E) PRECURSORS.

IF THE DEPARTMENT DESIGNATES A SUBSTANCE AS AN IMMEDIATE PRECURSOR OF A CONTROLLED DANGEROUS SUBSTANCE, A SUBSTANCE THAT IS A PRECURSOR OF THE IMMEDIATE PRECURSOR IS NOT SUBJECT TO CONTROL SOLELY BECAUSE IT IS A PRECURSOR OF THE IMMEDIATE PRECURSOR.

(F) OBJECTION TO INCLUSION.

(1) A NEW SUBSTANCE THAT IS DESIGNATED AS A CONTROLLED SUBSTANCE UNDER FEDERAL LAW IS A SIMILARLY CONTROLLED DANGEROUS SUBSTANCE UNDER THIS TITLE UNLESS THE DEPARTMENT OBJECTS TO THE INCLUSION.

(2) IF THE DEPARTMENT OBJECTS, IT SHALL PUBLISH THE REASONS FOR THE OBJECTION AND GIVE EACH INTERESTED PARTY AN OPPORTUNITY TO BE HEARD.

(3) AFTER THE HEARING, THE DEPARTMENT SHALL PUBLISH ITS DECISION, WHICH IS FINAL.

(4) AN ACTION FOR JUDICIAL REVIEW OF A FINAL DECISION MADE IN ACCORDANCE WITH THIS SECTION DOES NOT STAY THE EFFECT OF THE DECISION.

(G) SCHEDULE UPDATE AND REPUBLICATION.

THE DEPARTMENT ANNUALLY SHALL UPDATE AND REPUBLISH A SCHEDULE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 278.

In subsection (b) of this section, the former reference to "notice and hearing" is deleted as unnecessary in light of the reference to the Administrative Procedure Act, which requires both notice and an opportunity for hearing.

In subsection (c)(7) of this section, the reference to "psychological" dependence is substituted for the former reference to "psychic" dependence

for clarity.

Also in subsection (c)(7) of this section, the reference to "the ability of the substance to cause ... dependence" is substituted for the former reference to a substance's "liability" for clarity.

In subsection (c)(8) of this section, the reference to a "controlled dangerous substance" is substituted for the former reference to a "substance already controlled under this [title]" for brevity.

In subsection (d)(1) of this section, the reference to "those factors" is substituted for the former ambiguous word "thereto" for clarity. The Criminal Law Article Review Committee calls this substitution to the attention of the General Assembly.

In subsection (e) of this section, the reference to a precursor "of a controlled dangerous substance" is added for clarity.

Also in subsection (e) of this section, the reference to an "immediate" precursor is substituted for the former reference to a "controlled" precursor for clarity.

In subsection (f)(1) of this section, the reference to a substance "[being] a controlled dangerous substance under this title" is substituted for the former reference to the substance "[being] similarly controlled under this [title]" for clarity.

Also in subsection (f)(1) of this section, the former reference to "rescheduling" is deleted as contradictory of the reference to a "new substance" in that same paragraph and to conform to longstanding departmental practice, under which the Department may not reschedule a controlled dangerous substance. The Criminal Law Article Review Committee calls this deletion to the attention of the General Assembly.

In subsection (f)(2) and (3) of this section, the former references to "mak[ing] public" an objection or decision are deleted in light of the requirements to "publish" the objection or decision.

In subsection (f)(4) of this section, the reference to an "action for judicial review" is substituted for the former reference to an "appeal" for consistency with similar provisions throughout the revised articles of the Code.

Also in subsection (f)(4) of this section, the reference to a "final decision" is substituted for the former reference to a "designation" to conform to the terminology of this section.

In subsection (g) of this section, the former reference to the requirement that the Department update and republish a schedule on a "semiannual basis for two years from July 1, 1970" is deleted as obsolete.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the schedules of controlled dangerous substances updated and republished each year under subsection (g) of this section may differ from the lists set forth in this title, because the requirement to update and republish does not require the Department to suggest corrective legislation whenever a substance is added to a schedule. Thus a court or attorney who relies only on this title to determine whether a particular substance is a controlled dangerous substance may not realize that the substance has been added to a schedule, even though the Department has included the substance in its annually republished lists.

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

5-203. REGULATIONS.

THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 302(h) and, as it related to the adoption of regulations, § 280.

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

The former reference to regulations "as are necessary" is deleted as implicit in the authority to adopt regulations "to implement" this title.

Defined term: "Department" § 5-101

5-204. FEES.

THE DEPARTMENT MAY CHARGE REASONABLE FEES RELATING TO THE REGISTRATION AND CONTROL OF THE MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED DANGEROUS SUBSTANCES IN THE STATE.

REVISOR'S NOTE: This section formerly was Art. 27, § 280, as it related to fees.

The only changes are in style.

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

SUBTITLE 3. REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS.

5-301. REGISTRATION REQUIRED.

(A) IN GENERAL.

(1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON SHALL BE REGISTERED BY THE DEPARTMENT BEFORE THE PERSON MANUFACTURES, DISTRIBUTES, OR DISPENSES A CONTROLLED DANGEROUS SUBSTANCE IN THE STATE.

(2) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBSECTION.

(B) SEPARATE REGISTRATION FOR EACH LOCATION.

AN APPLICANT MUST REGISTER SEPARATELY EACH PRINCIPAL PLACE OF BUSINESS OR PROFESSIONAL PRACTICE WHERE THE APPLICANT MANUFACTURES, DISTRIBUTES, OR DISPENSES A CONTROLLED DANGEROUS SUBSTANCE.

(C) SCOPE OF REGISTRATION.

TO THE EXTENT AUTHORIZED BY THE REGISTRATION AND SUBJECT TO SUBSECTION (B) OF THIS SECTION AND THIS SUBTITLE, A PERSON REGISTERED BY THE DEPARTMENT UNDER THIS SUBTITLE MAY:

(1) POSSESS, MANUFACTURE, DISTRIBUTE, OR DISPENSE CONTROLLED DANGEROUS SUBSTANCES; AND

(2) PERFORM ANY ACTIVITY LISTED IN ITEM (1) OF THIS SUBSECTION TO CONDUCT RESEARCH.

(D) EXCEPTIONS.

A PERSON NEED NOT REGISTER WITH THE DEPARTMENT TO POSSESS A CONTROLLED DANGEROUS SUBSTANCE WHILE ACTING IN THE COURSE OF THE PERSON'S BUSINESS OR PROFESSION IF THE PERSON IS:

(1) AN AGENT OR AGENT'S EMPLOYEE OF A REGISTERED MANUFACTURER, DISTRIBUTOR, OR DISPENSER OF A CONTROLLED DANGEROUS SUBSTANCE;

(2) A COMMON OR CONTRACT CARRIER OR WAREHOUSEMAN, OR AN EMPLOYEE OF A COMMON OR CONTRACT CARRIER OR WAREHOUSEMAN; OR

(3) AN ULTIMATE USER OR PERSON IN POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE ACTING IN GOOD FAITH IN ACCORDANCE WITH A LAWFUL ORDER OF AN AUTHORIZED PROVIDER.

(E) WAIVER.

IF THE DEPARTMENT FINDS THAT A WAIVER IS CONSISTENT WITH PUBLIC HEALTH AND SAFETY, BY REGULATION, THE DEPARTMENT MAY WAIVE THE REGISTRATION REQUIREMENT FOR A MANUFACTURER, DISTRIBUTOR, OR DISPENSER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 281(b), (c), (d), and, except for the reference to a two-year term of registration, (a).

In subsection (a)(2) of this section, the former reference to "rules" is deleted in light of the reference to "regulations". *See* General Revisor's Note to article.

In subsection (c) of this section, the former reference to being registered "to manufacture, distribute, or dispense" is deleted as implicit in the reference to registration.

In the introductory language to subsection (d) of this section, the former phrase "in addition to the aforementioned registrants" is deleted as surplusage.

Also in the introductory language to subsection (d) of this section, the former reference to persons who may "lawfully" possess a controlled dangerous substance is deleted as redundant.

In subsection (d)(1) of this section, the reference to the agent's "employee" acting in the usual course of business is added for consistency within that item.

In subsection (d)(3) of this section, the defined term "authorized provider" is substituted for the former reference to a "practitioner" for consistency within this title.

Defined terms: "Agent" § 5-101

"Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Department" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

"Ultimate user" § 5-101

5-302. TERM OF REGISTRATION.

A REGISTRATION EXPIRES 2 YEARS AFTER ITS EFFECTIVE DATE.

REVISOR'S NOTE: This section is new language derived without substantive change from the reference to a two-year term of registration in the first

sentence of former Art. 27, § 281(a).

The reference to two years "after its effective date" is new language added to state expressly that which only was implied in the former reference to "two years".

5-303. MANUFACTURERS AND DISTRIBUTORS.

(A) DEPARTMENT TO REGISTER APPLICANTS.

UNLESS THE DEPARTMENT DETERMINES THAT THE ISSUANCE OF THE REGISTRATION IS INCONSISTENT WITH THE PUBLIC INTEREST, THE DEPARTMENT SHALL REGISTER AN APPLICANT TO MANUFACTURE OR DISTRIBUTE CONTROLLED DANGEROUS SUBSTANCES INCLUDED IN SCHEDULE I THROUGH SCHEDULE V.

(B) FACTORS TO DETERMINE PUBLIC INTEREST.

TO DETERMINE THE PUBLIC INTEREST, THE DEPARTMENT SHALL CONSIDER:

(1) THE MAINTENANCE OF EFFECTIVE CONTROLS AGAINST DIVERSION OF PARTICULAR CONTROLLED DANGEROUS SUBSTANCES AND ANY SCHEDULE I OR SCHEDULE II SUBSTANCE COMPOUNDED FROM A CONTROLLED DANGEROUS SUBSTANCE INTO OTHER THAN LEGITIMATE MEDICAL, SCIENTIFIC, OR INDUSTRIAL CHANNELS;

(2) COMPLIANCE WITH APPLICABLE FEDERAL, STATE, AND LOCAL LAW;

(3) ANY CONVICTIONS OF THE APPLICANT UNDER FEDERAL, STATE, AND LOCAL LAWS RELATING TO THE MANUFACTURE, DISTRIBUTION, OR DISPENSING OF CONTROLLED DANGEROUS SUBSTANCES;

(4) THE APPLICANT'S EXPERIENCE IN THE MANUFACTURE AND DISTRIBUTION OF CONTROLLED DANGEROUS SUBSTANCES AND THE EFFECTIVENESS OF THE APPLICANT'S CONTROLS AGAINST DIVERSION; AND

(5) ANY OTHER FACTOR THAT IS RELEVANT TO AND CONSISTENT WITH PUBLIC HEALTH AND SAFETY.

(C) SCOPE OF REGISTRATION.

(1) A REGISTRANT MAY MANUFACTURE OR DISTRIBUTE ONLY A CONTROLLED DANGEROUS SUBSTANCE THAT IS SPECIFIED IN THE REGISTRATION.

(2) A MANUFACTURER OR DISTRIBUTOR WHO COMPLIES WITH FEDERAL LAW ON REGISTRATION, OTHER THAN FEES, IS DEEMED TO HAVE COMPLIED WITH THIS SECTION.

(D) ORDER FORMS.

(1) A REGISTRANT MAY DISTRIBUTE CONTROLLED DANGEROUS SUBSTANCES IN SCHEDULE I AND SCHEDULE II ONLY IN ACCORDANCE WITH AN ORDER FORM.

(2) A REGISTRANT WHO COMPLIES WITH FEDERAL LAW ON ORDER FORMS FOR SCHEDULE I AND SCHEDULE II IS DEEMED TO HAVE COMPLIED WITH THIS SUBSECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 284 and 281(f), (g), and (j).

In the introductory language of subsection (b) of this section, the reference to "the Department" is added for clarity.

In subsection (c)(1) of this section, the reference to registration "granted" under this section is deleted as implicit in the reference to "registration under this section".

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Registrant" § 5-101

"Schedule I" § 5-101

"Schedule II" § 5-101

"Schedule V" § 5-101

5-304. AUTHORIZED PROVIDERS.

(A) REGISTRATION REQUIRED.

IF AN AUTHORIZED PROVIDER IS AUTHORIZED TO DISPENSE OR CONDUCT RESEARCH UNDER STATE LAW, THE DEPARTMENT SHALL REGISTER THE AUTHORIZED PROVIDER TO DISPENSE A CONTROLLED DANGEROUS SUBSTANCE OR TO CONDUCT RESEARCH WITH A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE II THROUGH SCHEDULE V.

(B) SEPARATE REGISTRATION NOT REQUIRED.

THE DEPARTMENT NEED NOT REQUIRE SEPARATE REGISTRATION UNDER THIS SECTION FOR AN AUTHORIZED PROVIDER WHO IS:

(1) ENGAGED IN RESEARCH WITH A NONNARCOTIC CONTROLLED DANGEROUS SUBSTANCE IN SCHEDULE II THROUGH SCHEDULE V; AND

(2) ALREADY REGISTERED UNDER THIS SUBTITLE IN ANOTHER CAPACITY.

(C) FEDERAL REGISTRATION.

AN AUTHORIZED PROVIDER MAY CONDUCT RESEARCH IN THE STATE WITH A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE I IF THE AUTHORIZED PROVIDER IS REGISTERED UNDER FEDERAL LAW TO CONDUCT RESEARCH WITH A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE I AND GIVES EVIDENCE OF THE REGISTRATION TO THE DEPARTMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 281(h).

In this section, the defined term "authorized provider" is substituted for the former reference to "practitioner", to conform to the terminology of this title.

In subsection (b)(2) of this section, the reference to an "authorized provider" who is already registered under this subtitle in another capacity is substituted for the former reference to "registrant", to conform to the reference to the terminology used in subsection (b)(1) of this section.

Also in subsection (b)(2) of this section, the reference to an authorized provider already registered under this "subtitle" is substituted for the former reference to registration under this "section" to reflect the reorganization of material derived from former Art. 27, § 281 concerning controlled dangerous substance registration in this subtitle.

Defined terms: "Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Department" § 5-101

"Dispense" § 5-101

"Schedule I" § 5-101

"Schedule II" § 5-101

"Schedule V" § 5-101

5-305. INSPECTIONS.

IN ACCORDANCE WITH REGULATIONS THAT THE DEPARTMENT ADOPTS, THE DEPARTMENT MAY INSPECT THE ESTABLISHMENT OF A REGISTRANT OR APPLICANT FOR REGISTRATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 281(e).

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

Defined terms: "Department" § 5-101

"Registrant" § 5-101

5-306. REQUIRED RECORD KEEPING.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO AN AUTHORIZED PROVIDER WHO LAWFULLY PRESCRIBES OR ADMINISTERS, BUT DOES NOT OTHERWISE DISPENSE, A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE II, SCHEDULE III, SCHEDULE IV, OR SCHEDULE V.

(B) RECORDS REQUIRED.

(1) A REGISTRANT SHALL MAKE A COMPLETE AND ACCURATE RECORD OF ALL STOCKS OF CONTROLLED DANGEROUS SUBSTANCES ON HAND EVERY 2 YEARS DURING THE REGULAR FISCAL INVENTORY.

(2) THE REGISTRANT SHALL KEEP THE RECORD FOR 2 YEARS.

(C) CONTENTS OF RECORDS AND INVENTORIES.

RECORDS SHALL CONTAIN THE INFORMATION REQUIRED BY REGULATIONS THAT THE DEPARTMENT ADOPTS.

(D) COMPLIANCE WITH FEDERAL LAW.

A REGISTRANT WHO COMPLIES WITH FEDERAL LAW ON RECORDS AND REPORTS IS DEEMED TO HAVE COMPLIED WITH THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 283.

In subsection (a) of this section, the defined term "authorized provider" is substituted for the former reference to "practitioners", to conform to the terminology of the rest of this title.

In subsection (b) of this section, the former starting date of July 1, 1970, for record keeping is deleted as obsolete.

Also in subsection (b) of this section, the former reference to controlled dangerous substances in "Schedule I, II, III, IV, or V in [former Art. 27,] § 279" is deleted as unnecessary. *See* the definition of "controlled dangerous substance" in § 5-101 of this title.

Defined terms: "Administer" § 5-101

"Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Department" § 5-101

"Dispense" § 5-101

"Registrant" § 5-101

"Schedule II" § 5-101

"Schedule III" § 5-101

"Schedule IV" § 5-101

"Schedule V" § 5-101

5-307. SUSPENSIONS, REVOCATIONS, AND DENIALS -- GROUNDS.

(A) IN GENERAL.

SUBJECT TO THE NOTICE AND HEARING PROVISIONS OF § 5-308 OF THIS SUBTITLE, THE DEPARTMENT MAY DENY A REGISTRATION TO ANY APPLICANT, SUSPEND OR REVOKE A REGISTRATION, OR REFUSE TO RENEW A REGISTRATION IF THE DEPARTMENT FINDS THAT THE APPLICANT OR REGISTRANT:

(1) HAS MATERIALLY FALSIFIED AN APPLICATION FILED IN ACCORDANCE WITH OR REQUIRED BY THIS TITLE;

(2) HAS BEEN CONVICTED OF A CRIME UNDER FEDERAL LAW OR THE LAW OF ANY STATE RELATING TO A CONTROLLED DANGEROUS SUBSTANCE;

(3) HAS HAD FEDERAL REGISTRATION SUSPENDED OR REVOKED AND MAY NO LONGER MANUFACTURE, DISTRIBUTE, OR DISPENSE A CONTROLLED DANGEROUS SUBSTANCE; OR

(4) HAS VIOLATED THIS TITLE.

(B) LIMITS ON REVOCATION OR SUSPENSION.

THE DEPARTMENT MAY LIMIT REVOCATION OR SUSPENSION OF A REGISTRATION TO THE PARTICULAR CONTROLLED DANGEROUS SUBSTANCE FOR WHICH GROUNDS FOR REVOCATION OR SUSPENSION EXIST.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 282(a), (b), and the reference to a denial of registration and a refusal of renewal of registration in (c).

In the introductory language of subsection (a) of this section, the former reference to a registration "pursuant to § 281, as amended from time to time" is deleted as implicit in the defined term "registration".

Also in the introductory language of subsection (a) of this section, the reference to the ability of the Department to "deny a registration to any applicant ... or refuse to renew a registration" states explicitly the former implicit reference to the ability of the Department "pursuant to a denial of registration or to a refusal of renewal of registration under § 281".

Also in the introductory language of subsection (a) of this section, the former reference to a registration "to manufacture, distribute, or dispense" is deleted as implicit in the reference to a "registration".

In subsection (a)(2) of this section, the reference to a "crime" is substituted for the former reference to an "offense" for consistency. *See* General Revisor's Note to article.

In subsection (a)(3) of this section, the former reference to registrant whose

federal registration has been suspended or revoked "by competent federal authority and is no longer authorized by federal law to engage in the manufacturing, distribution, or dispensing of controlled dangerous substances" is deleted as implicit in the reference to having had "federal registration suspended or revoked".

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Registrant" § 5-101

"State" § 1-101

5-308. SAME -- NOTICE AND HEARING.

(A) ORDER TO SHOW CAUSE REQUIRED.

(1) BEFORE THE DEPARTMENT TAKES ACTION UNDER § 5-307 OF THIS SUBTITLE, THE DEPARTMENT SHALL SERVE ON THE APPLICANT OR REGISTRANT AN ORDER TO SHOW CAUSE WHY REGISTRATION SHOULD NOT BE DENIED, REVOKED, OR SUSPENDED OR ITS RENEWAL REFUSED.

(2) THE ORDER TO SHOW CAUSE SHALL:

(I) CONTAIN A STATEMENT OF THE BASIS OF THE PROPOSED DENIAL, REVOCATION, SUSPENSION, OR REFUSAL; AND

(II) ORDER THE APPLICANT OR REGISTRANT TO APPEAR BEFORE THE DEPARTMENT AT A TIME AND PLACE STATED IN THE ORDER, BUT NOT LESS THAN 30 DAYS AFTER THE DATE OF RECEIPT OF THE ORDER.

(3) IF THE DEPARTMENT PROPOSES TO DENY A RENEWAL OF REGISTRATION, THE ORDER TO SHOW CAUSE SHALL BE SERVED AT LEAST 30 DAYS BEFORE THE REGISTRATION EXPIRES.

(B) CONDUCT OF PROCEEDINGS.

PROCEEDINGS TO DENY, REVOKE, OR SUSPEND A REGISTRATION OR RENEWAL OF A REGISTRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(C) PROCEEDINGS INDEPENDENT OF CRIMINAL PROSECUTION.

(1) THE PROCEEDINGS UNDER THIS SECTION SHALL BE INDEPENDENT OF AND NOT INSTEAD OF ANY CRIMINAL PROSECUTION OR OTHER PROCEEDING UNDER STATE LAW.

(2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN EXISTING REGISTRATION:

(I) IS NOT ABATED BY PROCEEDINGS TO REFUSE RENEWAL OF REGISTRATION; AND

(II) SHALL REMAIN IN EFFECT PENDING THE OUTCOME OF THE PROCEEDINGS UNDER THIS SECTION.

(D) SUSPENSIONS DURING IMMINENT PUBLIC DANGER.

(1) THE DEPARTMENT MAY SUSPEND A REGISTRATION SIMULTANEOUSLY WITH THE INSTITUTION OF PROCEEDINGS UNDER THIS SECTION IF THE DEPARTMENT FINDS THAT AN IMMINENT DANGER EXISTS TO PUBLIC HEALTH OR SAFETY.

(2) THE SUSPENSION SHALL CONTINUE UNTIL THE EARLIEST OF:

(I) THE END OF ALL PROCEEDINGS, INCLUDING ANY JUDICIAL REVIEW;

(II) WITHDRAWAL BY THE DEPARTMENT OF THE SUSPENSION; OR

(III) DISSOLUTION OF THE SUSPENSION BY THE APPROPRIATE CIRCUIT COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 282(c) and (d).

In subsection (a)(1) of this section, the former phrase "pursuant to a denial of registration or to a refusal of removal of registration under [former] § 281" is deleted as included in the reference to taking action "under § 5-307 of this subtitle".

In subsection (a)(2)(i) of this section, the reference to "the basis of the proposed denial, revocation, suspension, or refusal" is substituted for the former reference to "the basis thereof" for clarity. Similarly, in subsection (a)(3) of this section, the reference to the Department proposal "to deny a renewal of registration" is substituted for the former reference to "[i]n the case of a denial of renewal of registration".

In subsection (b) of this section, the reference to proceedings to deny, revoke, or suspend "a registration or renewal of a registration" is added for clarity.

Defined terms: "Department" § 5-101

"Registrant" § 5-101

5-309. PLACING UNDER SEAL AND DISPOSING OF CONTROLLED DANGEROUS SUBSTANCES.

(A) PLACING UNDER SEAL.

IF THE DEPARTMENT SUSPENDS OR REVOKES A REGISTRATION, THE DEPARTMENT MAY PLACE UNDER SEAL ALL CONTROLLED DANGEROUS SUBSTANCES THAT THE REGISTRANT OWNS OR POSSESSES AT THE TIME OF THE SUSPENSION OR REVOCATION IN ACCORDANCE WITH THE REGISTRATION.

(B) DISPOSITION AFTER TIME FOR APPEALS.

UNLESS THE COURT ON REQUEST ORDERS THE SALE OF PERISHABLE SUBSTANCES AND THE DEPOSIT OF THE PROCEEDS OF THE SALE WITH THE COURT, A DISPOSITION MAY NOT BE MADE OF CONTROLLED DANGEROUS SUBSTANCES UNDER SEAL UNTIL THE TIME FOR TAKING AN APPEAL HAS ELAPSED OR UNTIL ALL APPEALS END.

(C) FORFEITURE OF CONTROLLED DANGEROUS SUBSTANCES.

WHEN A REVOCATION ORDER BECOMES FINAL, ALL CONTROLLED DANGEROUS SUBSTANCES PLACED UNDER SEAL IN ACCORDANCE WITH THIS SECTION SHALL BE FORFEITED TO THE STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 282(e).

In subsection (a) of this section, the former reference "as the case may be", which described the time of suspension or the effective date of the revocation order, is deleted as surplusage.

Also in subsection (a) of this section, the former reference to controlled dangerous substances that may "in the discretion of" the Department be placed under seal is deleted as unnecessary.

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

"Possess" § 5-101

"Registrant" § 5-101

5-310. NOTICE TO DRUG ENFORCEMENT ADMINISTRATION.

THE DEPARTMENT SHALL NOTIFY PROMPTLY THE FEDERAL DRUG ENFORCEMENT ADMINISTRATION OF EACH ORDER THAT SUSPENDS OR REVOKES REGISTRATION AND EACH FORFEITURE OF A CONTROLLED DANGEROUS SUBSTANCE UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 282(f).

The reference to the "federal Drug Enforcement Administration" is substituted for the former obsolete reference to the "Bureau of Narcotics and Dangerous Drugs".

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

SUBTITLE 4. SCHEDULES.

5-401. IN GENERAL.

(A) NAMES OF CONTROLLED DANGEROUS SUBSTANCES.

THE SUBSTANCES INCLUDED IN THE SCHEDULES IN THIS SUBTITLE ARE CONTROLLED DANGEROUS SUBSTANCES WHETHER DESIGNATED BY OFFICIAL NAME, COMMON OR USUAL NAME, CHEMICAL NAME, OR TRADE NAME.

(B) DEPRESSANT OR STIMULANT DRUG -- CONSTRUCTION.

FOR PURPOSES OF THIS SUBTITLE, A DRUG IS A DEPRESSANT OR STIMULANT DRUG IF:

(1) IT IS LYSERGIC ACID DIETHYLAMIDE; OR

(2) IT CONTAINS ANY QUANTITY OF:

(I) BARBITURIC ACID OR A SALT OF BARBITURIC ACID; OR

(II) A DERIVATIVE OF BARBITURIC ACID THAT THE SECRETARY OF HEALTH AND HUMAN SERVICES DESIGNATES AS HABIT FORMING UNDER § 502(D) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT (21 U.S.C. § 352(D));

(III) AMPHETAMINE OR ITS OPTICAL ISOMERS;

(IV) A SALT OF AMPHETAMINE OR A SALT OF AN OPTICAL ISOMER OF AMPHETAMINE;

(V) A SUBSTANCE THAT THE ATTORNEY GENERAL OF THE UNITED STATES DESIGNATES AS HABIT-FORMING BECAUSE OF ITS STIMULANT EFFECT ON THE CENTRAL NERVOUS SYSTEM; OR

(VI) A SUBSTANCE THAT THE ATTORNEY GENERAL OF THE UNITED STATES DESIGNATES AS HAVING A POTENTIAL FOR ABUSE BECAUSE OF:

1. A DEPRESSANT OR STIMULANT EFFECT ON THE CENTRAL NERVOUS SYSTEM; OR

2. A HALLUCINOGENIC EFFECT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 277(j) and the introductory language to 279.

In subsection (a) of this section, the former reference to "whatever" official name is deleted as surplusage.

Subsection (b) of this section is revised as a scope provision for Schedules I through V, for clarity.

In subsection (b)(2)(v) of this section, the former reference to the Attorney General of the United States "after investigation, ha[ving] found to be, and by regulation" designating as habit forming is deleted as included in the reference to "designat[ing]" the substance as a "depressant or stimulant drug". Similarly, in subsection (b)(2)(vi) of this section, the former reference to the Attorney General of the United States "after investigation, ha[ving] found to have, and by regulation" designating as having a potential for abuse is deleted as included in the reference to "designat[ing]" the substance as a "depressant or stimulant drug".

Defined terms: "Controlled dangerous substance" § 5-101

"Depressant or stimulant drug" § 5-101

5-402. SCHEDULE I.

(A) IN GENERAL.

SCHEDULE I CONSISTS OF EACH CONTROLLED DANGEROUS SUBSTANCE:

(1) LISTED IN THIS SECTION;

(2) ADDED TO SCHEDULE I BY THE DEPARTMENT UNDER § 5-202(B) OF THIS TITLE; OR

(3) DESIGNATED AS A SCHEDULE I CONTROLLED DANGEROUS SUBSTANCE BY THE FEDERAL GOVERNMENT UNLESS THE DEPARTMENT OBJECTS UNDER § 5-202(F) OF THIS TITLE.

(B) CORE SUBSTANCES.

(1) THESE SUBSTANCES ARE LISTED IN SCHEDULE I:

(I) ACETYLMETHADOL;

(II) ALFENTANIL;

(III) ALLYLPRODINE;

(IV) ALPHACETYLMETHADOL, EXCEPT LEVOALPHACETYLMETHADOL;

(V) ALPHAMEPRODINE;

(VI) ALPHAMETHADOL;

(VII) BENZETHIDINE;

(VIII) BETACETYLMETHADOL;

(IX) BETAMEPRODINE;

(X) BETAMETHADOL;

(XI) BETAPRODINE;

(XII) CLONITAZENE;

(XIII) DEXTROMORAMIDE;

(XIV) DEXTRORPHAN;

(XV) DIAMPROMIDE;

(XVI) DIETHYLTHIAMBUTENE;

(XVII) DIMENOXADOL;

(XVIII) DIFENOXIN;

(XIX) DIMEPHEPTANOL;

(XX) DIMETHYLTHIAMBUTENE;

(XXI) DIOXAPHETYL BUTYRATE;

(XXII) DIPIPANONE;

(XXIII) ETHYLMETHYLTHIAMBUTENE;

(XXIV) ETONITAZENE;

(XXV) ETOXERIDINE;

(XXVI) FURETHIDINE;

(XXVII) HYDROXYPETHIDINE;

(XXVIII) KETOBEMIDONE;

(XXIX) LEVOMORAMIDE;

(XXX) LEVOPHENACYLMORPHAN;

(XXXI) MORPHERIDINE;

(XXXII) NORACYMETHADOL;

(XXXIII) NORLEVORPHANOL;

(XXXIV) NORMETHADONE;

(XXXV) NORPIPANONE;

(XXXVI) PHENADOXONE;

(XXXVII) PHENAMPROMIDE;

(XXXVIII) PHENOMORPHAN;

(XXXIX) PHENOPERIDINE;

(XL) PIRITRAMIDE;

(XLI) PROHEPTAZINE;

(XLII) PROPERIDINE;

(XLIII) PROPIRAM;

(XLIV) RACEMORAMIDE; AND

(XLV) TRIMEPERIDINE.

(2) UNLESS SPECIFICALLY EXCEPTED UNDER THIS SUBTITLE, AN ISOMER, ESTER, ETHER, OR SALT OF A SUBSTANCE LISTED IN THIS SUBSECTION OR A SALT OF THE ISOMER, ESTER, OR ETHER IS A SUBSTANCE LISTED IN SCHEDULE I IF THE EXISTENCE OF THE ISOMER, ESTER, ETHER, OR SALT IS POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION.

(C) OPIUM DERIVATIVES.

(1) THESE OPIUM DERIVATIVES ARE SUBSTANCES LISTED IN SCHEDULE I:

(I) ACETORPHINE;

(II) ACETYLDIHYDROCODEINE;

(III) ACETYLOCODONE;

(IV) BENZYLMORPHINE;

(V) CODEINE METHYLBROMIDE;

(VI) CODEINE-N-OXIDE;

(VII) CODOXIME;

(VIII) CYPRENORPHINE;

(IX) DESOMORPHINE;

(X) DIHYDROMORPHINE;

(XI) DROTEBANOL;

(XII) ETHYLMORPHINE METHYLIODIDE;

(XIII) ETORPHINE;

(XIV) ETORPHINE 3-METHYLETHER;

(XV) HEROIN;

(XVI) HYDROMORPHINOL;

(XVII) METHYLDESORPHINE;

(XVIII) METHYLDIHYDROMORPHINONE;

(XIX) METHYLHYDROMORPHINE;

(XX) MORPHINE METHYLBROMIDE;

(XXI) MORPHINE METHYLCHLORIDE;

(XXII) MORPHINE METHYLSULFONATE;

(XXIII) MORPHINE-N-OXIDE;

(XXIV) MYROPHINE;

(XXV) NICOCODEINE;

(XXVI) NICODICODINE;

(XXVII) NICOMORPHINE;

(XXVIII) NORCODEINE;

(XXIX) NORMORPHINE;

(XXX) PHOLCODINE; AND

(XXXI) THEBACON.

(2) UNLESS SPECIFICALLY EXCEPTED UNDER THIS SUBTITLE, A SALT, ISOMER, OR SALT OF AN ISOMER OF A SUBSTANCE LISTED IN THIS SUBSECTION IS A SCHEDULE I SUBSTANCE IF THE EXISTENCE OF THE SALT, ISOMER, OR SALT OF AN ISOMER IS POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION.

(D) HALLUCINOGENS.

(1) A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY OF THE FOLLOWING HALLUCINOGENIC OR HALLUCINOGENIC-LIKE SUBSTANCES IS A SUBSTANCE LISTED IN SCHEDULE I:

(I) BUFOTENINE;

(II) DIETHYLTRYPTAMINE;

(III) DIMETHYLTRYPTAMINE;

(IV) 4-METHYL-2, 5-DIMETHOXYAMPHETAMINE;

(V) IBOGAINE;

(VI) LYSERGIC ACID DIETHYLAMIDE;

(VII) MARIJUANA;

(VIII) MESCALINE;

(IX) PEYOTE;

(X) PSILOCYBIN;

(XI) PSILOCYN;

(XII) TETRAHYDROCANNABINOL;

(XIII) THIOPHENE ANALOG OF PHENCYCLIDINE;

(XIV) 2, 5-DIMETHOXYAMPHETAMINE;

(XV) 4-BROMO-2, 5-DIMETHOXYAMPHETAMINE;

(XVI) 4-METHOXYAMPHETAMINE;

(XVII) 3, 4-METHYLENEDIOXYAMPHETAMINE;

(XVIII) 3, 4-METHYLENEDIOXYMETHAMPHETAMINE (MDMA);

(XIX) 5-METHOXY-3, 4-METHYLENEDIOXYAMPHETAMINE;

(XX) 3, 4, 5-TRIMETHOXYAMPHETAMINE;

(XXI) N-METHYL-3-PIPERIDYL BENZILATE;

(XXII) N-ETHYL-3-PIPERIDYL BENZILATE;

(XXIII) N-ETHYL-1-PHENYLCYCLOHEXYLAMINE;

(XXIV) 1-(1-PHENYLCYCLOHEXYL)-PYRROLIDINE;

(XXV) 1-(1-(2-THIENYL)-CYCLOHEXYL)-PIPERIDINE;

(XXVI) 1-METHYL-4-PHENYL-4-PROPIONOXYPIPERIDINE (MPPP);

AND

(XXVII) 1-(2-PHENYLETHYL)-4-PHENYL-4-ACETYLOXYPIPERIDINE (PEPAP).

(2) UNLESS SPECIFICALLY EXCEPTED UNDER THIS SUBTITLE, A SALT, ISOMER, OR SALT OF AN ISOMER OF A SUBSTANCE LISTED IN THIS SUBSECTION IS A SUBSTANCE LISTED IN SCHEDULE I IF THE EXISTENCE OF THE SALT, ISOMER, OR SALT OF AN ISOMER IS POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION.

(E) DEPRESSANTS.

(1) UNLESS SPECIFICALLY EXCEPTED UNDER THIS SUBTITLE OR LISTED IN ANOTHER SCHEDULE, A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A DEPRESSANT EFFECT ON THE CENTRAL NERVOUS SYSTEM IS A SUBSTANCE LISTED IN SCHEDULE I:

(I) MECLOQUALONE;

(II) METHAQUALONE; AND

(III) A SALT, ISOMER, OR SALT OF AN ISOMER OF A SUBSTANCE LISTED IN THIS PARAGRAPH IF THE EXISTENCE OF THE SALT, ISOMER, OR SALT OF AN ISOMER IS POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION.

(2) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY OF THE FOLLOWING SUBSTANCES IS A SUBSTANCE LISTED IN SCHEDULE I:

(I) 3-METHYLFENTANYL (N-3-METHYL-1-(2-PHENYLETHYL)-4-PIPERIDYL-1-N-PHENYLPROPANAMIDE), ITS OPTICAL AND GEOMETRIC ISOMERS, SALTS, AND SALTS OF ISOMERS;

(II) ACETYL-ALPHA-METHYLFENTANYL;

(III) ALPHA-METHYLTHIOFENTANYL;

(IV) BENZYLFENTANYL;

(V) BETA-HYDROXY-3-METHYLFENTANYL;

(VI) BETA-HYDROXYFENTANYL;

(VII) THENYLFENTANYL;

(VIII) THIOFENTANYL; AND

(IX) 3-METHYLTHIOFENTANYL.

(F) ANALOGUES.

(1) IN THIS SUBSECTION:

(I) "CONTROLLED DANGEROUS SUBSTANCE ANALOGUE" MEANS A SUBSTANCE:

1. THAT HAS A CHEMICAL STRUCTURE SUBSTANTIALLY SIMILAR TO THE CHEMICAL STRUCTURE OF A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE I OR SCHEDULE II; AND

2. THAT HAS A STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM THAT IS SUBSTANTIALLY SIMILAR TO OR GREATER THAN THE STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM OF A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE I OR SCHEDULE II; BUT

(II) "CONTROLLED DANGEROUS SUBSTANCE ANALOGUE" DOES NOT INCLUDE:

1. A CONTROLLED DANGEROUS SUBSTANCE;

2. A SUBSTANCE FOR WHICH THERE IS AN APPROVED NEW DRUG APPLICATION; OR

3. A SUBSTANCE EXEMPTED FOR INVESTIGATIONAL USE UNDER § 506 OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(2) TO THE EXTENT INTENDED FOR HUMAN CONSUMPTION, EACH CONTROLLED DANGEROUS SUBSTANCE ANALOGUE IS A SUBSTANCE LISTED IN SCHEDULE I.

(G) REQUIRED FACTORS FOR ADDING SUBSTANCE.

THE DEPARTMENT MAY NOT ADD A SUBSTANCE TO SCHEDULE I UNDER § 5-202 OF THIS TITLE UNLESS THE DEPARTMENT FINDS:

(1) A HIGH POTENTIAL FOR ABUSE OF THE SUBSTANCE;

(2) NO ACCEPTED MEDICAL USE IN THE UNITED STATES FOR THE SUBSTANCE; AND

(3) A LACK OF ACCEPTED SAFETY FOR USE OF THE SUBSTANCE UNDER MEDICAL SUPERVISION.

REVISOR'S NOTE: Subsections (a)(1) and (b) through (g) of this section are new language derived without substantive change from former Art. 27, § 279(a).

Subsection (a)(2) and (3) of this section is new language added to state explicitly that which was only formerly implied in the law.

In subsections (b) and (e) of this section, the reference to being excepted "under this subtitle" is added for clarity.

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

"Marijuana" § 5-101

"Schedule I" § 5-101

"Schedule II" § 5-101

5-403. SCHEDULE II.

(A) IN GENERAL.

SCHEDULE II CONSISTS OF EACH CONTROLLED DANGEROUS SUBSTANCE:

(1) LISTED IN THIS SECTION;

(2) ADDED TO SCHEDULE II BY THE DEPARTMENT UNDER § 5-202(B) OF THIS TITLE; OR

(3) DESIGNATED AS A SCHEDULE II CONTROLLED DANGEROUS SUBSTANCE BY THE FEDERAL GOVERNMENT UNLESS THE DEPARTMENT OBJECTS UNDER § 5-202(F) OF THIS TITLE.

(B) CORE SUBSTANCES.

(1) UNLESS THE SUBSTANCE IS LISTED IN ANOTHER SCHEDULE AND EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, OPIUM AND OPIATE, AND A SALT, COMPOUND, DERIVATIVE, OR PREPARATION OF OPIUM OR OPIATE IS A SUBSTANCE LISTED IN SCHEDULE II, INCLUDING:

(I) RAW OPIUM;

(II) OPIUM EXTRACTS;

(III) OPIUM FLUID;

(IV) POWDERED OPIUM;

(V) GRANULATED OPIUM;

(VI) TINCTURE OF OPIUM;

(VII) CODEINE;

(VIII) ETHYLMORPHINE;

(IX) ETORPHINE HYDROCHLORIDE;

(X) HYDROCODONE;

(XI) HYDROMORPHONE;

(XII) METOPON;

(XIII) MORPHINE;

(XIV) OXYCODONE;

(XV) OXYMORPHONE; AND

(XVI) THEBAINE.

(2) APOMORPHINE, DEXTRORPHAN, NALBUPHINE, NALOXONE, AND NALTREXONE, AND THEIR RESPECTIVE SALTS, ARE NOT SUBSTANCES LISTED IN SCHEDULE II.

(3) SUBSTANCES LISTED IN SCHEDULE II ALSO INCLUDE:

(I) EXCEPT FOR THE ISOQUINOLINE ALKALOIDS OF OPIUM, A SALT, COMPOUND, DERIVATIVE, OR PREPARATION THAT IS CHEMICALLY EQUIVALENT OR IDENTICAL TO A SUBSTANCE LISTED IN PARAGRAPH (1) OF THIS SUBSECTION;

(II) OPIUM POPPY AND POPPY STRAW;

(III) COCA LEAF;

(IV) COCAINE, ITS SALTS, OPTICAL AND GEOMETRIC ISOMERS, AND SALTS OF ISOMERS;

(V) ECGONINE, ITS DERIVATIVES, THEIR SALTS, ISOMERS, AND SALTS OF ISOMERS; AND

(VI) A COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY OF THE SUBSTANCES LISTED IN THIS SECTION.

(4) A SUBSTANCE THAT IS LISTED IN SCHEDULE II IS INCLUDED WHETHER PRODUCED:

(I) DIRECTLY OR INDIRECTLY BY EXTRACTION FROM SUBSTANCES OF VEGETABLE ORIGIN;

(II) INDEPENDENTLY BY CHEMICAL SYNTHESIS; OR

(III) BY A COMBINATION OF EXTRACTION AND CHEMICAL SYNTHESIS.

(C) CERTAIN OPIATES.

(1) THESE OPIATES ARE SUBSTANCES LISTED IN SCHEDULE II:

(I) ALPHAPRODINE;

(II) ANILERIDINE;

(III) BEZITRAMIDE;

(IV) DIHYDROCODEINE;

(V) DIPHENOXYLATE;

(VI) FENTANYL;

(VII) ISOMETHADONE;

(VIII) LEVOALPHACETYLMETHADOL;

(IX) LEVOMETHORPHAN;

(X) LEVORPHANOL;

(XI) METAZOCINE;

(XII) METHADONE;

(XIII) METHADONE--INTERMEDIATE, 4-CYANO-2-DIMETHYLAMINO-4, 4-DIPHENYL BUTANE;

(XIV) MORAMIDE--INTERMEDIATE, 2-METHYL-3-MORPHOLINO-1, 1-DIPHENYL-PROPANE-CARBOXYLIC ACID;

(XV) PETHIDINE;

(XVI) PETHIDINE--INTERMEDIATE--A, 4-CYANO-1-METHYL-4-PHENYLPIPERIDINE;

(XVII) PETHIDINE--INTERMEDIATE--B, ETHYL-4-PHENYLPIPERIDINE-4-CARBOXYLATE;

(XVIII) PETHIDINE--INTERMEDIATE--C, 1-METHYL-4-PHENYLPIPERIDINE-4-CARBOXYLIC ACID;

(XIX) PHENAZOCINE;

(XX) PIMINODINE;

(XXI) RACEMETHORPHAN;

(XXII) RACEMORPHAN; AND

(XXIII) SULFENTANIL.

(2) UNLESS SPECIFICALLY EXCEPTED UNDER THIS SUBTITLE, AN ISOMER, ESTER, ETHER, OR SALT OF AN OPIATE AND A SALT OF AN ISOMER, ESTER, OR ETHER IS A SUBSTANCE LISTED IN SCHEDULE II IF THE EXISTENCE OF THE ISOMER,

ESTER, ETHER, OR SALT IS POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION.

(D) STIMULANTS.

A SUBSTANCE IS LISTED IN SCHEDULE II IF THE SUBSTANCE INCLUDES A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A POTENTIAL FOR ABUSE ASSOCIATED WITH A STIMULANT EFFECT ON THE CENTRAL NERVOUS SYSTEM:

(1) AMPHETAMINE, ITS SALTS, OPTICAL ISOMERS, AND SALTS OF ITS OPTICAL ISOMERS;

(2) PHENMETRAZINE AND ITS SALTS;

(3) A SUBSTANCE THAT CONTAINS ANY METHAMPHETAMINE, INCLUDING SALTS, OPTICAL ISOMERS, AND SALTS OF ITS OPTICAL ISOMERS, IN COMBINATION WITH ONE OR MORE ACTIVE NONNARCOTIC INGREDIENTS IN RECOGNIZED THERAPEUTIC AMOUNTS;

(4) METHYLPHENIDATE; AND

(5) METHAMPHETAMINE, ITS SALTS, OPTICAL ISOMERS, AND SALTS OF OPTICAL ISOMERS.

(E) DEPRESSANTS.

(1) UNLESS SPECIFICALLY EXCEPTED UNDER THIS SUBTITLE OR LISTED IN ANOTHER SCHEDULE, A SUBSTANCE IS LISTED IN SCHEDULE II IF THE SUBSTANCE INCLUDES A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A DEPRESSANT EFFECT ON THE CENTRAL NERVOUS SYSTEM:

(I) AMOBARBITAL;

(II) SECOBARBITAL;

(III) PENTOBARBITAL;

(IV) PHENCYCLIDINE;

(V) 1-(1-PHENYLCYCLOHEXYL) PIPERIDINE;

(VI) 1-PHENYLCYCLOHEXYLAMINE; AND

(VII) 1-PIPERIDINOCYCLOHEXANECARBONITRILE.

(2) UNLESS SPECIFICALLY EXCEPTED UNDER THIS SUBTITLE OR LISTED IN ANOTHER SCHEDULE, A SALT, ISOMER, OR SALT OF AN ISOMER OF A SUBSTANCE LISTED IN THIS SUBSECTION IS INCLUDED IN SCHEDULE II IF THE EXISTENCE OF

THE SALT, ISOMER, OR SALT OF AN ISOMER IS POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION.

(F) REQUIRED FACTORS FOR ADDING SUBSTANCE.

THE DEPARTMENT MAY NOT ADD A SUBSTANCE TO SCHEDULE II UNDER § 5-202 OF THIS SUBTITLE UNLESS THE DEPARTMENT FINDS:

(1) A HIGH POTENTIAL FOR ABUSE OF THE SUBSTANCE;

(2) CURRENTLY ACCEPTED MEDICAL USE OF THE SUBSTANCE IN THE UNITED STATES, OR CURRENTLY ACCEPTED MEDICAL USE WITH SEVERE RESTRICTIONS; AND

(3) EVIDENCE THAT ABUSE OF THE SUBSTANCE MAY LEAD TO SEVERE PSYCHOLOGICAL OR PHYSICAL DEPENDENCE.

REVISOR'S NOTE: Subsections (a)(1) and (b) through (f) of this section are new language derived without substantive change from former Art. 27, § 279(b).

Subsection (a)(2) and (3) of this section is new language added to state explicitly that which was only formerly implied in the law.

In subsection (e) of this section, the reference to being excepted "under this subtitle" is added for clarity.

In subsection (f)(1) and (3) of this section, the reference to abuse "of the substance" is added for clarity. Similarly, in subsection (f)(2) of this section, the reference to use "of the substance" is added for clarity.

In subsection (f)(3) of this section, the reference to "evidence that" abuse of the substance may lead to dependence is added for clarity.

Also in subsection (f)(3) of this section, the reference to "psychological" dependence is substituted for the former reference to "psychic" dependence for clarity.

Defined terms: "Coca leaf" § 5-101

"Controlled dangerous substance" § 5-101

"Department" § 5-101

"Opiate" § 5-101

"Produce" § 5-101

"Schedule II" § 5-101

5-404. SCHEDULE III.

(A) IN GENERAL.

SCHEDULE III CONSISTS OF EACH CONTROLLED DANGEROUS SUBSTANCE:

(1) LISTED IN THIS SECTION;

(2) ADDED TO SCHEDULE III BY THE DEPARTMENT UNDER § 5-202(B) OF THIS TITLE; OR

(3) DESIGNATED AS A SCHEDULE III CONTROLLED DANGEROUS SUBSTANCE BY THE FEDERAL GOVERNMENT UNLESS THE DEPARTMENT OBJECTS UNDER § 5-202(F) OF THIS TITLE.

(B) NALORPHINE AND ANABOLIC STEROID.

(1) SUBSTANCES LISTED IN SCHEDULE III INCLUDE:

(I) NALORPHINE; AND

(II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN ANABOLIC STEROID CONSISTING OF A MATERIAL, COMPOUND, OR PREPARATION THAT INCLUDES:

1. BOLDENONE;

2. CHLOROTESTOSTERONE;

3. CLOSTEBOL;

4. DEHYDROCHLORMETHYLTESTOSTERONE;

5. DIHYDROTESTOSTERONE;

6. DROSTANOLONE;

7. ETHYLESTROENOL;

8. FLUOXYMESTERONE;

9. FORMOBULONE;

10. MESTEROLONE;

11. METHANDIENONE;

12. METHANDRANONE;

13. METHANDRIOL;

14. METHANDROSTENOLONE;

15. METHENOLONE;

16. METHYLTESTOSTERONE;

17. MIBOLERONE;

18. NANDROLONE;

19. NORETHANDROLONE;

20. OXANDROLONE;

21. OXYMESTERONE;

22. OXYMETHOLONE;

23. STANOLONE;

24. STANOZOLOL;

25. TESTOLACTONE;

26. TESTOSTERONE;

27. TRENBOLONE; AND

28. ANY ISOMER, ESTER, SALT, OR DERIVATIVE OF A SUBSTANCE LISTED IN THIS PARAGRAPH.

(2) THE FOLLOWING SUBSTANCES ARE NOT INCLUDED IN SCHEDULE III:

(I) AN ESTROGEN, PROGESTIN, OR CORTICOSTEROID; OR

(II) A SUBSTANCE COVERED BY PARAGRAPH (1) OF THIS SUBSECTION IF:

1. EXPRESSLY INTENDED FOR ADMINISTRATION THROUGH IMPLANTS TO CATTLE OR OTHER NONHUMAN SPECIES; AND

2. APPROVED FOR THAT USE BY THE FOOD AND DRUG ADMINISTRATION.

(C) STIMULANTS.

(1) UNLESS LISTED IN ANOTHER SCHEDULE, A SUBSTANCE IS LISTED IN SCHEDULE III IF THE SUBSTANCE INCLUDES A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A STIMULANT EFFECT ON THE CENTRAL NERVOUS SYSTEM:

(I) BENZPHETAMINE;

(II) CHLORPHENTERMINE;

(III) CLORTERMINE;

(IV) MAZINDOL; AND

(V) PHENDIMETRAZINE.

(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, SUBSTANCES IN SCHEDULE III INCLUDE:

(I) A SALT OF A SUBSTANCE LISTED IN THIS SUBSECTION;

(II) AN OPTICAL, POSITION, OR GEOMETRIC ISOMER OF A SUBSTANCE LISTED IN THIS SUBSECTION; OR

(III) A SALT OF AN ISOMER OF A SUBSTANCE LISTED IN THIS SUBSECTION.

(3) UNLESS LISTED IN ANOTHER SCHEDULE, A SALT, ISOMER, OR SALT OF AN ISOMER DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION MAY BE INCLUDED IN SCHEDULE III ONLY IF THE EXISTENCE OF THE SALTS, ISOMERS, AND SALTS OF ISOMERS IS POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION.

(D) DEPRESSANTS.

UNLESS LISTED IN ANOTHER SCHEDULE, A SUBSTANCE IS LISTED IN SCHEDULE III IF THE SUBSTANCE INCLUDES A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A POTENTIAL FOR ABUSE ASSOCIATED WITH A DEPRESSANT EFFECT ON THE CENTRAL NERVOUS SYSTEM:

(1) EXCEPT THOSE SUBSTANCES THAT ARE SPECIFICALLY LISTED IN OTHER SCHEDULES, A SUBSTANCE THAT CONTAINS ANY QUANTITY OF A DERIVATIVE OF BARBITURIC ACID, OR A SALT OF A DERIVATIVE OF A BARBITURIC ACID;

(2) CHLORHEXADOL;

(3) GLUTETHIMIDE;

(4) LYSERGIC ACID;

(5) LYSERGIC ACID AMIDE;

(6) METHYPRYLON;

(7) PENTAZOCINE;

(8) SULFONDIETHYLMETHANE;

(9) SULFONETHYLMETHANE; AND

(10) SULFONMETHANE.

(E) NARCOTIC DRUGS.

(1) SUBSTANCES LISTED IN SCHEDULE III INCLUDE A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS LIMITED QUANTITIES OF ANY OF THESE NARCOTIC DRUGS OR THEIR SALTS:

(I) NOT MORE THAN 1.80 GRAMS OF CODEINE PER 100 MILLILITERS OR NOT MORE THAN 90 MILLIGRAMS PER DOSAGE UNIT, WITH AN EQUAL OR GREATER QUANTITY OF AN ISOQUINOLINE ALKALOID OF OPIUM;

(II) NOT MORE THAN 1.80 GRAMS OF CODEINE PER 100 MILLILITERS OR NOT MORE THAN 90 MILLIGRAMS PER DOSAGE UNIT, WITH ONE OR MORE ACTIVE, NONNARCOTIC INGREDIENTS IN RECOGNIZED THERAPEUTIC AMOUNTS;

(III) NOT MORE THAN 300 MILLIGRAMS OF DIHYDROCODEINONE PER 100 MILLILITERS OR NOT MORE THAN 15 MILLIGRAMS PER DOSAGE UNIT, WITH A FOURFOLD OR GREATER QUANTITY OF AN ISOQUINOLINE ALKALOID OF OPIUM;

(IV) NOT MORE THAN 300 MILLIGRAMS OF DIHYDROCODEINONE PER 100 MILLILITERS OR NOT MORE THAN 15 MILLIGRAMS PER DOSAGE UNIT, WITH ONE OR MORE ACTIVE, NONNARCOTIC INGREDIENTS IN RECOGNIZED THERAPEUTIC AMOUNTS;

(V) NOT MORE THAN 1.80 GRAMS OF DIHYDROCODEINE PER 100 MILLILITERS OR NOT MORE THAN 90 MILLIGRAMS PER DOSAGE UNIT, WITH ONE OR MORE ACTIVE, NONNARCOTIC INGREDIENTS IN RECOGNIZED THERAPEUTIC AMOUNTS;

(VI) NOT MORE THAN 300 MILLIGRAMS OF ETHYLMORPHINE PER 100 MILLILITERS OR NOT MORE THAN 15 MILLIGRAMS PER DOSAGE UNIT, WITH ONE OR MORE ACTIVE, NONNARCOTIC INGREDIENTS IN RECOGNIZED THERAPEUTIC AMOUNTS;

(VII) NOT MORE THAN 500 MILLIGRAMS OF OPIUM PER 100 MILLILITERS OR PER 100 GRAMS, OR NOT MORE THAN 25 MILLIGRAMS PER DOSAGE UNIT, WITH ONE OR MORE ACTIVE, NONNARCOTIC INGREDIENTS IN RECOGNIZED THERAPEUTIC AMOUNTS;

(VIII) NOT MORE THAN 100 MILLIGRAMS OF OPIUM PER 100 MILLILITERS OR PER 100 GRAMS, OR NOT MORE THAN 5 MILLIGRAMS PER DOSAGE UNIT; AND

(IX) NOT MORE THAN 50 MILLIGRAMS OF MORPHINE PER 100 MILLILITERS OR PER 100 GRAMS WITH ONE OR MORE ACTIVE, NONNARCOTIC INGREDIENTS IN RECOGNIZED THERAPEUTIC AMOUNTS.

(2) SUBSTANCES LISTED IN SCHEDULE III INCLUDE A COMPOUND, MIXTURE, OR PREPARATION OR SALT OF A COMPOUND, MIXTURE, OR PREPARATION AND ANOTHER ACTIVE MEDICINAL INGREDIENT THAT IS NOT LISTED IN ANOTHER SCHEDULE AND THAT CONTAINS:

(I) AMOBARBITAL;

(II) SECOBARBITAL; OR

(III) PENTOBARBITAL.

(3) IF NOT COMBINED WITH ONE OR MORE ACTIVE MEDICINAL INGREDIENTS THAT ARE LISTED IN ANOTHER SCHEDULE, SUBSTANCES LISTED IN SCHEDULE III INCLUDE A SUPPOSITORY DOSAGE FORM OR SALT OF A SUPPOSITORY DOSAGE THAT CONTAINS:

(I) AMOBARBITAL;

(II) SECOBARBITAL; OR

(III) PENTOBARBITAL.

(F) OTHER DRUGS.

SUBSTANCES LISTED IN SCHEDULE III INCLUDE:

(1) DRONABINOL (SYNTHETIC) IN SESAME OIL AND ENCAPSULATED IN A SOFT GELATIN CAPSULE IN A U.S. FOOD AND DRUG ADMINISTRATION-APPROVED PRODUCT; AND

(2) KETAMINE, ITS SALTS, ISOMERS, AND SALTS OF ISOMERS.

(G) REQUIRED FACTORS FOR ADDING SUBSTANCE.

THE DEPARTMENT MAY NOT ADD A SUBSTANCE TO SCHEDULE III UNDER § 5-202 OF THIS SUBTITLE UNLESS THE DEPARTMENT FINDS:

(1) A POTENTIAL FOR ABUSE OF THE SUBSTANCE THAT IS LESS THAN THAT FOR THE SUBSTANCES LISTED IN SCHEDULE I AND SCHEDULE II;

(2) WELL DOCUMENTED AND APPROVED MEDICAL USE OF THE SUBSTANCE IN THE UNITED STATES; AND

(3) EVIDENCE THAT ABUSE OF THE SUBSTANCE MAY LEAD TO MODERATE OR LOW PHYSICAL DEPENDENCE OR HIGH PSYCHOLOGICAL DEPENDENCE.

REVISOR'S NOTE: Subsections (a)(1) and (b) through (f) of this section are new language derived without substantive change from former Art. 27, §§ 277(c) and 279(c).

Subsection (a)(2) and (3) of this section is new language added to state explicitly that which was only formerly implied in the law.

In subsection (b)(1)(ii)16 of this section, the reference to "methyltestosterone" is substituted for the former incorrect reference to "methystestosterone" for accuracy.

In subsection (g)(1) and (3) of this section, the reference to abuse "of the substance" is added for clarity.

In subsection (g)(3) of this section, the reference to "evidence that" abuse of the substance may lead to dependence is added for clarity.

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

"Narcotic drug" § 5-101

"Schedule I" § 5-101

"Schedule II" § 5-101

"Schedule III" § 5-101

5-405. SCHEDULE IV.

(A) IN GENERAL.

SCHEDULE IV CONSISTS OF EACH CONTROLLED DANGEROUS SUBSTANCE:

(1) LISTED IN THIS SECTION;

(2) ADDED TO SCHEDULE IV BY THE DEPARTMENT UNDER § 5-202(B) OF THIS TITLE; OR

(3) DESIGNATED AS A SCHEDULE IV CONTROLLED DANGEROUS SUBSTANCE BY THE FEDERAL GOVERNMENT UNLESS THE DEPARTMENT OBJECTS UNDER § 5-202(F) OF THIS TITLE.

(B) CORE SUBSTANCES.

SUBSTANCES LISTED IN SCHEDULE IV INCLUDE A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A POTENTIAL FOR ABUSE ASSOCIATED WITH A DEPRESSANT EFFECT ON THE CENTRAL NERVOUS SYSTEM:

(1) BARBITAL;

(2) BROMAZEPAM;

(3) CAMAZEPAM;

(4) CHLORAL BETAINE;

(5) CHLORAL HYDRATE;

(6) ETHCHLORVYNOL;

(7) CHLORDIAZEPOXIDE;

(8) CLOBAZAM;

(9) CLONAZEPAM;

(10) CLORAZEPATE;

(11) CLOTIAZEPAM;

(12) CLOXAZOLAM;

(13) DELORAZEPAM;

(14) DIAZEPAM;

(15) ESTAZOLAM;

(16) ETHINAMATE;

(17) ETHYLLOFLAZEPATE;

(18) FLUDIAZEPAM;

(19) FLUNITRAZEPAM;

(20) FLURAZEPAM;

(21) HALAZEPAM;

(22) HALOXAZOLAM;

(23) KETAZOLAM;

(24) LOPRAZOLAM;

(25) LORAZEPAM;

(26) LORMETAZEPAM;

(27) MEBUTAMATE;

(28) MEDAZEPAM;

(29) METHOHEXITAL;

(30) MEPROBAMATE;

(31) METHYLPHENOBARBITAL;

(32) NIMETAZEPAM;

(33) NITROZEPAM;

(34) NORDIAZEPAM;

(35) OXAZEPAM;

(36) OXAZOLAM;

(37) PARALDEHYDE;

(38) PETRICHLORAL;

(39) PHENOBARBITAL;

(40) PINAZEPAM;

(41) PRAZEPAM;

(42) TEMAZEPAM;

(43) TETRAZEPAM; AND

(44) TRIAZOLAM.

(C) FENFLURAMINE.

SUBSTANCES LISTED IN SCHEDULE IV INCLUDE:

(1) A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS FENFLURAMINE; AND

(2) IF ITS EXISTENCE IS POSSIBLE:

(I) A SALT OF FENFLURAMINE;

(II) AN OPTICAL, POSITION, OR GEOMETRIC ISOMER OF FENFLURAMINE; AND

(III) A SALT OF AN ISOMER OF FENFLURAMINE.

(D) STIMULANTS.

SUBSTANCES LISTED IN SCHEDULE IV INCLUDE A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A POTENTIAL FOR ABUSE ASSOCIATED WITH A STIMULANT EFFECT ON THE CENTRAL NERVOUS SYSTEM:

(1) DIETHYLPROPION;

(2) PEMOLINE, INCLUDING ORGANOMETALLIC COMPLEXES AND THEIR CHELATES; AND

(3) PHENTERMINE.

(E) EXEMPTIONS.

BY REGULATION, THE DEPARTMENT MAY EXEMPT FROM THIS SECTION A COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS A DEPRESSANT SUBSTANCE LISTED IN SUBSECTION (A) OF THIS SECTION IF:

(1) THE COMPOUND, MIXTURE, OR PREPARATION CONTAINS AN ACTIVE MEDICINAL INGREDIENT THAT DOES NOT HAVE A DEPRESSANT EFFECT ON THE CENTRAL NERVOUS SYSTEM; AND

(2) THE ADMIXTURES ARE INCLUDED IN COMBINATIONS, QUANTITY, PROPORTION, OR CONCENTRATION THAT VITIATE THE POTENTIAL FOR ABUSE OF THE SUBSTANCES THAT HAVE A DEPRESSANT EFFECT ON THE CENTRAL NERVOUS SYSTEM.

(F) REQUIRED FACTORS FOR ADDING SUBSTANCE.

THE DEPARTMENT MAY NOT ADD A SUBSTANCE TO SCHEDULE IV UNDER § 5-202 OF THIS SUBTITLE UNLESS THE DEPARTMENT FINDS THAT:

(1) THE SUBSTANCE HAS A LOW POTENTIAL FOR ABUSE RELATIVE TO THE SUBSTANCES LISTED IN SCHEDULE III;

(2) THE SUBSTANCE HAS CURRENTLY ACCEPTED MEDICAL USE IN TREATMENT IN THE UNITED STATES; AND

(3) ABUSE OF THE SUBSTANCE MAY LEAD TO LIMITED PHYSICAL DEPENDENCE OR PSYCHOLOGICAL DEPENDENCE RELATIVE TO THE SUBSTANCES IN SCHEDULE III.

REVISOR'S NOTE: Subsection (a) of this section is new language added for clarity and consistency.

Subsections (b) through (f) of this section are new language derived without substantive change from former Art. 27, § 279(d).

In subsection (e) of this section, the reference to a "regulation" is substituted for the former reference to a "rule". *See* General Revisor's Note to article.

Defined terms: "Controlled dangerous substance" § 5-101

"Department" § 5-101

"Schedule III" § 5-101

"Schedule IV" § 5-101

5-406. SCHEDULE V.

(A) IN GENERAL.

SCHEDULE V CONSISTS OF EACH CONTROLLED DANGEROUS SUBSTANCE:

(1) LISTED IN THIS SECTION;

(2) ADDED TO SCHEDULE V BY THE DEPARTMENT UNDER § 5-202(B) OF THIS TITLE; OR

(3) DESIGNATED AS A SCHEDULE V CONTROLLED DANGEROUS SUBSTANCE BY THE FEDERAL GOVERNMENT UNLESS THE DEPARTMENT OBJECTS UNDER § 5-202(F) OF THIS TITLE.

(B) CORE SUBSTANCES.

A SUBSTANCE IS LISTED IN SCHEDULE V IF THE SUBSTANCE INCLUDES A COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS THE FOLLOWING QUANTITIES OF NARCOTIC DRUGS OR THEIR SALTS:

(1) (I) NOT MORE THAN 200 MILLIGRAMS OF CODEINE PER 100 MILLILITERS OR PER 100 GRAMS;

(II) NOT MORE THAN 100 MILLIGRAMS OF DIHYDROCODEINE PER 100 MILLILITERS OR PER 100 GRAMS;

(III) NOT MORE THAN 50 MILLIGRAMS OF ETHYLMORPHINE PER 100 MILLILITERS OR PER 100 GRAMS;

(IV) NOT MORE THAN 2.5 MILLIGRAMS OF DIPHENOXYLATE AND NOT LESS THAN 25 MICROGRAMS OF ATROPINE SULFATE PER DOSAGE UNIT; OR

(V) UNLESS SPECIFICALLY EXCEPTED UNDER THIS SUBTITLE, OR UNLESS LISTED IN ANOTHER SCHEDULE, ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION CONTAINING BUPRENORPHINE OR ITS SALT; AND

(2) NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS IN SUFFICIENT PROPORTION TO CONFER ON THE COMPOUND, MIXTURE, OR PREPARATION VALUABLE MEDICINAL QUALITIES OTHER THAN THOSE POSSESSED BY THE NARCOTIC DRUG ALONE.

(C) REQUIRED FACTORS FOR ADDING SUBSTANCE.

THE DEPARTMENT MAY NOT ADD A SUBSTANCE TO SCHEDULE V UNDER § 5-202 OF THIS SUBTITLE UNLESS THE DEPARTMENT FINDS:

(1) THE SUBSTANCE HAS A LOW POTENTIAL FOR ABUSE RELATIVE TO THE SUBSTANCES LISTED IN SCHEDULE IV;

(2) THE SUBSTANCE HAS CURRENTLY ACCEPTED MEDICAL USE IN THE UNITED STATES; AND

(3) ABUSE OF THE SUBSTANCE MAY LEAD TO LIMITED PHYSICAL DEPENDENCE OR PSYCHOLOGICAL DEPENDENCE LIABILITY RELATIVE TO THE SUBSTANCES LISTED IN SCHEDULE IV.

REVISOR'S NOTE: Subsection (a) of this section is new language added for clarity and consistency.

Subsections (b) and (c) of this section are new language derived without substantive change from former Art. 27, § 279(e).

In subsection (c) of this section, the references to "the substance" are added for clarity.

Defined terms: "Department" § 5-101

"Narcotic drug" § 5-101

"Schedule IV" § 5-101

"Schedule V" § 5-101

SUBTITLE 5. PRESCRIPTIONS.

5-501. DISPENSING OF CERTAIN SUBSTANCES LISTED IN SCHEDULE II.

(A) WRITTEN PRESCRIPTION REQUIRED.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON MAY NOT DISPENSE A CONTROLLED DANGEROUS SUBSTANCE WITHOUT A WRITTEN PRESCRIPTION FROM AN AUTHORIZED PROVIDER IF THE SUBSTANCE IS:

(1) LISTED IN SCHEDULE II; AND

(2) A DRUG TO WHICH § 21-220 OF THE HEALTH - GENERAL ARTICLE APPLIES.

(B) EXCEPTIONS.

A CONTROLLED DANGEROUS SUBSTANCE TO WHICH SUBSECTION (A) OF THIS SECTION APPLIES MAY BE DISPENSED WITHOUT A WRITTEN PRESCRIPTION BY:

(1) AN AUTHORIZED PROVIDER WHO:

(I) IS NOT A PHARMACIST; AND

(II) DISPENSES THE CONTROLLED DANGEROUS SUBSTANCE DIRECTLY TO AN ULTIMATE USER; OR

(2) A PHARMACIST IF:

(I) AN EMERGENCY EXISTS;

(II) THE PHARMACIST DISPENSES THE DRUG UNDER REGULATIONS OF THE DEPARTMENT ON AN ORAL PRESCRIPTION THAT THE PHARMACIST REDUCES PROMPTLY TO WRITING AND KEEPS ON FILE; AND

(III) FEDERAL LAW AUTHORIZES THE ORAL PRESCRIPTION.

(C) RECORDS AND INVENTORIES.

A PRESCRIPTION FOR A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE II SHALL BE KEPT ON FILE IN CONFORMITY WITH THE REQUIREMENTS FOR RECORDS AND INVENTORIES UNDER § 5-306 OF THIS TITLE.

(D) REFILL PROHIBITED.

A PERSON MAY NOT REFILL A PRESCRIPTION FOR A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE II.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 285(a).

In subsection (a)(2) of this section, the reference to "a drug to which § 21-220 of the Health - General Article applies" is substituted for the former reference to "a prescription drug as determined under the Health - General Article" to avoid confusion with the defined term "prescription drug" and to identify the applicable section of the Health - General Article.

In subsection (b)(2) of this section, the reference to "a pharmacist" is added to state explicitly what merely was implied in the former law, *i.e.*, that pharmacists may dispense controlled dangerous substances without a prescription under certain circumstances.

In subsection (c) of this section, the reference to a prescription "for a controlled dangerous substance" is added for clarity.

Also in subsection (c) of this section, the reference to requirements "for records and inventories" is added for clarity.

Also in subsection (c) of this section, the former reference to "as amended from time to time" is deleted as unnecessary in light of Art. 1, § 21.

Defined terms: "Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Department" § 5-101

"Dispense" § 5-101

"Drug" § 5-101

"Person" § 1-101

"Schedule II" § 5-101

"Ultimate user" § 5-101

5-502. METHADONE.

AN AUTHORIZED PROVIDER MAY NOT DISPENSE METHADONE, DIRECTLY OR BY PRESCRIPTION, UNLESS:

(1) THE AUTHORIZED PROVIDER IS ASSOCIATED WITH A CONTROLLED DRUG THERAPY PROGRAM AUTHORIZED BY THE ALCOHOL AND DRUG ABUSE ADMINISTRATION OF THE DEPARTMENT; OR

(2) AN EMERGENCY OR MEDICAL SITUATION EXISTS UNDER REGULATIONS THAT THE DEPARTMENT ADOPTS IN COOPERATION WITH THE MEDICAL AND CHIRURGICAL FACULTY OF MARYLAND.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 285(a-1).

Defined terms: "Authorized provider" § 5-101

"Department" § 5-101

"Dispense" § 5-101

5-503. OPIUM.

(A) "OPIUM" DEFINED.

IN THIS SECTION, "OPIUM" INCLUDES:

(1) CODEINE; AND

(2) A NATURAL OR SYNTHETIC COMPOUND, MANUFACTURED SUBSTANCE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF OPIUM.

(B) PRESCRIPTION REQUIRED; EXCEPTIONS.

(1) EXCEPT ON A VALID PRESCRIPTION OF AN AUTHORIZED PRESCRIBER AS DEFINED IN § 12-101 OF THE HEALTH OCCUPATIONS ARTICLE, A PERSON MAY NOT DISPENSE, GIVE, OR SELL A PREPARATION CONTAINING OPIUM OR ANY OF ITS DERIVATIVES.

(2) THIS SUBSECTION DOES NOT APPLY TO:

(I) A SALE MADE TO AN AUTHORIZED PROVIDER; OR

(II) A SALE MADE BY A MANUFACTURER, DISTRIBUTOR, OR LICENSED PHARMACY TO A HOSPITAL OR INSTITUTION THAT OPERATES A DISPENSARY IN WHICH AN AUTHORIZED PROVIDER IS IN CHARGE.

(C) POSSESSION OF OPIUM.

(1) EXCEPT ON A PRESCRIPTION FROM AN AUTHORIZED PRESCRIBER AS DEFINED IN § 12-101 OF THE HEALTH OCCUPATIONS ARTICLE, A PERSON MAY NOT POSSESS OR CONTROL A PREPARATION CONTAINING OPIUM OR ITS DERIVATIVES.

(2) A PERSON MAY POSSESS OR CONTROL A PREPARATION CONTAINING OPIUM OR ITS DERIVATIVES IF THE POSSESSION OR CONTROL IS IN THE REGULAR COURSE OF LAWFUL BUSINESS, OCCUPATION, PROFESSION, EMPLOYMENT, OR DUTY OF THE PERSON.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING $1000;

(2) FOR A SECOND VIOLATION, A FINE NOT EXCEEDING $2000; OR

(3) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 18 MONTHS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 285(d).

In subsections (a) and (c)(1) of this section, the former references to opium "or its derivatives" are deleted as included in the definition of opium in subsection (a)(2) of this section.

In subsection (a)(2) of this section, the reference to a "manufactured substance" is substituted for the former reference to "manufacture" for clarity.

In subsections (b)(1) and (c)(1) of this section, the former references to a "duly" authorized prescriber are deleted as surplusage.

In subsection (b)(2)(i) of this section, the reference to an "authorized provider" is substituted for the former references to sales made by and to certain practitioners for clarity.

In subsection (c)(2) of this section, the specific reference to "a preparation containing opium" is substituted for the former reference to "the drug", for clarity.

Also in subsection (c)(2) of this section, the word "lawful" is added to modify "business, occupation, profession, employment, or duty" to clarify that possession of certain substances is only allowed under otherwise lawful circumstances. The Criminal Procedure Article Review Committee calls this addition to the attention of the General Assembly.

In subsection (d) of this section, the reference to a person being "subject to" a certain fine is substituted for the former requirement that a person "shall be fined", for clarity and consistency within this subtitle.

Also in subsection (d) of this section, the references to a "violation" are substituted for the former references to an "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Authorized provider" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-504. SUBSTANCE LISTED IN SCHEDULE III OR SCHEDULE IV.

(A) DISPENSING OF SUBSTANCE WITHOUT PRESCRIPTION.

EXCEPT WHEN DISPENSED DIRECTLY TO AN ULTIMATE USER BY AN AUTHORIZED PROVIDER WHO IS NOT A PHARMACIST, A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE III OR SCHEDULE IV THAT IS A DRUG TO WHICH § 21-220 OF THE HEALTH - GENERAL ARTICLE APPLIES MAY NOT BE DISPENSED WITHOUT A WRITTEN OR ORAL PRESCRIPTION.

(B) PRESCRIPTION FILLS AND REFILLS.

UNLESS RENEWED BY THE AUTHORIZED PROVIDER, THE PRESCRIPTION MAY NOT BE:

(1) FILLED OR REFILLED MORE THAN 6 MONTHS AFTER THE DATE OF PRESCRIPTION; OR

(2) REFILLED MORE THAN FIVE TIMES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 285(b).

In subsection (a) of this section, the reference to "a drug to which § 21-220 of the Health - General Article applies" is substituted for the former reference to "a prescription drug as determined under the Health - General Article" to avoid confusion with the defined term "prescription drug" and to identify the applicable section of the Health - General Article.

In subsection (b)(2) of this section, the former reference to a prescription being refilled "after the date of the prescription" is deleted as unnecessary.

Defined terms: "Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Drug" § 5-101

"Schedule III" § 5-101

"Schedule IV" § 5-101

"Ultimate user" § 5-101

5-505. SUBSTANCE LISTED IN SCHEDULE V.

(A) DISTRIBUTION OR DISPENSING ONLY FOR MEDICAL PURPOSES.

A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE V MAY NOT BE DISTRIBUTED OR DISPENSED EXCEPT FOR A MEDICAL PURPOSE.

(B) REQUIRED LABELS.

WHEN DISPENSING THE CONTROLLED DANGEROUS SUBSTANCE, AN AUTHORIZED PROVIDER SHALL SECURELY AFFIX TO THE CONTAINER, IN ADDITION TO ANY OTHER LABEL ALREADY THERE, A LABEL WITH:

(1) THE DISPENSER'S NAME, SIGNATURE, AND REGISTRY NUMBER;

(2) THE DATE ON WHICH THE CONTROLLED DANGEROUS SUBSTANCE IS DISPENSED; AND

(3) THE PURCHASER'S NAME.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 285(c).

In subsection (b) of this section, the former phrase "in addition to compliance with the provisions of this subheading and the federal requirements" is deleted as unnecessary. Any duty imposed under this section would be in addition to, not instead of, any other duty imposed by another provision of this, or any other, article, as well as by federal law.

Defined terms: "Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Schedule V" § 5-101

SUBTITLE 6. CRIMES -- CONTROLLED DANGEROUS SUBSTANCES AND PARAPHERNALIA.

PART I. PRIMARY CRIMES.

5-601. POSSESSING OR ADMINISTERING CONTROLLED DANGEROUS SUBSTANCE.

(A) IN GENERAL.

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT:

(1) POSSESS OR ADMINISTER TO ANOTHER A CONTROLLED DANGEROUS SUBSTANCE, UNLESS OBTAINED DIRECTLY OR BY PRESCRIPTION OR ORDER FROM AN AUTHORIZED PROVIDER ACTING IN THE COURSE OF PROFESSIONAL PRACTICE; OR

(2) OBTAIN OR ATTEMPT TO OBTAIN A CONTROLLED DANGEROUS SUBSTANCE, OR PROCURE OR ATTEMPT TO PROCURE THE ADMINISTRATION OF A CONTROLLED DANGEROUS SUBSTANCE BY:

(I) FRAUD, DECEIT, MISREPRESENTATION, OR SUBTERFUGE;

(II) THE COUNTERFEITING OR ALTERATION OF A PRESCRIPTION OR A WRITTEN ORDER;

(III) THE CONCEALMENT OF A MATERIAL FACT;

(IV) THE USE OF A FALSE NAME OR ADDRESS;

(V) FALSELY ASSUMING THE TITLE OF OR REPRESENTING TO BE A MANUFACTURER, DISTRIBUTOR, OR AUTHORIZED PROVIDER; OR

(VI) MAKING, ISSUING, OR PRESENTING A FALSE OR COUNTERFEIT PRESCRIPTION OR WRITTEN ORDER.

(B) INFORMATION NOT PRIVILEGED.

INFORMATION THAT IS COMMUNICATED TO A PHYSICIAN IN AN EFFORT TO OBTAIN A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THIS SECTION IS NOT A PRIVILEGED COMMUNICATION.

(C) PENALTY.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 4 YEARS OR A FINE NOT EXCEEDING $25,000 OR BOTH.

(2) A PERSON WHOSE VIOLATION OF THIS SECTION INVOLVES THE USE OR POSSESSION OF MARIJUANA IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 287(a), (e), and (b) except as it related to controlled paraphernalia.

In subsection (a)(1) of this section, the former reference to a "valid" prescription is deleted as implicit in the reference to a "prescription" from an authorized provider.

In subsection (a)(2)(ii) of this section, the defined term "counterfeit[ing]" is substituted for the former reference to "forgery" for consistency within this article. Similarly, in subsection (a)(2)(v) of this section, the reference to a "counterfeit" prescription or written order is substituted for the former reference to a "forged" prescription or written order.

In subsection (a)(2)(v) of this section, the reference to "issuing, or presenting" a prescription is substituted for the former reference to "uttering" a prescription for clarity and consistency within this article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section only provides for disclosure of information communicated to a "physician". Since other persons may be involved in unlawful attempts to obtain controlled dangerous substances, the General Assembly may wish to consider

broadening this provision.

Defined terms: "Administer" § 5-101

"Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Counterfeit" § 1-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Marijuana" § 5-101

"Possess" § 5-101

5-602. MANUFACTURING, DISTRIBUTING, POSSESSION WITH INTENT TO DISTRIBUTE, OR DISPENSING CONTROLLED DANGEROUS SUBSTANCE.

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT:

(1) MANUFACTURE, DISTRIBUTE, OR DISPENSE A CONTROLLED DANGEROUS SUBSTANCE; OR

(2) POSSESS A CONTROLLED DANGEROUS SUBSTANCE IN SUFFICIENT QUANTITY REASONABLY TO INDICATE UNDER ALL CIRCUMSTANCES AN INTENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE A CONTROLLED DANGEROUS SUBSTANCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(a)(1).

Defined terms: "Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-603. EQUIPMENT TO PRODUCE CONTROLLED DANGEROUS SUBSTANCE.

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT MANUFACTURE, DISTRIBUTE, OR POSSESS A MACHINE, EQUIPMENT, INSTRUMENT, IMPLEMENT, DEVICE, OR A COMBINATION OF THEM THAT IS ADAPTED TO PRODUCE A CONTROLLED DANGEROUS SUBSTANCE UNDER CIRCUMSTANCES THAT REASONABLY INDICATE AN INTENT TO USE IT TO PRODUCE, SELL, OR DISPENSE A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(a)(4).

Defined terms: "Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

"Produce" § 5-101

5-604. COUNTERFEIT SUBSTANCE.

(A) "COUNTERFEIT SUBSTANCE" DEFINED.

IN THIS SECTION, "COUNTERFEIT SUBSTANCE" MEANS A CONTROLLED DANGEROUS SUBSTANCE, OR ITS CONTAINER OR LABELING, THAT:

(1) WITHOUT AUTHORIZATION, BEARS A LIKENESS OF THE TRADEMARK, TRADE NAME, OR OTHER IDENTIFYING MARK, IMPRINT, NUMBER, OR DEVICE OF A MANUFACTURER, DISTRIBUTOR, OR DISPENSER OTHER THAN THE ACTUAL MANUFACTURER, DISTRIBUTOR, OR DISPENSER; AND

(2) THEREBY FALSELY PURPORTS OR IS REPRESENTED TO BE THE PRODUCT OF, OR TO HAVE BEEN DISTRIBUTED BY, THE OTHER MANUFACTURER, DISTRIBUTOR, OR DISPENSER.

(B) PROHIBITED -- IN GENERAL.

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT:

(1) CREATE OR DISTRIBUTE A COUNTERFEIT SUBSTANCE; OR

(2) POSSESS A COUNTERFEIT SUBSTANCE WITH INTENT TO DISTRIBUTE IT.

(C) SAME -- EQUIPMENT TO CREATE COUNTERFEIT SUBSTANCE.

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT MANUFACTURE, DISTRIBUTE, OR POSSESS EQUIPMENT THAT IS DESIGNED TO PRINT, IMPRINT, OR REPRODUCE AN AUTHENTIC OR IMITATION TRADEMARK, TRADE NAME, OTHER IDENTIFYING MARK, IMPRINT, NUMBER, OR DEVICE OF ANOTHER ONTO A DRUG OR THE CONTAINER OR LABEL OF A DRUG, RENDERING THE DRUG A COUNTERFEIT SUBSTANCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 277(g) and 286(a)(2) and (3).

In subsection (c) of this section, the reference to an "authentic" trademark is added to state expressly that which was only implied in the former law, namely, that a counterfeit substance may include a controlled dangerous substance that bears the genuine trademark of a manufacturer, distributor, or dispenser or a replica of that trademark.

Also in subsection (c) of this section, the reference to an imprint, "number", or device is added for consistency with subsection (a) of this section. The Criminal Law Article Review Committee calls this addition to the

attention of the General Assembly.

Also in subsection (c) of this section, the reference to an "imitation" trademark is substituted for the former reference to "any likeness of", for clarity.

Also in subsection (c) of this section, the former reference to "any punch, die, plate, [or] stone" is deleted as included in the comprehensive reference to "equipment".

Defined terms: "Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Drug" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-605. KEEPING COMMON NUISANCE.

(A) "COMMON NUISANCE" DEFINED.

"COMMON NUISANCE" MEANS A DWELLING, BUILDING, VEHICLE, VESSEL, AIRCRAFT, OR OTHER PLACE:

(1) RESORTED TO BY INDIVIDUALS FOR THE PURPOSE OF ADMINISTERING ILLEGALLY CONTROLLED DANGEROUS SUBSTANCES; OR

(2) WHERE CONTROLLED DANGEROUS SUBSTANCES OR CONTROLLED PARAPHERNALIA ARE MANUFACTURED, DISTRIBUTED, DISPENSED, STORED, OR CONCEALED ILLEGALLY.

(B) IN GENERAL.

A PERSON MAY NOT KEEP A COMMON NUISANCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(a)(5).

In subsection (a)(1) of this section, the reference to "individuals" is substituted for the former reference to "drug abusers" to clarify that proving an individual's status as a "drug abuser" is not an element of the crime of keeping or maintaining a common nuisance.

In subsection (a)(2) of this section, the former reference to controlled paraphernalia "as defined in § 287(d) of this subheading" is deleted in light of the definition of the term in § 5-101 of this title.

Defined terms: "Administer" § 5-101

"Controlled paraphernalia" § 5-101

"Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

5-606. FALSE PRESCRIPTION.

(A) PROHIBITED.

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT PASS, ISSUE, MAKE, OR POSSESS A FALSE, COUNTERFEIT, OR ALTERED PRESCRIPTION FOR A CONTROLLED DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE THE CONTROLLED DANGEROUS SUBSTANCE.

(B) INFORMATION NOT PRIVILEGED.

INFORMATION THAT IS COMMUNICATED TO AN AUTHORIZED PRESCRIBER IN AN EFFORT TO OBTAIN A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF SUBSECTION (A) OF THIS SECTION IS NOT A PRIVILEGED COMMUNICATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(a)(6).

In subsection (a) of this section, the reference to "issu[ing]" a prescription is substituted for the former reference to "utter[ing]" a prescription for consistency within this article.

Also in subsection (a) of this section, the former reference to "prescriptions" is deleted in light of Art. 1, § 8, which provides that the singular includes the plural.

Also in subsection (a) of this section, the former prohibition against "manufactur[ing]" a false prescription is deleted in light of the prohibition against "mak[ing]" a false prescription.

Defined terms: "Controlled dangerous substance" § 5-101

"Counterfeit" § 1-101

"Distribute" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-607. PENALTIES -- CERTAIN CRIMES.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN §§ 5-608 AND 5-609 OF THIS SUBTITLE, A PERSON WHO VIOLATES A PROVISION OF §§ 5-602 THROUGH 5-606 OF THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $15,000 OR BOTH.

(B) REPEAT OFFENDER.

(1) A PERSON WHO HAS BEEN CONVICTED PREVIOUSLY UNDER SUBSECTION (A) OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS.

(2) THE COURT MAY NOT SUSPEND THE MANDATORY MINIMUM SENTENCE TO LESS THAN 2 YEARS.

(3) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(b)(3).

In subsection (a) of this section, the phrase "[e]xcept as provided in §§ 5-608 and 5-609 of this subtitle" is substituted for the former reference to "[a]ny other controlled dangerous substance classified in Schedule I, II, III, IV, or V", in light of §§ 5-608 and 5-609 of this subtitle. If a substance is not a narcotic drug or an hallucinogenic substance, then the penalties in this section apply.

Also in subsection (a) of this section, the reference to a person being "subject to ... imprisonment" is substituted for the former requirement that a person "shall ... [be] sentenced to a term of imprisonment", for consistency within this article.

Also in subsection (a) of this section, the former reference to a person being "deemed" guilty of a felony is deleted as surplusage.

In subsection (b)(1) of this section, the former reference to a person "sentenced ... as a repeat offender" is deleted as implicit in the reference to a person "who has previously been convicted under subsection (a) of this section".

In subsection (b)(2) of this section, the reference to the "mandatory minimum sentence" is substituted for the former reference to the "prison sentence" for clarity.

In subsection (b)(3) of this section, the reference to a person not being eligible for parole "during the mandatory minimum sentence" is substituted for the former reference to a person not being eligible for parole "during that period" for clarity.

Defined term: "Person" § 1-101

5-608. SAME -- NARCOTIC DRUG.

(A) IN GENERAL.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO VIOLATES A PROVISION OF §§ 5-602 THROUGH 5-606 OF THIS SUBTITLE WITH RESPECT TO A SCHEDULE I OR II NARCOTIC DRUG IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $25,000 OR BOTH.

(B) SECOND TIME OFFENDER.

(1) A PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 10 YEARS AND IS SUBJECT TO A FINE NOT EXCEEDING $100,000 IF THE PERSON PREVIOUSLY HAS BEEN CONVICTED ONCE:

(I) UNDER SUBSECTION (A) OF THIS SECTION;

(II) OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION; OR

(III) OF A CRIME UNDER THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION IF COMMITTED IN THIS STATE.

(2) THE COURT MAY NOT SUSPEND THE MANDATORY MINIMUM SENTENCE TO LESS THAN 10 YEARS.

(3) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

(4) A PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION IS NOT PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER § 8-507 OF THE HEALTH - GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE SENTENCE.

(C) THIRD TIME OFFENDER.

(1) A PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 25 YEARS AND IS SUBJECT TO A FINE NOT EXCEEDING $100,000 IF THE PERSON PREVIOUSLY:

(I) HAS SERVED AT LEAST ONE TERM OF CONFINEMENT OF AT LEAST 180 DAYS IN A CORRECTIONAL INSTITUTION AS A RESULT OF A CONVICTION UNDER SUBSECTION (A) OF THIS SECTION OR § 5-614 OF THIS SUBTITLE; AND

(II) HAS BEEN CONVICTED TWICE, IF THE CONVICTIONS ARISE FROM SEPARATE OCCASIONS:

1. UNDER SUBSECTION (A) OF THIS SECTION;

2. OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION;

3. OF A CRIME UNDER THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION IF COMMITTED IN THIS STATE; OR

4. OF ANY COMBINATION OF THESE CRIMES.

(2) THE COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF 25 YEARS.

(3) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

(4) A SEPARATE OCCASION IS ONE IN WHICH THE SECOND OR SUCCEEDING CRIME IS COMMITTED AFTER THERE HAS BEEN A CHARGING DOCUMENT FILED FOR THE PRECEDING CRIME.

(D) FOURTH TIME OFFENDER.

(1) A PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 40 YEARS AND IS SUBJECT TO A FINE NOT EXCEEDING $100,000 IF THE PERSON PREVIOUSLY HAS SERVED THREE OR MORE SEPARATE TERMS OF CONFINEMENT AS A RESULT OF THREE OR MORE SEPARATE CONVICTIONS:

(I) UNDER SUBSECTION (A) OF THIS SECTION;

(II) OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION;

(III) OF A CRIME UNDER THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION IF COMMITTED IN THIS STATE; OR

(IV) OF ANY COMBINATION OF THESE CRIMES.

(2) THE COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF 40 YEARS.

(3) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(b)(1) and, as they related to narcotic

drugs, (c), (d), and (e).

In subsection (a) of this section, the reference to a person being subject "on conviction" to a certain penalty is added for clarity and consistency within this subtitle.

In subsections (b)(1), (c)(1), and (d)(1) of this section, the references to a conspiracy "to commit a crime included in" subsection (a) of this section are substituted for the former references to a conspiracy "to violate" [subsection (a) of this section] for clarity and accuracy. Similarly, in subsections (b)(1)(iii), (c)(1)(ii)3, and (d)(1)(iii) of this section, the references to a crime of another state or the United States that would be "a crime included in" subsection (a) of this section are substituted for the former references to such a crime that would be "a violation of" [subsection (a) of this section].

In subsection (b)(1) of this section and throughout this subtitle, the former references to "District of Columbia" are deleted as included within the definition of "state" in § 1-101 of this article.

In subsection (b)(2) of this section, the reference to the "mandatory minimum sentence" is substituted for the former reference to the "prison sentence" for clarity.

Also in subsection (b)(2) of this section, the former reference to a person "sentenced under subsection (b)(1) ... of this section, or of conspiracy to violate subsection (b)(1) ... of this section or any combination of these offenses" is deleted as redundant in light of subsection (b)(1) of this section.

Also in subsection (b)(2) of this section, the former reference to the prison sentence of a "second offender" is deleted as redundant in light of the reference to a person "convicted a second time" in subsection (b)(1) of this section.

In subsection (b)(3) of this section, the reference to a person not being eligible for parole "during the mandatory minimum sentence" is substituted for the former reference to a person not being eligible for parole "during that period" for clarity.

In subsection (b)(4) of this section, the reference to a "person convicted under subsection (a) of this section" is substituted for the former reference to a "convicted defendant" for clarity because the limitation applies only to those inmates convicted under subsection (a) of this section, and not to those inmates convicted under § 5-609 of this subtitle.

Also in subsection (b)(4) of this section, the reference to a "drug treatment program" is substituted for the former reference to a "rehabilitation program" for clarity.

Also in subsection (b)(4) of this section, the former reference to not

"prevent[ing], ... or mak[ing] ineligible" a convicted person from participating in a drug treatment program is deleted as redundant in light of the statement that the person convicted under "this subsection is not prohibited" from participating in a drug treatment program.

In subsections (c)(1) and (d)(1) of this section, the former references to a sentence "for the term allowed by law, but in any event" for not less than the specified amount are deleted as surplusage.

In subsections (c)(2) and (d)(2) of this section, the former prohibitions, that "[n]either the sentence ... nor any part of it" may be suspended, are deleted as included in the references to the prohibition against the suspension of "any part" of the sentence.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (c)(1)(i) of this section, a third-time offender who does not serve sufficient time under the second conviction may be treated as a first-time offender. *Cf. Thomas v. State*, 104 Md. App. 461 (1995), where the Court held that "second" means "second" only and would thus not apply to a defendant who was convicted for a third time but did not meet requirements for enhanced sentencing under Art. 27, § 286(d) governing third convictions. The General Assembly may wish to explore the consistency of repeat-offender provisions in this section and in § 5-609 of this subtitle.

Defined terms: "Drug" § 5-101

"Narcotic drug" § 5-101

"Person" § 1-101

"Schedule I" § 5-101

"Schedule II" § 5-101

"State" § 1-101

5-609. PENALTIES -- SELECTED SCHEDULE I AND II HALLUCINOGENIC SUBSTANCES.

(A) IN GENERAL.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO VIOLATES A PROVISION OF §§ 5-602 THROUGH 5-606 OF THIS SUBTITLE WITH RESPECT TO ANY OF THE FOLLOWING CONTROLLED DANGEROUS SUBSTANCES IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $20,000 OR BOTH:

(1) PHENCYCLIDINE;

(2) 1-(1-PHENYLCYCLOHEXYL) PIPERIDINE;

(3) 1-PHENYLCYCLOHEXYLAMINE;

(4) 1-PIPERIDINOCYCLOHEXANECARBONITRILE;

(5) N-ETHYL-1-PHENYLCYCLOHEXYLAMINE;

(6) 1-(1-PHENYLCYCLOHEXYL)-PYRROLIDINE;

(7) 1-(1-(2-THIENYL)-CYCLOHEXYL)-PIPERIDINE;

(8) LYSERGIC ACID DIETHYLAMIDE; OR

(9) 750 GRAMS OR MORE OF 3, 4-METHYLENEDIOXYMETHAMPHETAMINE (MDMA).

(B) SECOND TIME OFFENDER.

(1) A PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 10 YEARS AND IS SUBJECT TO A FINE NOT EXCEEDING $100,000 IF THE PERSON PREVIOUSLY HAS BEEN CONVICTED ONCE:

(I) UNDER SUBSECTION (A) OF THIS SECTION;

(II) OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION; OR

(III) OF A CRIME UNDER THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION IF COMMITTED IN THIS STATE; OR

(IV) OF ANY COMBINATION OF THESE CRIMES.

(2) THE COURT MAY NOT SUSPEND THE MANDATORY MINIMUM SENTENCE TO LESS THAN 10 YEARS.

(3) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

(C) THIRD TIME OFFENDER.

(1) A PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 25 YEARS AND IS SUBJECT TO A FINE NOT EXCEEDING $100,000 IF THE PERSON PREVIOUSLY:

(I) HAS SERVED AT LEAST ONE TERM OF CONFINEMENT OF AT LEAST 180 DAYS IN A CORRECTIONAL INSTITUTION AS A RESULT OF A CONVICTION UNDER SUBSECTION (A) OF THIS SECTION OR § 5-614 OF THIS SUBTITLE; AND

(II) IF THE CONVICTIONS DO NOT ARISE FROM A SINGLE INCIDENT, HAS BEEN CONVICTED TWICE:

1. UNDER SUBSECTION (A) OF THIS SECTION;

2. OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION;

3. OF A CRIME UNDER THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION IF COMMITTED IN THIS STATE; OR

4. OF ANY COMBINATION OF THESE CRIMES.

(2) THE COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF 25 YEARS.

(3) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

(4) A SEPARATE OCCASION IS ONE IN WHICH THE SECOND OR SUCCEEDING CRIME IS COMMITTED AFTER THERE HAS BEEN A CHARGING DOCUMENT FILED FOR THE PRECEDING CRIME.

(D) FOURTH TIME OFFENDER.

(1) A PERSON WHO IS CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 40 YEARS AND IS SUBJECT TO A FINE NOT EXCEEDING $100,000 IF THE PERSON PREVIOUSLY HAS SERVED THREE SEPARATE TERMS OF CONFINEMENT AS A RESULT OF THREE SEPARATE CONVICTIONS:

(I) UNDER SUBSECTION (A) OF THIS SECTION;

(II) OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION;

(III) OF A CRIME UNDER THE LAWS OF ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION IF COMMITTED IN THIS STATE; OR

(IV) OF ANY COMBINATION OF THESE CRIMES.

(2) THE COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF 40 YEARS.

(3) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(b)(2) and, as they related to

hallucinogenic substances, (c)(1) and (2), (d), and (e).

In subsection (a) of this section, the reference to a person being subject "on conviction" to a certain penalty is added for clarity and consistency within this subtitle.

Also in subsection (a) of this section, the former references to hallucinogenic substances "classified in Schedule II" and "classified in Schedule I" are deleted as surplusage.

In subsections (b)(1), (c)(1), and (d)(1) of this section, the references to a conspiracy "to commit a crime included in" subsection (a) of this section are substituted for the former references to a conspiracy "to violate" [subsection (a) of this section] for clarity and accuracy. Similarly, in subsections (b)(1)(iii), (c)(1)(ii)3, and (d)(1)(iii) of this section, the references to a crime of another state or the United States that would be "a crime included in" subsection (a) of this section are substituted for the former references to such a crime that would be "a violation of" [subsection (a) of this section].

In subsection (b)(1) of this section and throughout this subtitle, the former references to a conviction under the laws of the "District of Columbia" are deleted as included within the definition of "state" in § 1-101 of this article.

In subsection (b)(2) of this section, the reference to the "mandatory minimum sentence" is substituted for the former reference to the "prison sentence" for clarity.

Also in subsection (b)(2) of this section, the former reference to a person "sentenced under ... subsection (b)(2) of this section, or of conspiracy to violate ... subsection (b)(2) of this section or any combination of these offenses" is deleted as redundant in light of subsection (b)(1) of this section.

Also in subsection (b)(2) of this section, the former reference to the prison sentence of a "second offender" is deleted as redundant in light of the reference to a person "convicted a second time" in subsection (b)(1) of this section.

In subsection (b)(3) of this section, the reference to a person not being eligible for parole "during the mandatory minimum sentence" is substituted for the former reference to a person not being eligible for parole "during that period" for clarity.

In subsections (c)(1) and (d)(1) of this section, the references to a person who is convicted "a third time" and "a fourth time", respectively, are added for clarity and conformity with subsection (b) of this section.

Also in subsections (c)(1) and (d)(1) of this section, the former references to a sentence "for the term allowed by law, but in any event" for not less than

the specified amount are deleted as surplusage.

In subsections (c)(2) and (d)(2) of this section, the former prohibitions, that "[n]either the sentence ... nor any part of it" may be suspended, are deleted as included in the references to the prohibition against the suspension of "any part" of the sentence.

Defined terms: "Controlled dangerous substance" § 5-101

"Person" § 1-101

"State" § 1-101

5-610. RESERVED.

5-611. RESERVED.

PART II. PRIMARY OFFENDERS.

5-612. VOLUME DEALER.

(A) UNLAWFUL AMOUNTS.

A PERSON WHO VIOLATES § 5-602 OF THIS SUBTITLE WITH RESPECT TO ANY OF THE FOLLOWING CONTROLLED DANGEROUS SUBSTANCES IN THE AMOUNTS INDICATED IS SUBJECT ON CONVICTION TO A FINE NOT EXCEEDING $100,000 AND THE ENHANCED PENALTY PROVIDED IN SUBSECTION (C) OF THIS SECTION:

(1) 50 POUNDS OR MORE OF MARIJUANA;

(2) 448 GRAMS OR MORE OF COCAINE;

(3) 448 GRAMS OR MORE OF ANY MIXTURE CONTAINING A DETECTABLE AMOUNT OF COCAINE;

(4) 50 GRAMS OR MORE OF COCAINE BASE, COMMONLY KNOWN AS "CRACK";

(5) 28 GRAMS OR MORE OF MORPHINE OR OPIUM OR ANY DERIVATIVE, SALT, ISOMER, OR SALT OF AN ISOMER OF MORPHINE OR OPIUM;

(6) ANY MIXTURE CONTAINING 28 GRAMS OR MORE OF MORPHINE OR OPIUM OR ANY DERIVATIVE, SALT, ISOMER, OR SALT OF AN ISOMER OF MORPHINE OR OPIUM;

(7) 1,000 DOSAGE UNITS OR MORE OF LYSERGIC ACID DIETHYLAMIDE;

(8) ANY MIXTURE CONTAINING THE EQUIVALENT OF 1,000 DOSAGE UNITS OF LYSERGIC ACID DIETHYLAMIDE;

(9) 16 OUNCES OR MORE OF PHENCYCLIDINE IN LIQUID FORM;

(10) 448 GRAMS OR MORE OF ANY MIXTURE CONTAINING PHENCYCLIDINE;

(11) 448 GRAMS OR MORE OF METHAMPHETAMINE; OR

(12) ANY MIXTURE CONTAINING 448 GRAMS OR MORE OF METHAMPHETAMINE.

(B) AGGREGATION OF AMOUNTS.

FOR THE PURPOSE OF DETERMINING THE QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE INVOLVED IN INDIVIDUAL ACTS OF MANUFACTURING, DISTRIBUTING, DISPENSING, OR POSSESSING WITH INTENT TO MANUFACTURE, DISTRIBUTE, OR DISPENSE UNDER SUBSECTION (A) OF THIS SECTION, THE ACTS MAY BE AGGREGATED IF EACH OF THE ACTS OCCURRED WITHIN A 90-DAY PERIOD.

(C) ENHANCED PENALTY.

(1) A PERSON WHO IS CONVICTED UNDER § 5-602 OF THIS SUBTITLE WITH RESPECT TO A CONTROLLED DANGEROUS SUBSTANCE IN AN AMOUNT INDICATED IN SUBSECTION (A) OF THIS SECTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 5 YEARS.

(2) THE COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF 5 YEARS.

(3) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(f).

In subsection (a)(7) of this section, the phrase "or more" is added for consistency with the other items in that subsection.

In subsection (b) of this section, the reference to individual acts of possession with intent to "manufacture ... or dispense" is added for clarity because this section provides a penalty for a violation of § 5-601 of this subtitle. Section 5-601 makes it a crime for a person to possess a controlled dangerous substance with intent to manufacture, distribute, or dispense the controlled dangerous substance.

Also in subsection (b) of this section, the former reference to an aggregate act "of manufacturing, distribution, dispensing, or possessing with intent to distribute" is deleted for brevity and as implicit.

In subsection (c)(1) of this section, the reference to the requirement that a person "shall be sentenced to imprisonment for not less than 5 years" is added for clarity and consistency within this subtitle.

Also in subsection (c)(1) of this section, the former reference to a person being sentenced "as otherwise provided for in this section" is deleted as included in the introductory language to subsection (a) of this section.

Also in subsection (c)(1) of this section, the reference to a person who is "guilty of a felony" for a violation of this section is deleted as redundant since a violation of § 5-607 is a felony regardless of the amount of controlled dangerous substance involved. This section is merely a sentence enhancing provision.

In subsection (c)(2) of this section, the reference to the "mandatory minimum" sentence is substituted for the former reference to "that term of imprisonment" for clarity and consistency within this subtitle.

Also in subsection (c)(2) of this section, the former statement that "it is mandatory upon the court to impose" the minimum sentence is deleted as implicit. Subsection (c)(1) of this section sets a minimum penalty and subsection (c)(2) of this section prohibits a court from suspending any part of that penalty.

Also in subsection (c)(2) of this section, the former prohibition that "neither that term of imprisonment nor any part of it" may be suspended is deleted as included in the reference to the prohibition against the suspension of "any part" of the sentence.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (a)(9) of this section relating to a quantity of phencyclidine is ambiguous. The reference to "ounces" could be either a measurement of volume or of weight.

Defined terms: "Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Marijuana" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-613. DRUG KINGPIN.

(A) "DRUG KINGPIN" DEFINED.

IN THIS SECTION, "DRUG KINGPIN" MEANS AN ORGANIZER, SUPERVISOR, FINANCIER, OR MANAGER WHO ACTS AS A COCONSPIRATOR IN A CONSPIRACY TO MANUFACTURE, DISTRIBUTE, DISPENSE, TRANSPORT IN, OR BRING INTO THE STATE A CONTROLLED DANGEROUS SUBSTANCE.

(B) DRUG KINGPIN CONSPIRACY; PENALTY.

(1) A DRUG KINGPIN WHO CONSPIRES TO MANUFACTURE, DISTRIBUTE, DISPENSE, TRANSPORT IN, OR BRING INTO THE STATE A CONTROLLED DANGEROUS SUBSTANCE IN AN AMOUNT LISTED IN § 5-612 OF THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 20 YEARS AND NOT EXCEEDING 40 YEARS WITHOUT THE POSSIBILITY OF PAROLE OR A FINE NOT EXCEEDING $1,000,000 OR BOTH.

(2) A COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF 20 YEARS.

(3) THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

(C) ULTIMATE DISTRIBUTING OR DISPENSING ELSEWHERE NOT A DEFENSE.

IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE CONTROLLED DANGEROUS SUBSTANCE WAS BROUGHT INTO OR TRANSPORTED IN THE STATE SOLELY FOR ULTIMATE DISTRIBUTION OR DISPENSING IN ANOTHER JURISDICTION.

(D) MERGER.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, A CONVICTION UNDER THIS SECTION DOES NOT MERGE WITH THE CONVICTION FOR ANY CRIME THAT IS THE OBJECT OF THE CONSPIRACY.

(E) PROBATION BEFORE JUDGMENT.

THE PROVISIONS OF § 6-220 OF THE CRIMINAL PROCEDURE ARTICLE DO NOT APPLY TO A CONVICTION UNDER THIS SECTION.

(F) CONSTRUCTION OF SECTION.

THIS SECTION DOES NOT:

(1) PROHIBIT A COURT FROM IMPOSING AN ENHANCED PENALTY UNDER § 5-905 OF THIS TITLE; OR

(2) PRECLUDE OR LIMIT A PROSECUTION FOR ANY OTHER CRIME.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286(g).

In subsection (a) of this section, the reference to an organizer, supervisor, financier, or manager "who acts" as a coconspirator is added for clarity.

Also in subsection (a) of this section, the former reference to a person "who occupies a position of" organizer, supervisor, financier, or manager is deleted as surplusage.

In subsection (b)(1) of this section, the reference to a fine or imprisonment

"or ... both" is added as implicit in the use of the conjunction "and" between the term of imprisonment and the amount of the fine to which a defendant may be subject in former Art. 27, § 286(g)(2)(i) and (ii).

Also in subsection (b)(1) of this section, the reference to a controlled dangerous substance in "an amount" is substituted for the former reference to a controlled dangerous substance "in one or more of the amounts" in light of Art. 1, § 8, which provides that the singular includes the plural.

In subsection (b)(2) of this section, the reference to the "mandatory minimum sentence of 20 years" is added for clarity.

Also in subsection (b)(2) of this section, the former statement that "it is mandatory on the court to impose" the minimum sentence is deleted as implicit. Subsection (b)(1)(ii) of this section sets a minimum penalty and subsection (b)(2) of this section prohibits a court from suspending any part of that penalty.

In subsection (b)(3) of this section, the reference to a person not being eligible for parole "during the mandatory minimum sentence" is added for clarity and consistency within this subtitle.

In subsection (f)(2) of this section, the reference to any other "crime" is substituted for the former reference to any other "criminal offense" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

5-614. IMPORTER OF CERTAIN CONTROLLED DANGEROUS SUBSTANCES.

(A) UNLAWFUL AMOUNTS.

(1) UNLESS AUTHORIZED BY LAW TO POSSESS THE SUBSTANCE, A PERSON MAY NOT BRING INTO THE STATE:

(I) 45 KILOGRAMS OR MORE OF MARIJUANA;

(II) 28 GRAMS OR MORE OF COCAINE;

(III) ANY MIXTURE CONTAINING 28 GRAMS OR MORE OF COCAINE;

(IV) 4 GRAMS OR MORE OF MORPHINE OR OPIUM OR ANY DERIVATIVE, SALT, ISOMER, OR SALT OF AN ISOMER OF MORPHINE OR OPIUM;

(V) 1,000 DOSAGE UNITS OF LYSERGIC ACID DIETHYLAMIDE;

(VI) ANY MIXTURE CONTAINING THE EQUIVALENT OF 1,000 DOSAGE UNITS OF LYSERGIC ACID DIETHYLAMIDE;

(VII) 28 GRAMS OR MORE OF PHENCYCLIDINE IN LIQUID OR POWDER FORM;

(VIII) 112 GRAMS OR MORE OF ANY MIXTURE CONTAINING PHENCYCLIDINE;

(IX) 1,000 DOSAGE UNITS OR MORE OF METHAQUALONE;

(X) 28 GRAMS OR MORE OF METHAMPHETAMINE;

(XI) ANY MIXTURE CONTAINING 28 GRAMS OR MORE OF METHAMPHETAMINE;

(XII) 4 GRAMS OR MORE OF FENTANYL OR A FENTANYL ANALOGUE.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 25 YEARS OR A FINE NOT EXCEEDING $50,000 OR BOTH.

(B) SAME -- SMALLER AMOUNTS OF MARIJUANA.

(1) UNLESS AUTHORIZED BY LAW TO POSSESS THE MARIJUANA, A PERSON MAY NOT BRING INTO THE STATE MORE THAN 5 KILOGRAMS BUT LESS THAN 45 KILOGRAMS OF MARIJUANA.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286A.

In subsection (a)(1) of this section, the phrase "[u]nless authorized by law to possess the substance" is substituted for the former phrase "which it is unlawful for that person to possess" for brevity. Similarly, in subsection (b) of this section, the phrase "[u]nless authorized by law to possess the marijuana" is substituted for the former phrase "which it is unlawful for that person to possess". The Criminal Law Article Review Committee calls these substitutions to the attention of the General Assembly.

In subsection (a)(2) of this section, the former reference to "the discretion of the court" is deleted as implicit in setting maximum penalties.

Defined terms: "Marijuana" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-615. RESERVED.

5-616. RESERVED.

PART III. RELATED AND DERIVATIVE CRIMES.

5-617. DISTRIBUTING FAKED CONTROLLED DANGEROUS SUBSTANCE.

(A) IN GENERAL.

A PERSON MAY NOT DISTRIBUTE, ATTEMPT TO DISTRIBUTE, OR POSSESS WITH INTENT TO DISTRIBUTE A NONCONTROLLED SUBSTANCE:

(1) THAT THE PERSON REPRESENTS AS A CONTROLLED DANGEROUS SUBSTANCE;

(2) THAT THE PERSON INTENDS FOR USE OR DISTRIBUTION AS A CONTROLLED DANGEROUS SUBSTANCE; OR

(3) UNDER CIRCUMSTANCES WHERE ONE REASONABLY SHOULD KNOW THAT THE NONCONTROLLED SUBSTANCE WILL BE USED OR DISTRIBUTED FOR USE AS A CONTROLLED DANGEROUS SUBSTANCE.

(B) CONSIDERATIONS.

TO DETERMINE IF A PERSON HAS VIOLATED THIS SECTION, THE COURT OR OTHER AUTHORITY SHALL INCLUDE IN ITS CONSIDERATION:

(1) WHETHER THE NONCONTROLLED SUBSTANCE WAS PACKAGED IN A MANNER NORMALLY USED TO DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE ILLEGALLY;

(2) WHETHER THE DISTRIBUTION OR ATTEMPTED DISTRIBUTION INCLUDED AN EXCHANGE OF OR DEMAND FOR MONEY OR OTHER PROPERTY AS CONSIDERATION, AND WHETHER THE AMOUNT OF CONSIDERATION WAS SUBSTANTIALLY GREATER THAN THE REASONABLE VALUE OF THE NONCONTROLLED SUBSTANCE; AND

(3) WHETHER THE PHYSICAL APPEARANCE OF THE NONCONTROLLED SUBSTANCE IS SUBSTANTIALLY IDENTICAL TO THAT OF A CONTROLLED DANGEROUS SUBSTANCE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $15,000 OR BOTH.

(D) BELIEF NOT A DEFENSE.

IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE DEFENDANT BELIEVED THAT THE NONCONTROLLED SUBSTANCE WAS A CONTROLLED DANGEROUS SUBSTANCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286B(b) through (f).

In subsection (b)(1) of this section, the reference to a controlled "dangerous" substance is added for consistency within this title.

In subsection (c) of this section, the former phrase "with respect to the distribution, attempt to distribute, or possession with intent to distribute a noncontrolled substance as a controlled dangerous substance" is deleted as redundant.

Former Art. 27, § 286B(a)(2) and its introductory language, which defined the word "distribute" only for § 286B, is deleted as duplicative of the defined term "distribute", which is defined for this entire title in § 5-101 of this title.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b) of this section, the meaning of the reference to some "other authority" that would make a determination under this section is unclear. It may refer to a licensing authority under § 5-810 of this title, or to some other unit. The parallel provision of § 5-618 of this subtitle refers only to a determination by a "court". The General Assembly may wish to consider reconciling this section and § 5-618 of this subtitle.

Defined terms: "Controlled dangerous substance" § 5-101

"Distribute" § 5-101

"Noncontrolled substance" § 1-101

"Person" § 1-101

"Possess" § 5-101

5-618. POSSESSION OR PURCHASE OF NONCONTROLLED SUBSTANCE.

(A) IN GENERAL.

EXCEPT AS AUTHORIZED IN THIS TITLE, A PERSON MAY NOT POSSESS OR PURCHASE A NONCONTROLLED SUBSTANCE THAT THE PERSON REASONABLY BELIEVES IS A CONTROLLED DANGEROUS SUBSTANCE.

(B) CONSIDERATIONS.

TO DETERMINE IF A PERSON HAS VIOLATED THIS SECTION, THE COURT SHALL INCLUDE IN ITS CONSIDERATION:

(1) WHETHER THE NONCONTROLLED SUBSTANCE WAS PACKAGED IN A MANNER NORMALLY USED TO ILLEGALLY DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE;

(2) IF THE NONCONTROLLED SUBSTANCE WAS PURCHASED, WHETHER THE AMOUNT OF THE CONSIDERATION WAS SUBSTANTIALLY GREATER THAN THE REASONABLE VALUE OF THE NONCONTROLLED SUBSTANCE; AND

(3) WHETHER THE PHYSICAL APPEARANCE OF THE NONCONTROLLED SUBSTANCE IS SUBSTANTIALLY IDENTICAL TO THAT OF A CONTROLLED DANGEROUS SUBSTANCE.

(C) REASONABLE BELIEF NOT A DEFENSE.

IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE SUBSTANCE A PERSON POSSESSED OR PURCHASED WAS NOT A CONTROLLED DANGEROUS SUBSTANCE IF THE PERSON REASONABLY BELIEVED THAT IT WAS A CONTROLLED DANGEROUS SUBSTANCE.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 287B(b) through (e).

In subsection (c) of this section, the former references to a "noncontrolled" substance are deleted as unnecessary.

Defined terms: "Controlled dangerous substance" § 5-101

"Distribute" § 5-101

"Noncontrolled substance" § 1-101

"Person" § 1-101

"Possess" § 5-101

5-619. DRUG PARAPHERNALIA.

(A) "DRUG PARAPHERNALIA" DEFINED.

(1) IN THIS SECTION, "DRUG PARAPHERNALIA" MEANS EQUIPMENT, A PRODUCT, OR MATERIAL THAT IS USED, INTENDED FOR USE, OR DESIGNED FOR USE, IN:

(I) PLANTING, PROPAGATING, CULTIVATING, GROWING, HARVESTING, MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING, STORING, CONTAINING, OR CONCEALING A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THIS TITLE; OR

(II) INJECTING, INGESTING, INHALING, OR OTHERWISE INTRODUCING INTO THE HUMAN BODY A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THIS TITLE.

(2) "DRUG PARAPHERNALIA" INCLUDES:

(I) A KIT USED, INTENDED FOR USE, OR DESIGNED FOR USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, OR HARVESTING ANY SPECIES OF PLANT THAT IS A CONTROLLED DANGEROUS SUBSTANCE OR FROM WHICH A CONTROLLED DANGEROUS SUBSTANCE CAN BE DERIVED;

(II) A KIT USED, INTENDED FOR USE, OR DESIGNED FOR USE IN MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING, PROCESSING, OR PREPARING A CONTROLLED DANGEROUS SUBSTANCE;

(III) AN ISOMERIZATION DEVICE USED, INTENDED FOR USE, OR DESIGNED FOR USE IN INCREASING THE POTENCY OF ANY SPECIES OF PLANT THAT IS A CONTROLLED DANGEROUS SUBSTANCE;

(IV) TESTING EQUIPMENT USED, INTENDED FOR USE, OR DESIGNED FOR USE IN IDENTIFYING OR IN ANALYZING THE STRENGTH, EFFECTIVENESS, OR PURITY OF A CONTROLLED DANGEROUS SUBSTANCE;

(V) A SCALE OR BALANCE USED, INTENDED FOR USE, OR DESIGNED FOR USE IN WEIGHING OR MEASURING A CONTROLLED DANGEROUS SUBSTANCE;

(VI) A DILUENT OR ADULTERANT, SUCH AS QUININE HYDROCHLORIDE, MANNITOL, MANNITE, DEXTROSE, OR LACTOSE, USED, INTENDED FOR USE, OR DESIGNED FOR USE IN CUTTING A CONTROLLED DANGEROUS SUBSTANCE;

(VII) A SEPARATION GIN OR SIFTER USED, INTENDED FOR USE, OR DESIGNED FOR USE IN REMOVING TWIGS AND SEEDS FROM, OR IN OTHERWISE CLEANING OR REFINING, MARIJUANA;

(VIII) A BLENDER, BOWL, CONTAINER, SPOON, OR MIXING DEVICE USED, INTENDED FOR USE, OR DESIGNED FOR USE IN COMPOUNDING A CONTROLLED DANGEROUS SUBSTANCE;

(IX) A CAPSULE, BALLOON, ENVELOPE, OR OTHER CONTAINER USED, INTENDED FOR USE, OR DESIGNED FOR USE IN PACKAGING SMALL QUANTITIES OF A CONTROLLED DANGEROUS SUBSTANCE;

(X) A CONTAINER OR OTHER OBJECT USED, INTENDED FOR USE, OR DESIGNED FOR USE IN STORING OR CONCEALING A CONTROLLED DANGEROUS SUBSTANCE;

(XI) A HYPODERMIC SYRINGE, NEEDLE, OR OTHER OBJECT USED, INTENDED FOR USE, OR DESIGNED FOR USE IN PARENTERALLY INJECTING A CONTROLLED DANGEROUS SUBSTANCE INTO THE HUMAN BODY; AND

(XII) AN OBJECT USED, INTENDED FOR USE, OR DESIGNED FOR USE IN INGESTING, INHALING, OR OTHERWISE INTRODUCING MARIJUANA, COCAINE, HASHISH, OR HASHISH OIL INTO THE HUMAN BODY SUCH AS:

1. A METAL, WOODEN, ACRYLIC, GLASS, STONE, PLASTIC, OR CERAMIC PIPE WITH OR WITHOUT SCREEN, PERMANENT SCREEN, HASHISH HEAD, OR PUNCTURED METAL BOWL;

2. A WATER PIPE;

3. A CARBURETION TUBE OR DEVICE;

4. A SMOKING OR CARBURETION MASK;

5. AN OBJECT KNOWN AS A ROACH CLIP USED TO HOLD BURNING MATERIAL, SUCH AS A MARIJUANA CIGARETTE THAT HAS BECOME TOO SMALL OR TOO SHORT TO BE HELD IN THE HAND;

6. A MINIATURE SPOON USED FOR COCAINE AND COCAINE VIALS;

7. A CHAMBER PIPE;

8. A CARBURETOR PIPE;

9. AN ELECTRIC PIPE;

10. AN AIR-DRIVEN PIPE;

11. A CHILLUM;

12. A BONG; AND

13. AN ICE PIPE OR CHILLER.

(B) FACTORS TO DETERMINE DRUG PARAPHERNALIA.

TO DETERMINE WHETHER AN OBJECT IS DRUG PARAPHERNALIA, A COURT SHALL CONSIDER, AMONG OTHER LOGICALLY RELEVANT FACTORS:

(1) ANY STATEMENT BY AN OWNER OR A PERSON IN CONTROL OF THE OBJECT CONCERNING ITS USE;

(2) ANY PRIOR CONVICTION OF AN OWNER OR A PERSON IN CONTROL OF THE OBJECT UNDER A STATE OR FEDERAL LAW RELATING TO A CONTROLLED DANGEROUS SUBSTANCE;

(3) THE PROXIMITY OF THE OBJECT, IN TIME AND SPACE, TO A DIRECT VIOLATION OF THIS SECTION OR TO A CONTROLLED DANGEROUS SUBSTANCE;

(4) A RESIDUE OF A CONTROLLED DANGEROUS SUBSTANCE ON THE OBJECT;

(5) DIRECT OR CIRCUMSTANTIAL EVIDENCE OF THE INTENT OF AN OWNER OR A PERSON IN CONTROL OF THE OBJECT TO DELIVER IT TO ANOTHER WHO, THE OWNER OR THE PERSON KNOWS OR SHOULD REASONABLY KNOW, INTENDS TO USE THE OBJECT TO FACILITATE A VIOLATION OF THIS SECTION;

(6) ANY INSTRUCTIONS, ORAL OR WRITTEN, PROVIDED WITH THE OBJECT CONCERNING ITS USE;

(7) ANY DESCRIPTIVE MATERIALS ACCOMPANYING THE OBJECT THAT EXPLAIN OR DEPICT ITS USE;

(8) NATIONAL AND LOCAL ADVERTISING CONCERNING USE OF THE OBJECT;

(9) THE MANNER IN WHICH THE OBJECT IS DISPLAYED FOR SALE;

(10) WHETHER THE OWNER OR A PERSON IN CONTROL OF THE OBJECT IS A LICENSED DISTRIBUTOR OR DEALER OF TOBACCO PRODUCTS OR OTHER LEGITIMATE SUPPLIER OF RELATED ITEMS TO THE COMMUNITY;

(11) DIRECT OR CIRCUMSTANTIAL EVIDENCE OF THE RATIO OF SALES OF THE OBJECT TO THE TOTAL SALES OF THE BUSINESS ENTERPRISE;

(12) THE EXISTENCE AND SCOPE OF LEGITIMATE USES FOR THE OBJECT IN THE COMMUNITY; AND

(13) EXPERT TESTIMONY CONCERNING USE OF THE OBJECT.

(C) FINDING OF INTENTION OR DESIGN -- INNOCENCE OF OWNER NOT DISPOSITIVE.

THE INNOCENCE OF AN OWNER OR A PERSON IN CONTROL OF THE OBJECT AS TO A DIRECT VIOLATION OF THIS SECTION DOES NOT PREVENT A FINDING THAT THE OBJECT IS INTENDED FOR USE OR DESIGNED FOR USE AS DRUG PARAPHERNALIA.

(D) USE OR POSSESSION WITH INTENT TO USE; PENALTY.

(1) UNLESS AUTHORIZED UNDER THIS TITLE, A PERSON MAY NOT USE OR POSSESS WITH INTENT TO USE DRUG PARAPHERNALIA TO:

(I) PLANT, PROPAGATE, CULTIVATE, GROW, HARVEST, MANUFACTURE, COMPOUND, CONVERT, PRODUCE, PROCESS, PREPARE, TEST, ANALYZE, PACK, REPACK, STORE, CONTAIN, OR CONCEAL A CONTROLLED DANGEROUS SUBSTANCE; OR

(II) INJECT, INGEST, INHALE, OR OTHERWISE INTRODUCE INTO THE HUMAN BODY A CONTROLLED DANGEROUS SUBSTANCE.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING $500; AND

(II) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $2,000 OR BOTH.

(3) A PERSON WHO IS CONVICTED OF VIOLATING THIS SUBSECTION FOR THE FIRST TIME AND WHO PREVIOUSLY HAS BEEN CONVICTED OF VIOLATING SUBSECTION (E)(4) OF THIS SECTION IS SUBJECT TO THE PENALTY SPECIFIED UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION.

(E) DELIVERY OR SALE; PENALTY.

(1) UNLESS AUTHORIZED UNDER THIS TITLE, A PERSON MAY NOT DELIVER OR SELL, OR MANUFACTURE OR POSSESS WITH INTENT TO DELIVER OR SELL, DRUG PARAPHERNALIA, KNOWING, OR UNDER CIRCUMSTANCES WHERE ONE REASONABLY SHOULD KNOW, THAT THE DRUG PARAPHERNALIA WILL BE USED TO:

(I) PLANT, PROPAGATE, CULTIVATE, GROW, HARVEST, MANUFACTURE, COMPOUND, CONVERT, PRODUCE, PROCESS, PREPARE, TEST, ANALYZE, PACK, REPACK, STORE, CONTAIN, OR CONCEAL A CONTROLLED DANGEROUS SUBSTANCE; OR

(II) INJECT, INGEST, INHALE, OR OTHERWISE INTRODUCE INTO THE HUMAN BODY A CONTROLLED DANGEROUS SUBSTANCE.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING $500; AND

(II) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $2,000 OR BOTH.

(3) A PERSON WHO IS CONVICTED OF VIOLATING THIS SUBSECTION FOR THE FIRST TIME AND WHO PREVIOUSLY HAS BEEN CONVICTED OF VIOLATING PARAGRAPH (4) OF THIS SUBSECTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $2,000 OR BOTH.

(4) IF A PERSON WHO IS AT LEAST 18 YEARS OLD VIOLATES PARAGRAPH (1) OF THIS SUBSECTION BY DELIVERING DRUG PARAPHERNALIA TO A MINOR WHO IS AT LEAST 3 YEARS YOUNGER THAN THE PERSON, THE PERSON IS GUILTY OF A SEPARATE MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 8 YEARS OR A FINE NOT EXCEEDING $15,000 OR BOTH.

(F) ADVERTISING; PENALTY.

(1) A PERSON MAY NOT ADVERTISE IN A NEWSPAPER, MAGAZINE, HANDBILL, POSTER, SIGN, MAILING, OR OTHER WRITING OR PUBLICATION, OR BY SOUND TRUCK, KNOWING, OR UNDER CIRCUMSTANCES WHERE ONE REASONABLY SHOULD KNOW, THAT THE PURPOSE OF THE ADVERTISEMENT, WHOLLY OR PARTLY, IS TO PROMOTE THE SALE OR DELIVERY OF DRUG PARAPHERNALIA.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING $500; AND

(II) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $2,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 287A.

In subsection (a)(1) of this section, the former reference to "all" equipment, products, and materials "of any kind" is deleted as unnecessary.

Also in subsection (a)(1) of this section, the former phrase "but is not limited to" is deleted as unnecessary. *See* Art. 1, § 30.

In subsection (a)(2)(xii)6 of this section, the reference to a miniature "spoon used for cocaine" is substituted for the former reference to miniature "cocaine spoons" for clarity. The Criminal Law Article Review Committee calls this substitution to the attention of the General Assembly.

In subsection (b) of this section, the former reference to a court "or other authority" is deleted as unnecessary.

In subsections (c)(3) and (e)(3) of this section, the phrase "for the first time" is added for clarity.

In subsections (d)(1) and (e)(1) of this section, the references to actions being prohibited "[u]nless authorized under this title" are substituted for the former references to actions being unlawful if "in violation of this subheading" for consistency within this subtitle.

In subsections (d)(2)(ii), (e)(2)(ii), and (f)(2)(ii) of this section, the references to "each" subsequent violation are substituted for the former references to "a" subsequent violation and "a second or" subsequent violation for consistency within this article.

In subsection (e)(3) of this section, the reference to a separate "misdemeanor" is substituted for the former reference to a separate "offense" for clarity.

Defined terms: "Controlled dangerous substance" § 5-101

"Deliver" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Marijuana" § 5-101

"Minor" § 1-101

"Person" § 1-101

"Possess" § 5-101

"Produce" § 5-101

5-620. CONTROLLED PARAPHERNALIA.

(A) PROHIBITED.

UNLESS AUTHORIZED UNDER THIS TITLE, A PERSON MAY NOT:

(1) OBTAIN OR ATTEMPT TO OBTAIN CONTROLLED PARAPHERNALIA BY:

(I) FRAUD, DECEIT, MISREPRESENTATION, OR SUBTERFUGE;

(II) COUNTERFEITING A PRESCRIPTION OR A WRITTEN ORDER;

(III) CONCEALING A MATERIAL FACT OR THE USE OF A FALSE NAME OR ADDRESS;

(IV) FALSELY ASSUMING THE TITLE OF OR REPRESENTING TO BE A MANUFACTURER, DISTRIBUTOR, OR AUTHORIZED PROVIDER; OR

(V) MAKING OR ISSUING A FALSE OR COUNTERFEIT PRESCRIPTION OR WRITTEN ORDER; OR

(2) POSSESS OR DISTRIBUTE CONTROLLED PARAPHERNALIA UNDER CIRCUMSTANCES WHICH REASONABLY INDICATE AN INTENTION TO USE THE CONTROLLED PARAPHERNALIA FOR PURPOSES OF ILLEGALLY ADMINISTERING A CONTROLLED DANGEROUS SUBSTANCE.

(B) EVIDENCE OF UNLAWFUL INTENT.

EVIDENCE OF CIRCUMSTANCES THAT REASONABLY INDICATE AN INTENT TO USE CONTROLLED PARAPHERNALIA TO MANUFACTURE, ADMINISTER, DISTRIBUTE, OR DISPENSE A CONTROLLED DANGEROUS SUBSTANCE UNLAWFULLY INCLUDE THE CLOSE PROXIMITY OF THE CONTROLLED PARAPHERNALIA TO AN ADULTERANT, DILUENT, OR EQUIPMENT COMMONLY USED TO ILLEGALLY MANUFACTURE, ADMINISTER, DISTRIBUTE, OR DISPENSE CONTROLLED DANGEROUS SUBSTANCES, INCLUDING:

(1) A SCALE;

(2) A SIEVE;

(3) A STRAINER;

(4) A MEASURING SPOON;

(5) STAPLES;

(6) A STAPLER;

(7) A GLASSINE ENVELOPE;

(8) A GELATIN CAPSULE;

(9) PROCAINE HYDROCHLORIDE;

(10) MANNITOL;

(11) LACTOSE;

(12) QUININE; AND

(13) A CONTROLLED DANGEROUS SUBSTANCE.

(C) INFORMATION NOT PRIVILEGED.

INFORMATION THAT IS COMMUNICATED TO A PHYSICIAN TO OBTAIN CONTROLLED PARAPHERNALIA FROM THE PHYSICIAN IN VIOLATION OF THIS SUBTITLE IS NOT A PRIVILEGED COMMUNICATION.

(D) PENALTY.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 4 YEARS OR A FINE NOT EXCEEDING $25,000 OR BOTH.

(2) A PERSON WHO VIOLATES THIS SECTION INVOLVING THE USE OR POSSESSION OF MARIJUANA IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 287(b), except as it concerned controlled dangerous substances, (d), except as it defined "controlled paraphernalia", and (e).

In subsection (a)(1)(v) of this section, the reference to "issuing" a prescription is substituted for the former reference to "uttering" a prescription, for consistency within this article.

Also in subsection (a)(1)(v) of this section, the reference to a "counterfeit" prescription or order is substituted for the former reference to a "forged" prescription or order for consistency within this article.

In subsection (b) of this section, the former phrase "but not be limited to" is deleted as unnecessary. Art. 1, § 30, provides that "includes" is used "by way of illustration and not by way of limitation". Similarly, the former

phrase "but not limited to any of the following" is deleted.

Also in subsection (b) of this section, the reference to proximity of controlled paraphernalia to any "other" adulterant, diluent, or equipment is deleted as unnecessary.

In subsection (b)(12) of this section, the conjunction "and" is substituted for the former conjunction "or" as the standard conjunction used in an inclusive list.

Defined terms: "Administer" § 5-101

"Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Controlled paraphernalia" § 5-101

"Counterfeit" § 1-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Marijuana" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-621. USE OF WEAPON AS SEPARATE CRIME.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DRUG TRAFFICKING CRIME" MEANS A FELONY OR A CONSPIRACY TO COMMIT A FELONY INVOLVING THE POSSESSION, DISTRIBUTION, MANUFACTURE, OR IMPORTATION OF A CONTROLLED DANGEROUS SUBSTANCE UNDER §§ 5-602 THROUGH 5-609 AND 5-614 OF THIS ARTICLE.

(3) "FORFEITING AUTHORITY" MEANS THE OFFICE OR PERSON DESIGNATED BY AGREEMENT BETWEEN THE STATE'S ATTORNEY FOR A COUNTY AND THE CHIEF EXECUTIVE OFFICER OF THE GOVERNING BODY THAT HAS JURISDICTION OVER THE ASSETS SUBJECT TO FORFEITURE.

(B) PROHIBITED.

DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME, A PERSON MAY NOT:

(1) POSSESS A FIREARM UNDER SUFFICIENT CIRCUMSTANCES TO CONSTITUTE A NEXUS TO THE DRUG TRAFFICKING CRIME; OR

(2) USE, WEAR, CARRY, OR TRANSPORT A FIREARM.

(C) PENALTY.

(1) IN ADDITION TO THE SENTENCE PROVIDED FOR THE DRUG TRAFFICKING CRIME, A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST VIOLATION, IMPRISONMENT FOR NOT LESS THAN 5 YEARS AND NOT EXCEEDING 20 YEARS; OR

(II) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT FOR NOT LESS THAN 10 YEARS AND NOT EXCEEDING 20 YEARS.

(2) (I) THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF 5 YEARS UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.

(II) THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF 10 YEARS UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.

(3) (I) A COURT MAY NOT SUSPEND ANY PART OF A MANDATORY MINIMUM SENTENCE.

(II) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, A PERSON SENTENCED UNDER THIS SUBSECTION IS NOT ELIGIBLE FOR PAROLE.

(III) A SENTENCE IMPOSED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE CONSECUTIVE TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED BY VIRTUE OF THE COMMISSION OF THE DRUG TRAFFICKING CRIME.

(D) ENHANCED SENTENCE.

(1) (I) IN THIS SUBSECTION, "FIREARM SILENCER" MEANS A DEVICE THAT IS DESIGNED FOR SILENCING, MUFFLING, OR DIMINISHING THE REPORT OF A FIREARM.

(II) "FIREARM SILENCER" INCLUDES A COMBINATION OF PARTS DESIGNED, REDESIGNED, OR INTENDED FOR USE IN ASSEMBLING OR FABRICATING A FIREARM SILENCER OR MUFFLER.

(2) A COURT SHALL DOUBLE THE MINIMUM MANDATORY SENTENCE PROVIDED IN SUBSECTION (C)(1)(II) OF THIS SECTION IF THE FIREARM USED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME IS:

(I) LISTED IN § 4-301 OF THIS ARTICLE OR ARTICLE 27, § 441 OF THE CODE;

(II) A MACHINE GUN; OR

(III) EQUIPPED WITH A FIREARM SILENCER.

(E) FORFEITURE OF FIREARM.

(1) A FIREARM OR AMMUNITION SEIZED UNDER THIS SECTION IS CONTRABAND AND SHALL BE FORFEITED SUMMARILY TO A FORFEITING AUTHORITY.

(2) UNLESS OTHERWISE PROHIBITED BY LAW OR IF FORFEITURE PROCEEDINGS HAVE BEGUN, THE FORFEITING AUTHORITY SHALL RETURN THE SEIZED PROPERTY TO THE OWNER OR POSSESSOR WITHIN 90 DAYS AFTER THE DATE OF SEIZURE IF:

(I) THE OWNER OR POSSESSOR OF THE PROPERTY SEIZED IS ACQUITTED; OR

(II) THE CHARGES AGAINST THE PERSON ARE DISMISSED.

(3) UNLESS OTHERWISE PROHIBITED BY LAW, THE FORFEITING AUTHORITY SHALL RETURN THE SEIZED PROPERTY TO THE OWNER OR POSSESSOR PROMPTLY IF THE STATE:

(I) ENTERS A NOLLE PROSEQUI AGAINST THE OWNER OR POSSESSOR OF PROPERTY SEIZED; AND

(II) DOES NOT CHARGE THE PERSON WITHIN 90 DAYS AFTER THE NOLLE PROSEQUI IS ENTERED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 281A and 297(a)(5)(i).

In subsection (a)(3) of this section, the former reference to a designation "from time to time" is deleted as unnecessary.

In subsection (c)(1)(ii) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a second or" subsequent violation for consistency within this article.

In subsection (e)(1) of this section, the reference to "a forfeiting authority" is added for clarity.

As to a felony involving the possession, distribution, manufacture, or importation of a controlled dangerous substance, *see* §§ 5-602 through 5-606 (possession, distribution, manufacture) and § 5-614 (importation) of this subtitle.

In subsection (e)(2) of this section, the phrase "after the date of seizure" is added to clarify when the "90 days" begins.

Defined terms: "Controlled dangerous substance" § 5-101

"County" § 1-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-622. FIREARM CRIMES.

(A) "FIREARM" DEFINED.

IN THIS SECTION, "FIREARM" INCLUDES:

(1) A HANDGUN, ANTIQUE FIREARM, RIFLE, SHOTGUN, SHORT-BARRELED SHOTGUN, AND SHORT-BARRELED RIFLE, AS THOSE WORDS ARE DEFINED IN § 4-201 OF THIS ARTICLE;

(2) A MACHINE GUN, AS DEFINED IN § 4-401 OF THIS ARTICLE; AND

(3) A REGULATED FIREARM, AS DEFINED IN ARTICLE 27, § 441 OF THE CODE.

(B) PROHIBITED.

A PERSON MAY NOT POSSESS, OWN, CARRY, OR TRANSPORT A FIREARM IF THAT PERSON HAS BEEN CONVICTED OF:

(1) A FELONY UNDER THIS TITLE;

(2) A CRIME UNDER THE LAWS OF ANOTHER STATE OR OF THE UNITED STATES THAT WOULD BE A FELONY UNDER THIS TITLE IF COMMITTED IN THIS STATE;

(3) CONSPIRACY TO COMMIT A CRIME REFERRED TO IN PARAGRAPHS (1) AND (2) OF THIS SUBSECTION; OR

(4) AN ATTEMPT TO COMMIT A CRIME REFERRED TO IN PARAGRAPHS (1) AND (2) OF THIS SUBSECTION.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 291A.

In subsection (a)(1) of this section, the Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the terms "short-barreled shotgun" and "short-barreled rifle", as defined in § 4-201 of this article, are included in the term "handgun" as defined in the same section. It is unclear whether the terms "short-barreled shotgun" and "short-barreled rifle" as used in this section are redundant of the term "handgun", or differ in some way from those terms used in the definition of "handgun".

Defined terms: "Person" § 1-101

"Possess" § 5-101

"State" § 1-101

5-623. PROCEEDS OF DRUG CRIME.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DRUG CRIME" MEANS:

(I) A CRIME UNDER THIS TITLE; OR

(II) A CRIME COMMITTED IN ANOTHER JURISDICTION THAT WOULD BE A CRIME UNDER THIS TITLE IF COMMITTED IN THIS STATE.

(3) "FINANCIAL TRANSACTION" MEANS:

(I) A PAYMENT;

(II) A PURCHASE;

(III) A SALE;

(IV) A LOAN;

(V) A PLEDGE;

(VI) A TRANSFER;

(VII) A DELIVERY;

(VIII) A DEPOSIT;

(IX) A WITHDRAWAL; OR

(X) AN EXTENSION OF CREDIT OR EXCHANGE OF A MONETARY INSTRUMENT OR EQUIVALENT PROPERTY, INCLUDING PRECIOUS METALS, STONES OR JEWELRY, AIRLINE TICKETS, STAMPS, OR CREDIT IN A FINANCIAL INSTITUTION AS DEFINED IN § 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(4) "MONETARY INSTRUMENT" MEANS:

(I) COIN OR CURRENCY OF THE UNITED STATES OR ANY OTHER COUNTRY;

(II) A BANK CHECK;

(III) A TRAVELERS' CHECK;

(IV) A MONEY ORDER;

(V) AN INVESTMENT SECURITY; OR

(VI) A NEGOTIABLE INSTRUMENT.

(5) "PROCEEDS" MEANS MONEY OR ANY OTHER PROPERTY WITH A VALUE EXCEEDING $10,000.

(B) PROHIBITED.

EXCEPT FOR A FINANCIAL TRANSACTION NECESSARY TO PRESERVE A PERSON'S RIGHT TO REPRESENTATION AS GUARANTEED BY THE 6TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 21 OF THE MARYLAND DECLARATION OF RIGHTS, A PERSON MAY NOT, WITH THE INTENT TO PROMOTE A DRUG CRIME OR WITH THE INTENT TO CONCEAL OR DISGUISE THE NATURE, LOCATION, SOURCE, OWNERSHIP OR CONTROL OF PROCEEDS OF A DRUG CRIME:

(1) RECEIVE OR ACQUIRE PROCEEDS KNOWING THAT THE PROCEEDS ARE DERIVED FROM A DRUG CRIME;

(2) ENGAGE IN A FINANCIAL TRANSACTION INVOLVING PROCEEDS KNOWING THAT THE PROCEEDS ARE DERIVED FROM A DRUG CRIME;

(3) GIVE, SELL, TRANSFER, TRADE, INVEST, CONCEAL, TRANSPORT, OR MAINTAIN AN INTEREST IN PROCEEDS KNOWING THAT THE PROCEEDS ARE DERIVED FROM A DRUG CRIME;

(4) DIRECT, PROMOTE, PLAN, ORGANIZE, INITIATE, FINANCE, MANAGE, SUPERVISE, OR FACILITATE THE TRANSPORTATION OR TRANSFER OF PROCEEDS KNOWING THAT THE PROCEEDS ARE DERIVED FROM A DRUG CRIME; OR

(5) CONDUCT A FINANCIAL TRANSACTION INVOLVING PROCEEDS KNOWING THAT THE PROCEEDS ARE DERIVED FROM A DRUG CRIME.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION:

(I) IMPRISONMENT NOT EXCEEDING 5 YEARS;

(II) A FINE NOT EXCEEDING THE GREATER OF $250,000 OR TWICE THE VALUE OF THE PROCEEDS INVOLVED IN THE FINANCIAL TRANSACTION; OR

(III) BOTH; OR

(2) FOR EACH SUBSEQUENT VIOLATION:

(I) IMPRISONMENT NOT EXCEEDING 10 YEARS;

(II) A FINE NOT EXCEEDING THE GREATER OF $500,000 OR 5 TIMES THE VALUE OF THE PROCEEDS INVOLVED IN THE FINANCIAL TRANSACTION; OR

(III) BOTH.

(D) SEPARATE VIOLATION.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOR PURPOSES OF THIS SECTION EACH FINANCIAL TRANSACTION IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297B.

In subsection (a)(2) of this section, the defined term "drug crime" is substituted for the former defined term "controlled dangerous substance offense" for consistency within this article and to reflect the fact that several crimes under this title do not necessarily involve a controlled dangerous substance. *See, e.g.*, § 5-622 of this subtitle, concerning firearm crimes, and Subtitle 7 of this article, concerning prescription drugs and dispensing.

In subsection (c)(2) of this section, the reference to "each" subsequent conviction is substituted for the former reference to "a second or" subsequent conviction for consistency within this article.

Defined term: "Person" § 1-101

5-624. DRUG-INDUCED CONDUCT.

(A) "DRUG" DEFINED.

IN THIS SECTION, "DRUG" DOES NOT INCLUDE ALCOHOL.

(B) PROHIBITED.

A PERSON MAY NOT ADMINISTER A CONTROLLED DANGEROUS SUBSTANCE OR OTHER DRUG TO ANOTHER WITHOUT THAT PERSON'S KNOWLEDGE AND COMMIT AGAINST THAT OTHER:

(1) A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE; OR

(2) A SEXUAL OFFENSE IN THE THIRD DEGREE UNDER § 3-307 OF THIS ARTICLE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $2,500 OR BOTH.

(D) SENTENCING.

A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT OR ACTS ESTABLISHING THE VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 287C.

Defined terms: "Administer" § 5-101

"Controlled dangerous substance" § 5-101

"Person" § 1-101

5-625. RESERVED.

5-626. RESERVED.

PART IV. MISCELLANEOUS CRIMES.

5-627. CONTROLLED DANGEROUS SUBSTANCE NEAR SCHOOL.

(A) PROHIBITED.

A PERSON MAY NOT MANUFACTURE, DISTRIBUTE, DISPENSE, OR POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF § 5-602 OF THIS SUBTITLE OR CONSPIRE TO COMMIT ANY OF THESE CRIMES:

(1) IN A SCHOOL VEHICLE, AS DEFINED UNDER § 11-154 OF THE TRANSPORTATION ARTICLE; OR

(2) IN, ON, OR WITHIN 1,000 FEET OF REAL PROPERTY OWNED BY OR LEASED TO AN ELEMENTARY SCHOOL, SECONDARY SCHOOL, OR COUNTY BOARD AND USED FOR ELEMENTARY OR SECONDARY EDUCATION.

(B) APPLICATION OF SUBSECTION (A).

SUBSECTION (A) OF THIS SECTION APPLIES WHETHER OR NOT:

(1) SCHOOL WAS IN SESSION AT THE TIME OF THE CRIME; OR

(2) THE REAL PROPERTY WAS BEING USED FOR PURPOSES OTHER THAN SCHOOL PURPOSES AT THE TIME OF THE CRIME.

(C) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $20,000 OR BOTH; OR

(II) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT LESS THAN 5 YEARS AND NOT EXCEEDING 40 YEARS OR A FINE NOT EXCEEDING $40,000 OR BOTH.

(2) (I) THE COURT MAY NOT SUSPEND THE 5-YEAR MINIMUM SENTENCE REQUIRED BY PARAGRAPH (1)(II) OF THIS SUBSECTION.

(II) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, A PERSON SENTENCED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION IS NOT ELIGIBLE FOR PAROLE DURING THIS PERIOD OF THE 5-YEAR MINIMUM SENTENCE.

(3) A SENTENCE IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE IMPOSED.

(D) MERGER.

NOTWITHSTANDING ANY OTHER LAW, A CONVICTION UNDER THIS SECTION MAY NOT MERGE WITH A CONVICTION UNDER § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, § 5-607, § 5-608, § 5-609, § 5-612, § 5-613, OR § 5-628 OF THIS SUBTITLE.

(E) MAP AS EVIDENCE.

(1) IN A PROSECUTION UNDER THIS SECTION, A MAP OR CERTIFIED COPY OF A MAP MADE BY A COUNTY OR MUNICIPAL UNIT TO DEPICT THE LOCATION AND BOUNDARIES OF THE AREA WITHIN 1,000 FEET OF REAL PROPERTY OWNED BY OR LEASED TO AN ELEMENTARY SCHOOL, SECONDARY SCHOOL, OR COUNTY BOARD AND USED FOR SCHOOL PURPOSES IS ADMISSIBLE AS PRIMA FACIE EVIDENCE OF THE LOCATION AND BOUNDARIES OF THE DEPICTED AREA, IF THE GOVERNING BODY OF THE COUNTY OR MUNICIPAL CORPORATION APPROVES THE MAP OR CERTIFIED COPY OF THE MAP AS AN OFFICIAL RECORD OF THE LOCATION AND BOUNDARIES OF THE DEPICTED AREA.

(2) THE MAP OR A CERTIFIED COPY OF THE MAP SHALL BE FILED WITH THE COUNTY OR MUNICIPAL CORPORATION, WHICH SHALL MAINTAIN THE MAP OR THE CERTIFIED COPY OF THE MAP AS AN OFFICIAL RECORD.

(3) THE GOVERNING BODY OF THE COUNTY OR MUNICIPAL CORPORATION MAY REVISE PERIODICALLY THE MAP OR CERTIFIED COPY OF THE MAP.

(4) THIS SUBSECTION DOES NOT PRECLUDE THE PROSECUTION FROM INTRODUCING OTHER EVIDENCE TO ESTABLISH AN ELEMENT OF A CRIME UNDER THIS SECTION.

(5) THIS SUBSECTION DOES NOT PRECLUDE THE USE OR ADMISSIBILITY OF MAPS OR DIAGRAMS OTHER THAN THOSE APPROVED BY THE COUNTY OR MUNICIPAL CORPORATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286D.

In subsections (a) and (e)(1) of this section, the references to an area "within 1,000 feet of real property owned by or leased to an elementary school, secondary school, or school board" are substituted for the former references to "within 1,000 feet of any real property owned by or leased to any elementary school, secondary school, or school board, and used for elementary or secondary education" and "within 1,000 of the property of a public or nonpublic elementary or secondary school that is used for school purposes" for brevity.

In subsection (a)(2) of this section, the reference to a "county" board is substituted for the former reference to a "school" board for consistency with the Education Article.

Also in subsection (a)(2) of this section, the former phrase "as defined under § 1-101 of the Education Article" is deleted because none of the relevant references used in former Art. 27, § 286D(a)(1), "elementary school", "secondary school", "school board", or "elementary or secondary education", is defined in ED § 1-101.

In subsection (c)(1)(ii) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a second or" subsequent violation for consistency within this article.

In subsection (e)(4) of this section, the former reference to "relying upon ... testimony" is deleted in light of the broad reference to "introducing ... evidence".

In subsection (e)(1), (2), (3), and (5) of this section, the references to a "municipal corporation" are substituted for the former references to a "municipality" to conform to the terminology used in Md. Constitution, Art. XI-E.

In subsection (e)(1) of this section, the reference to a "unit" is substituted for the former phrase "agency or department" for brevity. *See* General Revisor's Note to article.

Defined terms: "Controlled dangerous substance" § 5-101

"County" § 1-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

5-628. USE OF MINOR.

(A) PROHIBITED.

(1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERSON MAY NOT HIRE, SOLICIT, ENGAGE, OR USE A MINOR TO MANUFACTURE, DELIVER, OR DISTRIBUTE ON BEHALF OF THAT PERSON A CONTROLLED DANGEROUS SUBSTANCE IN SUFFICIENT QUANTITY TO REASONABLY INDICATE UNDER ALL THE CIRCUMSTANCES AN INTENT TO DISTRIBUTE THE CONTROLLED DANGEROUS SUBSTANCE.

(II) THIS PARAGRAPH DOES NOT PROHIBIT A PERSON FROM HIRING, SOLICITING, ENGAGING, OR USING A MINOR TO MANUFACTURE, DELIVER, OR DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE IF THE MANUFACTURING, DELIVERING, OR DISTRIBUTING HAS A LAWFUL PURPOSE.

(2) A PERSON MAY NOT TRANSPORT, CARRY, OR OTHERWISE BRING A MINOR INTO THE STATE TO USE THE MINOR TO VIOLATE THIS SECTION OR § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, § 5-612, § 5-613, § 5-617, OR § 5-627 OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $20,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 286C and 286E.

In subsection (a)(1)(i) of this section, the former reference to the use of a minor "in any manner" is deleted as surplusage.

In subsection (a)(2) of this section, the reference to a violation of "§ 5-602, § 5-603, § 5-604, § 5-605, § 5-606, § 5-612, [and] § 5-613" of this subtitle is substituted for the former reference to "§ 286" of the former "Health - Controlled Dangerous Substances" subheading of Article 27, although §§ 5-607 through 5-609 of this subtitle are also derived from former § 286. Because §§ 5-607 through § 5-609 contain only sentencing provisions and not prohibited acts, they do not define "violations". No substantive change is intended.

Defined terms: "Controlled dangerous substance" § 5-101

"Deliver" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Minor" § 1-101

"Person" § 1-101

GENERAL REVISOR'S NOTE TO SUBTITLE

Former Art. 27, § 290, which limited the maximum punishments for attempting or conspiring to violate the former "Controlled Dangerous Substances" subheading of Article 27, is deleted as duplicative of the general limitations on punishment for

attempt and conspiracy. *See* General Revisor's Note to Title 1, Subtitle 2 of this article.

SUBTITLE 7. PRESCRIPTION DRUGS AND OTHER SUBSTANCES.

PART I. PRESCRIPTION DRUGS.

5-701. DISPENSING PRESCRIPTION DRUG.

(A) SCOPE OF SECTION.

SECTIONS 5-701 THROUGH 5-704 OF THIS SUBTITLE APPLY TO:

(1) THE SALE OF PRESCRIPTION DRUGS BY A MANUFACTURER, WHOLESALE DISTRIBUTOR, RETAIL PHARMACIST, OR JOBBER TO A PERSON NOT LEGALLY QUALIFIED OR AUTHORIZED TO PURCHASE AND HOLD PRESCRIPTION DRUGS FOR USE OR RESALE; AND

(2) AN AUTHORIZED PROVIDER'S ASSISTANT WHO IS NOT LICENSED TO ADMINISTER PRESCRIPTION DRUGS.

(B) PROHIBITED -- DISPENSING NOT ON PRESCRIPTION.

A PERSON MAY NOT DISPENSE A PRESCRIPTION DRUG EXCEPT:

(1) ON AN AUTHORIZED PROVIDER'S:

(I) WRITTEN PRESCRIPTION; OR

(II) ORAL PRESCRIPTION THAT THE PHARMACIST REDUCES TO WRITING AND FILES; OR

(2) BY REFILLING A WRITTEN OR ORAL PRESCRIPTION THAT IS AUTHORIZED:

(I) BY THE AUTHORIZED PROVIDER IN THE ORIGINAL PRESCRIPTION; OR

(II) BY ORAL DIRECTION THAT THE PHARMACIST REDUCES TO WRITING AND FILES.

(C) SAME -- WITHOUT REQUIRED LABEL.

A PERSON MAY NOT DISPENSE A PRESCRIPTION DRUG BY FILLING OR REFILLING A WRITTEN OR ORAL PRESCRIPTION OF AN AUTHORIZED PROVIDER UNLESS THE DRUG BEARS A LABEL THAT, IN ADDITION TO ANY REQUIREMENTS OF THE DEPARTMENT OR FEDERAL LAW, CONTAINS:

(1) THE NAME AND ADDRESS OF THE DISPENSER;

(2) THE SERIAL NUMBER AND DATE OF THE PRESCRIPTION;

(3) THE NAME OF THE AUTHORIZED PROVIDER; AND

(4) IF STATED IN THE PRESCRIPTION, THE NAME AND ADDRESS OF THE PATIENT AND THE DIRECTIONS FOR USE.

(D) OTHER PROHIBITED ACTS.

EXCEPT AS OTHERWISE PROVIDED UNDER THIS TITLE, A PERSON MAY NOT:

(1) MANUFACTURE, DISTRIBUTE, OR POSSESS WITH INTENT TO DISTRIBUTE A PRESCRIPTION DRUG;

(2) AFFIX A FALSE OR COUNTERFEIT LABEL TO A PACKAGE, CONTAINER, OR OTHER RECEPTACLE CONTAINING A PRESCRIPTION DRUG;

(3) OMIT, REMOVE, ALTER, OR OBLITERATE A LABEL OR SYMBOL THAT IS REQUIRED BY FEDERAL, STATE, OR LOCAL LAW ON A PRESCRIPTION DRUG; OR

(4) OBTAIN OR ATTEMPT TO OBTAIN A PRESCRIPTION DRUG BY:

(I) FRAUD, DECEIT, OR MISREPRESENTATION;

(II) THE COUNTERFEITING OR ALTERING OF A PRESCRIPTION OR WRITTEN ORDER;

(III) CONCEALING A MATERIAL FACT;

(IV) USING A FALSE NAME OR ADDRESS;

(V) FALSELY ASSUMING THE TITLE OF OR FALSELY REPRESENTING THAT THE PERSON IS A MANUFACTURER, DISTRIBUTOR, OR AUTHORIZED PROVIDER; OR

(VI) MAKING OR ISSUING A FALSE OR COUNTERFEIT PRESCRIPTION OR WRITTEN ORDER.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 300(b), (c), (e)(1), (g-1), and (h).

In subsection (a) of this section, the reference to an "authorized provider's" assistant is substituted for the former reference to a "practitioner's" assistant for consistency within this title.

In subsection (a)(1) of this section, the reference to a "distributor" is substituted for the former archaic reference to a "wholesale druggist" for

clarity.

In subsection (a)(2) of this section, the former reference to an assistant who is not "legally" licensed is deleted as implicit in the reference to licensure.

In subsections (b), (c), and (d)(4)(v) of this section, the defined term "authorized provider" is substituted for the former reference to "practitioner" for consistency within this title. Similarly, in subsection (c)(3) of this section, the defined term "authorized provider" is substituted for the former reference to "prescriber".

In the introductory language of subsection (b) of this section, the defined term "prescription drug" is substituted for the former reference to a "drug which bears a cautionary label warning against dispensing without a prescription under federal law" for brevity. *See* § 5-101 of this title.

In subsections (b)(1) and (c) of this section, the former references to a provider who is "licensed by law" are deleted in light of the definition of "authorized provider" to the same effect. *See* § 5-101 of this title.

In subsection (c)(4) of this section, the former reference to the name and address of the patient and the directions for use "as contained in the written or oral prescription" is deleted as redundant in light of the phrase "if stated in the prescription".

In subsection (d)(2) and (4)(ii) and (vi) of this section, the defined term "counterfeit" is substituted for the former references to "forgery" and "forged" prescriptions for consistency within this article.

In subsection (d)(4)(i) of this section, the former reference to obtaining a prescription drug by "subterfuge" is deleted as included in the reference to obtaining such a drug by "deceit".

In subsection (e) of this section, the former reference to a person who "refuses, neglects or fails to comply with the provisions and requirements ... [of this section], or who obtains or possesses a prescription drug in violation of this section" is deleted as included in the reference to a person "who violates this section".

Former Art. 27, § 300(e)(2), which prohibited a person from advertising through any media other than a professional or trade publication any controlled dangerous substance or prescription drug by either its "trade name" or by its generic or formulary name, is deleted as unconstitutional and unenforceable as a violation of the First Amendment rights of consumers to receive factual information concerning the sale of drugs. *See* 61 Op. Att'y Gen. 12 (1976), which concluded that the provision was unconstitutional in light of the U.S. Supreme Court holding in *Virginia State Board of Pharmacy v. Virginia Citizens Consumers Council*, 96 S. Ct. 1817 (1976).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that this revision assumes that this section applies to the sale of prescription drugs to certain persons, and also applies to a provider's assistant. The Committee notes that this section could be read to apply to the sale of prescription drugs to certain persons and to specifically identified unlicensed assistants.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly that subsection (b) of this section generally overlaps HG § 21-220. The General Assembly may wish to merge and harmonize these provisions.

Defined terms: "Administer" § 5-101

"Authorized provider" § 5-101

"Counterfeit" § 1-101

"Department" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Drug" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

"Prescription drug" § 5-101

5-702. SALE OF DRUG DIFFERENT FROM THAT ORDERED.

(A) PROHIBITED.

(1) THIS SUBSECTION APPLIES TO A PERSON ENGAGED IN THE BUSINESS OF SELLING PRESCRIPTION DRUGS, CONTROLLED DANGEROUS SUBSTANCES, MEDICINES, CHEMICALS, OR PREPARATIONS FOR MEDICAL USE OR OF COMPOUNDING OR DISPENSING THESE IN ACCORDANCE WITH PHYSICIANS' PRESCRIPTIONS.

(2) A PERSON SUBJECT TO THIS SUBSECTION MAY NOT KNOWINGLY SELL OR DELIVER TO ANOTHER A DRUG, MEDICINE, CHEMICAL, OR PREPARATION FOR MEDICINAL USE THAT IS RECOGNIZED OR AUTHORIZED BY THE LATEST EDITION OF THE UNITED STATES PHARMACOPOEIA AND NATIONAL FORMULARY OR PREPARED ACCORDING TO THE PRIVATE FORMULA OF ANOTHER THAT IS:

(I) OTHER OR DIFFERENT FROM THE PRESCRIPTION DRUG, CONTROLLED DANGEROUS SUBSTANCE, MEDICINE, CHEMICAL, OR PREPARATION THAT IS ORDERED OR CALLED FOR BY THE PERSON; OR

(II) EXCEPT AS AUTHORIZED UNDER § 12-504 OF THE HEALTH OCCUPATIONS ARTICLE, CALLED FOR IN A PRESCRIPTION OF A PHYSICIAN OR OTHER AUTHORIZED PROVIDER.

(B) ACT BY PRINCIPAL, AGENT, OR EMPLOYEE.

SUBSECTION (A) OF THIS SECTION APPLIES TO A PERSON ACTING ON THE PERSON'S OWN BEHALF OR AS AN AGENT OR EMPLOYEE OF SOME OTHER PERSON.

(C) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF NOT LESS THAN 1 MONTH AND NOT EXCEEDING 1 YEAR OR A FINE OF NOT LESS THAN $100 AND NOT EXCEEDING $500 OR BOTH.

(2) A PERSON CONVICTED UNDER THIS SECTION MAY NOT PRACTICE PHARMACY UNDER A CERTIFICATE OR REGISTRATION ISSUED UNDER STATE LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 300(i).

In subsection (a)(1) of this section, the former reference to "corporation" is deleted as included in the defined term "person".

In subsection (a)(2)(ii) of this section, the defined term "authorized provider" is substituted for the former term "authorized prescriber" for consistency within this title.

In subsection (c)(1) of this section, the reference to "1 year" is substituted for the former reference to "12 months" for consistency with similar provisions throughout this article.

Defined terms: "Agent" § 5-101

"Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Deliver" § 5-101

"Dispense" § 5-101

"Drug" § 5-101

"Person" § 1-101

"Prescription drug" § 5-101

5-703. UNSOLICITED MAILING.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO THE MAILING OF A DRUG TO A PERSON WHO UNDER STATE LAW IS AUTHORIZED TO DISBURSE, PRESCRIBE, OR ADMINISTER THE DRUG.

(B) PROHIBITED.

A PERSON MAY NOT SEND BY MAIL A PRESCRIPTION DRUG, CONTROLLED DANGEROUS SUBSTANCE, OR MEDICINE TO "RESIDENT", "OCCUPANT", OR TO A NAMED ADDRESSEE WHO HAS NOT REQUESTED THAT THE PRESCRIPTION DRUG, CONTROLLED DANGEROUS SUBSTANCE, OR MEDICINE BE MAILED.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 300(j).

In subsection (b) of this section, the former reference to any prescription drug, controlled dangerous substances, medicines, etc. "as defined in this subheading" is deleted in light of the title-wide scope of definitions in § 5-101 of this title. *See* § 5-101(a) of this title.

Also in subsection (b) of this section, the former reference to "bulk mailing" is deleted in light of the comprehensive reference to sending "by mail".

In subsection (c) of this section, the former reference to imprisonment "in jail" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Defined terms: "Administer" § 5-101

"Controlled dangerous substance" § 5-101

"Drug" § 5-101

"Person" § 1-101

"Prescription drug" § 5-101

5-704. REGULATIONS.

THE DEPARTMENT MAY ADOPT REGULATIONS TO ADMINISTER AND ENFORCE §§ 5-701 THROUGH 5-703 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 300(g).

The reference to "§§ 5-701 through 5-703 of this subtitle" is substituted for the former reference to "this section", to reflect the reorganization of material derived from former Art. 27, § 300, relating to prescription drugs.

The former reference to adopting "necessary" regulations is deleted as surplusage.

The former reference to promulgating "interpretations, not inconsistent with law" is deleted as included in the reference to "regulations".

Defined term: "Department" § 5-101

5-705. EVIDENCE OF COUNTERFEITING.

(A) IN GENERAL.

SUBJECT TO SUBSECTION (C) OF THIS SECTION, IN A CRIMINAL CASE INVOLVING COUNTERFEITING OF A PRESCRIPTION UNDER THIS TITLE, AN AFFIDAVIT BY AN AUTHORIZED PROVIDER MAY BE INTRODUCED AS EVIDENCE THAT:

(1) THE SIGNATURE ON A PRESCRIPTION OF THE AUTHORIZED PROVIDER HAS BEEN COUNTERFEITED;

(2) THE INDIVIDUAL NAMED ON THE PRESCRIPTION WAS NOT A PATIENT OF THE AUTHORIZED PROVIDER; OR

(3) THE INDIVIDUAL NAMED ON THE PRESCRIPTION DID NOT HAVE A PRESCRIPTION FROM THE AUTHORIZED PROVIDER FOR THE NAMED PRESCRIPTION DRUG OR CONTROLLED DANGEROUS SUBSTANCE OR DID NOT HAVE A PRESCRIPTION FOR THAT QUANTITY OF THE PRESCRIPTION DRUG OR CONTROLLED DANGEROUS SUBSTANCE.

(B) AFFIDAVIT.

THE AFFIDAVIT SHALL:

(1) BE ATTACHED TO A COPY OF THE PRESCRIPTION;

(2) BE GIVEN UNDER OATH SUBJECT TO THE PENALTY OF PERJURY;

(3) DECLARE THAT THE PRESCRIPTION IS COUNTERFEIT OR ALTERED;

(4) DESCRIBE IN DETAIL THE PARTS OF THE PRESCRIPTION THAT HAVE BEEN COUNTERFEITED; AND

(5) STATE WHETHER A PATIENT RELATIONSHIP EXISTS BETWEEN THE INDIVIDUAL NAMED ON THE PRESCRIPTION AND THE AUTHORIZED PROVIDER.

(C) NOTICE OF AFFIDAVIT.

(1) AT LEAST 10 DAYS BEFORE A PROCEEDING IN WHICH THE STATE INTENDS TO INTRODUCE INTO EVIDENCE AN AFFIDAVIT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, THE STATE SHALL PROVIDE WRITTEN NOTICE TO THE DEFENDANT THAT THE STATE INTENDS TO:

(I) RELY ON THE AFFIDAVIT; AND

(II) INTRODUCE THE AFFIDAVIT INTO EVIDENCE AT THE PROCEEDING.

(2) ON WRITTEN DEMAND OF A DEFENDANT FILED AT LEAST 5 DAYS BEFORE THE PROCEEDING DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE STATE SHALL REQUIRE THE PRESENCE OF THE AFFIANT AS A PROSECUTION WITNESS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 305(b) and (c).

Throughout this section, the defined term "counterfeit" in various grammatical inflections is substituted for the former references to "forgery" and a "forged" prescription for consistency within this article.

In subsection (a)(2) of this section, the former reference to an authorized provider "who is licensed by law to prescribe" is deleted as included in the definition of that term. *See* § 5-101 of this title.

Defined terms: "Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Counterfeit" § 1-101

"Prescription drug" § 5-101

5-706. RESERVED.

5-707. RESERVED.

PART II. OTHER SUBSTANCES.

5-708. INHALANT.

(A) SCOPE OF SECTION.

(1) THIS SECTION APPLIES TO FINGERNAIL POLISH, MODEL AIRPLANE GLUE, OR ANY OTHER SUBSTANCE THAT CAUSES INTOXICATION, INEBRIATION, EXCITEMENT, STUPEFACTION, OR DULLING OF THE BRAIN OR NERVOUS SYSTEM WHEN SMELLED OR INHALED.

(2) THIS SECTION DOES NOT APPLY TO:

(I) THE INHALATION OF ANAESTHESIA FOR MEDICAL OR DENTAL PURPOSES; OR

(II) CONTROLLED DANGEROUS SUBSTANCES.

(B) PROHIBITED.

(1) A PERSON MAY NOT DELIBERATELY SMELL OR INHALE A SUBSTANCE LISTED IN PARAGRAPH (2) OF THIS SUBSECTION IN AN AMOUNT THAT CAUSES INTOXICATION, EXCITEMENT, STUPEFACTION, OR DULLING OF THE BRAIN OR NERVOUS SYSTEM.

(2) THIS SECTION APPLIES TO A DRUG OR ANY OTHER NOXIOUS SUBSTANCE OR CHEMICAL THAT CONTAINS:

(I) AN ALDEHYDE;

(II) BUTANE;

(III) BUTYL NITRITE;

(IV) A CHLORINATED HYDROCARBON;

(V) ETHER;

(VI) A FLUORINATED HYDROCARBON;

(VII) A KETONE;

(VIII) METHYL BENZENE;

(IX) NITROUS OXIDE;

(X) AN ORGANIC ACETATE; OR

(XI) ANOTHER SUBSTANCE CONTAINING SOLVENTS RELEASING TOXIC VAPORS.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 301.

In subsection (a)(1) of this section, the reference to a substance or chemical "that causes intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system when smelled or inhaled" is substituted for the former reference to a substance or chemical "which has the aforementioned effect upon the brain or nervous system" for clarity.

Also in subsection (a)(1) of this section, the former reference to this section applying "with particularity" to certain substances is deleted as surplusage.

In subsection (b)(2) of this section, the former reference to drugs, noxious substances, or chemicals that contain "wholly or in part" certain substances is deleted as included in the reference to a substance "that contains" the listed chemicals.

Defined terms: "Controlled dangerous substance" § 5-101

"Drug" § 5-101

"Person" § 1-101

5-709. DISTRIBUTION OF INHALANT AND INSTRUCTION ON INHALING.

(A) "DISTRIBUTE" DEFINED.

IN THIS SECTION, "DISTRIBUTE" INCLUDES ACTUAL, CONSTRUCTIVE, OR ATTEMPTED TRANSFER, EXCHANGE, OR DELIVERY, REGARDLESS OF REMUNERATION OR AGENCY RELATIONSHIP.

(B) PROHIBITED -- DISTRIBUTION OF INHALANTS.

A PERSON MAY NOT DISTRIBUTE OR POSSESS WITH INTENT TO DISTRIBUTE TO ANOTHER A SUBSTANCE LISTED IN § 5-708 OF THIS SUBTITLE:

(1) WITH THE INTENT TO INDUCE UNLAWFUL INHALING OF THE SUBSTANCE; OR

(2) WITH THE KNOWLEDGE THAT THE OTHER WILL UNLAWFULLY INHALE THE SUBSTANCE.

(C) SAME -- INSTRUCTION ON INHALING.

A PERSON MAY NOT:

(1) INSTRUCT ANOTHER IN THE PRACTICE OF INHALING OR SMELLING THAT IS PROHIBITED UNDER § 5-708(B) OF THIS SUBTITLE; OR

(2) DISTRIBUTE A BUTANE CANISTER TO A MINOR.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 301A.

In subsection (a) of this section, the former reference to transfer, exchange, or delivering "from one person to another" is deleted as implicit.

In subsection (c) of this section, the reference to "the practice of inhaling or smelling that is prohibited under § 5-708(b) of this subtitle" is substituted for the former reference to "the practice of unlawful inhaling as defined in § 301 of this article" to reflect that smelling as well as inhaling is prohibited under former Art. 27, § 301, now § 5-708 of this subtitle, and that the practice was "prohibited" and not "defined" in that provision.

Defined terms: "Deliver" § 5-101

"Minor" § 1-101

"Person" § 1-101

"Possess" § 5-101

5-710. USE OF STEROID OR HORMONE -- WARNING.

(A) HUMAN GROWTH HORMONE DEFINED.

IN THIS SECTION, "HUMAN GROWTH HORMONE" MEANS:

(1) SOMATREM, SOMATROPIN, AND ANY OF THEIR ANALOGUES; OR

(2) A SUBSTANCE LABELED AS BEING OR CONTAINING SOMATREM OR SOMATROPIN AND ANY ANALOGUE OF SOMATREM OR SOMATROPIN.

(B) SCOPE OF SECTION.

THIS SECTION APPLIES TO AN ATHLETIC FACILITY, COMMERCIAL HEALTH CLUB, PUBLIC RECREATION CENTER, WEIGHT TRAINING GYM, SCHOOL GYMNASIUM, OR OTHER ESTABLISHMENT OPERATED PRIMARILY FOR THE EXERCISE, PHYSICAL FITNESS, ATHLETIC TRAINING, OR PHYSICAL EDUCATION OF THE INDIVIDUALS WHO USE THE FACILITY.

(C) WARNING NOTICE IN LOCKER ROOMS.

THE OPERATOR OF A FACILITY SUBJECT TO THIS SECTION SHALL OBTAIN AND AFFIX AT LEAST ONE WARNING NOTICE IN EACH LOCKER ROOM MAINTAINED IN THE FACILITY.

(D) LETTERING AND CONTENT REQUIREMENTS.

(1) THE LETTERING IN EACH WARNING NOTICE SHALL BE AT LEAST 1 INCH HIGH AND SHALL BE CONSPICUOUSLY PLACED FOR MAXIMUM POSSIBLE VISIBILITY.

(2) THE WARNING NOTICE SHALL READ:

WARNING

THE NONPRESCRIPTION USE, POSSESSION, OR DISTRIBUTION OF ANABOLIC STEROIDS OR HUMAN GROWTH HORMONE IS ILLEGAL IN THE STATE OF MARYLAND. ON CONVICTION, VIOLATORS ARE SUBJECT TO IMPRISONMENT OR A FINE OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 304.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that although anabolic steroids are listed in Schedule III (§ 5-404(b) of this title), and are subject to the penalties of this title, the only explicit reference in the Annotated Code of Maryland to "human growth hormones" (somatrem or somatropin or analogues) as prohibited substances is in this section, which requires a notice of illegality, but has no actual penalty. If the hormones are prescription drugs, then their distribution without a prescription is no less (or more) illegal than the distribution of any other prescription drug without the required prescription.

Defined terms: "Distribute" § 5-101

"Person" § 1-101

"Possess" § 5-101

SUBTITLE 8. CRIMINAL PROCEDURE.

5-801. INVESTIGATION BY STATE POLICE.

NOTWITHSTANDING ANY OTHER LAW, THE DEPARTMENT OF STATE POLICE MAY INITIATE INVESTIGATIONS AND ENFORCE THIS TITLE AND TITLE 12 OF THE CRIMINAL PROCEDURE ARTICLE THROUGHOUT THE STATE WITHOUT REGARD TO ANY LIMITATION OTHERWISE APPLICABLE TO THAT DEPARTMENT'S ACTIVITIES IN A MUNICIPAL CORPORATION OR OTHER POLITICAL SUBDIVISION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 298(e).

The reference allowing the Department of State Police to initiate investigations and enforce "this title" is substituted for the former obsolete reference to "the provisions of §§ 276 through 302 of this article" to apply to all sections of this title, including those that were enacted after the enactment of former Art. 27, § 298(e). When former § 298(e) was enacted by Ch. 403 of the Laws of 1970, the former controlled dangerous substances subheading included only §§ 276 through 302.

5-802. STATEWIDE JURISDICTION FOR OFFICERS.

(A) INVESTIGATIONS AND ENFORCEMENT.

(1) NOTWITHSTANDING ANY OTHER LAW, A LAW ENFORCEMENT OFFICER OF THE MARYLAND TRANSPORTATION AUTHORITY POLICE, THE MARYLAND PORT ADMINISTRATION POLICE, OR A MUNICIPAL CORPORATION OR COUNTY MAY INVESTIGATE AND OTHERWISE ENFORCE THIS TITLE AND TITLE 12 OF THE CRIMINAL PROCEDURE ARTICLE THROUGHOUT THE STATE WITHOUT ANY LIMITATION AS TO JURISDICTION AND TO THE SAME EXTENT AS A LAW ENFORCEMENT OFFICER OF THE DEPARTMENT OF STATE POLICE.

(2) THE AUTHORITY GRANTED IN PARAGRAPH (1) OF THIS SUBSECTION MAY BE EXERCISED ONLY IN ACCORDANCE WITH REGULATIONS THAT THE SECRETARY OF THE STATE POLICE ADOPTS.

(3) THE REGULATIONS ARE NOT SUBJECT TO TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE.

(B) REQUIRED NOTIFICATIONS.

IF ACTION IS TAKEN UNDER THE AUTHORITY GRANTED IN THIS SECTION, NOTIFICATION OF AN INVESTIGATION OR ENFORCEMENT ACTION SHALL BE MADE:

(1) IN A MUNICIPAL CORPORATION, TO THE CHIEF OF POLICE OR DESIGNEE OF THE CHIEF OF POLICE;

(2) IN A COUNTY THAT HAS A COUNTY POLICE DEPARTMENT, TO THE CHIEF OF POLICE OR DESIGNEE OF THE CHIEF OF POLICE;

(3) IN A COUNTY WITHOUT A POLICE DEPARTMENT, TO THE SHERIFF OR DESIGNEE OF THE SHERIFF;

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

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

(C) IMMUNITIES AND EXEMPTIONS FOR OFFICERS.

WHEN ACTING UNDER THE AUTHORITY GRANTED IN THIS SECTION, A LAW ENFORCEMENT OFFICER:

(1) IN ADDITION TO ANY OTHER IMMUNITIES AND EXEMPTIONS TO WHICH THE OFFICER MAY BE ENTITLED, HAS THE IMMUNITIES FROM LIABILITY AND EXEMPTIONS ACCORDED TO A LAW ENFORCEMENT OFFICER OF THE DEPARTMENT OF STATE POLICE; BUT

(2) REMAINS AN EMPLOYEE OF THE OFFICER'S EMPLOYING AGENCY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 298(f).

In subsection (a)(1) of this section, the reference allowing law enforcement officers to investigate and otherwise enforce "this title" is substituted for the former obsolete reference to "the provisions of [Art. 27,] §§ 276 through 302 of this article" to apply to all sections of this title, including those that were enacted after the enactment of former § 298(e). When former § 298(e) was enacted by Ch. 403 of the Laws of 1970, the controlled dangerous substances subheading included only former §§ 276 through 302.

Also in subsection (a)(1) of this section, the reference to a "municipal corporation" is substituted for the former reference to "municipality" to conform to the terminology used in Md. Constitution, Art. XI-E. Similarly, in subsection (b)(1) of this section, the reference to "municipal corporation" is substituted for the former reference to "incorporated municipality".

In subsection (c)(2) of this section, the former reference to law enforcement officers "at all times and for all purposes" remaining employees of their respective employing agency is deleted as surplusage.

Defined term: "County" § 1-101

5-803. PAYMENT FOR INFORMATION ABOUT VIOLATIONS.

(A) PAYMENTS BY STATE POLICE.

(1) THE SECRETARY OF THE STATE POLICE MAY PAY A PERSON THE SUM OF MONEY THAT THE SECRETARY CONSIDERS APPROPRIATE FOR INFORMATION ABOUT A VIOLATION OF THIS TITLE.

(2) THE MONEY SHALL:

(I) BE PAID WITHOUT REFERENCE TO ANY REWARD TO WHICH THE PERSON MAY OTHERWISE BE ENTITLED BY LAW; AND

(II) BE FROM FUNDS APPROPRIATED FOR THE DEPARTMENT OF STATE POLICE, INTELLIGENCE DIVISION.

(B) REIMBURSEMENT FOR MONEYS EXPENDED.

MONEY THAT IS EXPENDED FROM APPROPRIATIONS OF THE DEPARTMENT OF STATE POLICE, INTELLIGENCE DIVISION, FOR PURCHASE OF CONTROLLED DANGEROUS SUBSTANCES AND THAT IS SUBSEQUENTLY RECOVERED SHALL BE REIMBURSED TO THE CURRENT APPROPRIATION FOR THAT DEPARTMENT.

(C) ADVANCE MONEY FOR ENFORCEMENT.

THE SECRETARY OF THE STATE POLICE MAY ADVANCE MONEY TO ENFORCE THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 299.

In subsection (a)(2)(i) of this section, the former reference to "moieties" is deleted in light of Art. 38, § 3, which prohibits payment of any portion of a fine, penalty, or forfeiture to an informer.

Defined terms: "Controlled dangerous substance" § 5-101

"Person" § 1-101

5-804. ADMINISTRATIVE INSPECTION WARRANTS.

(A) "ADMINISTRATIVE PROBABLE CAUSE" DEFINED.

IN THIS SECTION, "ADMINISTRATIVE PROBABLE CAUSE" MEANS A VALID PUBLIC INTEREST IN THE EFFECTIVE ENFORCEMENT OF THIS TITLE OR REGULATIONS SUFFICIENT TO JUSTIFY ADMINISTRATIVE INSPECTION OF THE AREA, PREMISES, BUILDING, OR CONVEYANCE IN THE CIRCUMSTANCES SPECIFIED IN THE APPLICATION FOR THE ADMINISTRATIVE INSPECTION WARRANT.

(B) ISSUANCE.

ON SHOWING OF ADMINISTRATIVE PROBABLE CAUSE, A JUDGE OF THE STATE MAY ISSUE AN ADMINISTRATIVE INSPECTION WARRANT TO CONDUCT:

(1) ADMINISTRATIVE INSPECTIONS AUTHORIZED BY THIS TITLE; AND

(2) SEIZURES OF PROPERTY APPROPRIATE TO THE INSPECTIONS.

(C) CONTENTS.

(1) AN ADMINISTRATIVE INSPECTION WARRANT SHALL ISSUE ONLY ON AN AFFIDAVIT:

(I) OF A DESIGNATED OFFICER OR EMPLOYEE WITH KNOWLEDGE OF THE FACTS ALLEGED;

(II) THAT IS SWORN TO BEFORE THE JUDGE; AND

(III) THAT ESTABLISHES THE GROUNDS FOR ISSUING THE WARRANT.

(2) IF THE JUDGE IS SATISFIED THAT GROUNDS FOR THE APPLICATION EXIST OR THAT THERE IS ADMINISTRATIVE PROBABLE CAUSE TO BELIEVE THEY EXIST, THE JUDGE SHALL ISSUE AN ADMINISTRATIVE INSPECTION WARRANT THAT IDENTIFIES:

(I) THE AREA, PREMISES, BUILDING, OR CONVEYANCE TO BE INSPECTED;

(II) THE PURPOSE OF THE INSPECTION; AND

(III) WHERE APPROPRIATE, THE TYPE OF PROPERTY TO BE INSPECTED.

(3) THE WARRANT SHALL BE DIRECTED TO A PERSON AUTHORIZED TO EXECUTE IT.

(4) THE WARRANT SHALL:

(I) IDENTIFY THE ITEM OR TYPE OF PROPERTY TO BE SEIZED;

(II) STATE THE GROUNDS FOR ITS ISSUANCE AND THE NAME OF THE AFFIANT;

(III) REQUIRE THE PERSON TO WHOM THE WARRANT IS DIRECTED TO INSPECT THE AREA, PREMISES, BUILDING, OR CONVEYANCE IDENTIFIED FOR THE SPECIFIED PURPOSE;

(IV) REQUIRE, WHERE APPROPRIATE, THE SEIZURE OF THE SPECIFIED PROPERTY;

(V) REQUIRE THAT THE WARRANT BE SERVED DURING NORMAL BUSINESS HOURS; AND

(VI) DESIGNATE THE JUDGE TO WHOM THE WARRANT IS TO BE RETURNED.

(D) EXECUTION.

(1) AN ADMINISTRATIVE INSPECTION WARRANT ISSUED IN ACCORDANCE WITH THIS SECTION SHALL BE EXECUTED AND RETURNED WITHIN 10 DAYS AFTER ITS DATE.

(2) IF PROPERTY IS SEIZED IN ACCORDANCE WITH AN ADMINISTRATIVE INSPECTION WARRANT, THE PERSON WHO EXECUTES THE WARRANT:

(I) SHALL GIVE TO THE PERSON FROM WHOM OR FROM WHOSE PREMISES THE PROPERTY WAS TAKEN A COPY OF THE WARRANT AND A RECEIPT FOR THE PROPERTY TAKEN; OR

(II) SHALL LEAVE THE COPY AND RECEIPT AT THE PLACE FROM WHICH THE PROPERTY WAS TAKEN.

(3) THE WARRANT SHALL BE RETURNED PROMPTLY AND BE ACCOMPANIED BY A WRITTEN INVENTORY OF ANY PROPERTY TAKEN.

(4) THE INVENTORY SHALL BE MADE IN THE PRESENCE OF THE PERSON EXECUTING THE WARRANT AND:

(I) THE PERSON FROM WHOSE POSSESSION OR PREMISES THE PROPERTY WAS TAKEN; OR

(II) IF THAT PERSON IS NOT PRESENT, AT LEAST ONE OTHER CREDIBLE PERSON.

(5) ON REQUEST, THE JUDGE SHALL DELIVER A COPY OF THE INVENTORY TO:

(I) THE PERSON FROM WHOM OR FROM WHOSE PREMISES THE PROPERTY WAS TAKEN; AND

(II) THE APPLICANT FOR THE WARRANT.

(6) A JUDGE WHO ISSUES AN ADMINISTRATIVE INSPECTION WARRANT UNDER THIS SECTION SHALL:

(I) ATTACH TO THE WARRANT A COPY OF THE RETURN AND ALL PAPERS FILED IN CONNECTION WITH THE RETURN; AND

(II) FILE THEM WITH THE CLERK OF THE COURT FROM WHICH THE WARRANT WAS ISSUED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 294(a).

In subsections (a), (b), and (c)(2) of this section, the references to "administrative" probable cause are added to distinguish the standard for issuance of an administrative inspection warrant under this section from the standard of probable cause for issuance of search warrants in criminal matters. *See, e.g., U.S. v. Leon*, 468 U.S. 897 (1984); *Andresen v. Maryland*, 427 U.S. 463 (1976); *cf. Frank v. Maryland*, 359 U.S. 360 (1959). The Criminal Law Article Review Committee brings this addition to the attention of the General Assembly.

In subsection (b) of this section, the former reference to the power of a judge of this State to issue warrants "within his jurisdiction" is deleted as surplusage.

Also in subsection (b) of this section, the former reference to a showing of administrative probable cause "upon proper oath or affirmation" is deleted as implicit in the reference in subsection (b) to "[o]n showing" and the requirement in subsection (c)(1)(ii) that the affiant "[swear] to [facts] before the judge".

Also in subsection (b) of this section, the former reference to inspections authorized by this subheading "or regulations thereunder" is deleted as included in the reference to "inspections authorized by this title".

In subsection (c)(1) of this section, the former reference to an officer or employee who is "duly" designated is deleted as surplusage.

In subsection (c)(2)(iii) of this section, the former reference to the type of property to be inspected "if any" is deleted as unnecessary in light of the reference to seizing property "where appropriate".

Defined term: "Person" § 1-101

5-805. INSPECTIONS.

(A) "CONTROLLED PREMISES" DEFINED.

IN THIS SECTION, "CONTROLLED PREMISES" MEANS:

(1) A PLACE WHERE A REGISTRANT OR PERSON EXEMPTED FROM REGISTRATION REQUIREMENTS UNDER THIS TITLE IS REQUIRED TO KEEP RECORDS; OR

(2) A PLACE, INCLUDING A FACTORY, WAREHOUSE, ESTABLISHMENT, OR CONVEYANCE, WHERE A REGISTRANT OR PERSON EXEMPTED FROM REGISTRATION REQUIREMENTS UNDER THIS TITLE MAY POSSESS, MANUFACTURE, COMPOUND, PROCESS, SELL, DELIVER, OR DISPOSE OF A CONTROLLED DANGEROUS SUBSTANCE.

(B) INSPECTIONS ALLOWED.

THE DEPARTMENT MAY MAKE ADMINISTRATIVE INSPECTIONS OF CONTROLLED PREMISES IN ACCORDANCE WITH THIS SECTION AND DESIGNATE THOSE WHO MAY SEIZE PROPERTY UNDER THIS SECTION.

(C) INSPECTIONS IN CONTROLLED PREMISES.

AN OFFICER OR EMPLOYEE DESIGNATED BY THE DEPARTMENT MAY ENTER CONTROLLED PREMISES TO CONDUCT AN ADMINISTRATIVE INSPECTION:

(1) WHEN AUTHORIZED BY AN ADMINISTRATIVE INSPECTION WARRANT ISSUED UNDER § 5-804 OF THIS SUBTITLE; AND

(2) ON PRESENTING THE WARRANT AND APPROPRIATE CREDENTIALS TO THE OWNER, OPERATOR, OR AGENT IN CHARGE.

(D) INSPECTION RIGHTS.

WHEN AUTHORIZED BY AN ADMINISTRATIVE INSPECTION WARRANT, AN OFFICER OR EMPLOYEE DESIGNATED BY THE DEPARTMENT MAY:

(1) INSPECT AND COPY RECORDS THAT MUST BE KEPT UNDER THIS TITLE;

(2) INSPECT, WITHIN REASONABLE LIMITS AND IN A REASONABLE MANNER:

(I) CONTROLLED PREMISES AND ALL PERTINENT EQUIPMENT, FINISHED AND UNFINISHED MATERIAL, CONTAINERS, AND LABELING IN THE CONTROLLED PREMISES;

(II) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, ALL OTHER THINGS IN THE CONTROLLED PREMISES, INCLUDING RECORDS, FILES, PAPERS, PROCESSES, CONTROLS, AND FACILITIES, BEARING ON VIOLATION OF THIS TITLE; AND

(3) INVENTORY STOCK AND OBTAIN SAMPLES OF A CONTROLLED DANGEROUS SUBSTANCE IN THE CONTROLLED PREMISES.

(E) WARRANTLESS INSPECTIONS.

WITHOUT A WARRANT, THE DEPARTMENT MAY INSPECT BOOKS AND RECORDS IN ACCORDANCE WITH THIS TITLE AND ENTER AND CONDUCT ADMINISTRATIVE INSPECTIONS, INCLUDING SEIZURES OF PROPERTY:

(1) WITH THE CONSENT OF THE OWNER, OPERATOR, OR AGENT IN CHARGE OF THE CONTROLLED PREMISES;

(2) IN A SITUATION THAT PRESENTS IMMINENT DANGER TO HEALTH OR SAFETY;

(3) IN A SITUATION THAT INVOLVES INSPECTION OF CONVEYANCES WHERE THERE IS REASONABLE CAUSE TO BELIEVE THAT THE MOBILITY OF THE CONVEYANCE MAKES IT IMPRACTICABLE TO OBTAIN A WARRANT;

(4) IN ANY OTHER EXCEPTIONAL OR EMERGENCY SITUATION IN WHICH TIME OR OPPORTUNITY TO APPLY FOR A WARRANT IS LACKING; AND

(5) IN ALL OTHER SITUATIONS WHERE A WARRANT IS NOT LEGALLY REQUIRED.

(F) DATA NOT AVAILABLE FOR INSPECTION.

UNLESS THE OWNER, OPERATOR, OR AGENT IN CHARGE OF THE CONTROLLED PREMISES CONSENTS IN WRITING, AN INSPECTION AUTHORIZED UNDER THIS SECTION MAY NOT EXTEND TO:

(1) FINANCIAL DATA;

(2) SALES DATA OTHER THAN SHIPMENT DATA; OR

(3) PRICING DATA.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 294(b).

In subsection (a)(2) of this section, the defined term "possess" is substituted for the former reference to "hold" to conform to the terminology used elsewhere in this title.

Also in subsection (a)(2) of this section, the former word "otherwise" is deleted as unnecessary.

In the introductory language of subsection (e) of this section, the former reference to the Department "and its agents" is deleted as implicit in the reference to the "Department".

In subsection (e)(4) of this section, the reference to an exceptional or emergency "situation" is substituted for the former reference to an exceptional or emergency "circumstance" to conform to the terminology used elsewhere in this subsection.

Defined terms: "Agent" § 5-101

"Controlled dangerous substance" § 5-101

"Deliver" § 5-101

"Department" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

"Registrant" § 5-101

5-806. TEMPORARY AND PERMANENT INJUNCTIONS.

THE DEPARTMENT, THE ATTORNEY GENERAL, AND THE STATE'S ATTORNEY FOR A COUNTY MAY APPLY TO THE APPROPRIATE COURT FOR A TEMPORARY OR PERMANENT INJUNCTION TO RESTRAIN A PERSON FROM VIOLATING THIS TITLE:

(1) WHETHER OR NOT AN ADEQUATE REMEDY AT LAW EXISTS;

(2) IN ADDITION TO THE OTHER REMEDIES PROVIDED BY THIS TITLE; AND

(3) NOTWITHSTANDING ANY OTHER LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 295.

In the introductory language of this section, the former reference to any county "or Baltimore City, as the case may be" is deleted as unnecessary because in this article Baltimore City is included in the defined term "county".

Defined terms: "County" § 1-101

"Department" § 5-101

"Person" § 1-101

5-807. BURDEN OF PROOF.

(A) BURDEN ON CLAIMANT.

(1) THE STATE NEED NOT NEGATE AN EXEMPTION, PROVISO, OR EXCEPTION SET FORTH IN THIS TITLE IN A:

(I) COMPLAINT, INFORMATION, INDICTMENT, OR OTHER PLEADING; OR

(II) TRIAL, HEARING, OR OTHER PROCEEDING UNDER THIS TITLE.

(2) THE BURDEN OF PROOF TO ESTABLISH AN EXEMPTION, PROVISO, OR EXCEPTION IS ON THE PERSON CLAIMING ITS BENEFIT.

(B) PRESUMPTION CONCERNING REGISTRATION OR FORM.

(1) IN THE ABSENCE OF PROOF THAT A PERSON IS A REGISTRANT OR HOLDER OF AN ORDER FORM ISSUED UNDER § 5-303(D) OF THIS TITLE, THE PERSON IS PRESUMED NOT TO BE A REGISTRANT OR HOLDER OF A FORM.

(2) THE PERSON HAS THE BURDEN OF PROOF TO REBUT THE PRESUMPTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 298(a).

Defined terms: "Person" § 1-101

"Registrant" § 5-101

5-808. IMMUNITY FROM CRIMINAL LIABILITY FOR PUBLIC OFFICIALS AND EMPLOYEES.

(A) IN GENERAL.

IF THE INDIVIDUAL IS ENGAGED IN THE ENFORCEMENT OR PROSECUTION OF THIS TITLE OR OTHER LAW RELATING TO CONTROLLED DANGEROUS SUBSTANCES, CRIMINAL LIABILITY MAY NOT BE IMPOSED UNDER THIS TITLE ON:

(1) AN AUTHORIZED OFFICER OF THE UNITED STATES, THIS STATE, OR A POLITICAL SUBDIVISION OF THIS STATE; OR

(2) AN AUTHORIZED POLICE DEPARTMENT CIVILIAN EMPLOYEE OF THE UNITED STATES, THIS STATE, OR A POLITICAL SUBDIVISION OF THIS STATE.

(B) POSSESSION OF CONTROLLED DANGEROUS SUBSTANCES OR CONTROLLED PARAPHERNALIA.

A PUBLIC OFFICIAL OR EMPLOYEE WHO IS COVERED UNDER SUBSECTION (A) OF THIS SECTION MAY TEMPORARILY POSSESS CONTROLLED DANGEROUS SUBSTANCES OR CONTROLLED PARAPHERNALIA INCIDENTAL TO THE DISCHARGE OF OFFICIAL OR EMPLOYEE DUTIES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 298(b).

In subsection (a) of this section, the former references to a "duly" authorized officer or employee are deleted as surplusage.

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

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section is derived from former Art. 27, § 298(b), which was enacted by Chapter 403 of the Acts of 1970 and became effective July 1, 1970. It refers only to "controlled paraphernalia", also enacted by Chapter 403, not to "drug paraphernalia". "Drug paraphernalia" is a later term, first defined in Art. 27, § 287A(a), which was enacted by Chapter 874 of the Acts of 1980 and became effective May 27, 1980. The General Assembly may wish to consider adding a reference to "drug paraphernalia" to subsection (b) of this section.

Defined terms: "Controlled dangerous substance" § 5-101

"Controlled paraphernalia" § 5-101

"Possess" § 5-101

5-809. HEARSAY ADMITTED AT BAIL OR SENTENCING HEARING.

NOTWITHSTANDING ANY OTHER LAW, AT A HEARING RELATING TO BAIL OR SENTENCING ARISING OUT OF A VIOLATION OR ALLEGED VIOLATION OF THIS TITLE, HEARSAY EVIDENCE IS ADMISSIBLE IF:

(1) THE HEARSAY IS RELEVANT TO THE ISSUE; AND

(2) THE UNDERLYING CIRCUMSTANCES ON WHICH THE HEARSAY IS BASED AND THE RELIABILITY OF THE SOURCE OF THE INFORMATION ARE DEMONSTRATED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 298(d).

In the introductory language of this section, the former reference to "any provision of" this title is deleted as surplusage.

5-810. CONVICTIONS AND REPORTS TO LICENSING AUTHORITIES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DRUG CRIME" MEANS:

(I) A VIOLATION OF THIS TITLE; OR

(II) A VIOLATION OF THE LAW OF ANY OTHER JURISDICTION IF THE PROHIBITED CONDUCT WOULD BE A VIOLATION OF THIS TITLE IF COMMITTED IN THIS STATE.

(3) "LICENSE" HAS THE MEANING STATED IN ARTICLE 41, § 1-501 OF THE CODE.

(4) "LICENSING AUTHORITY" HAS THE MEANING STATED IN ARTICLE 41, § 1-501 OF THE CODE.

(5) "LICENSING INFORMATION" MEANS A STATEMENT OF:

(I) EACH LICENSE HELD BY THE DEFENDANT ON THE DATE OF SENTENCING;

(II) THE FULL NAME OF THE LICENSEE AS IT APPEARS ON THE LICENSE AND, IF DIFFERENT, AS IT APPEARS IN THE COURT'S DOCKET;

(III) THE BIRTH DATE OF THE LICENSEE; AND

(IV) THE NAME OF EACH LICENSING AUTHORITY BY WHOM THE DEFENDANT IS LICENSED.

(B) RELATIONSHIP BETWEEN CONVICTION AND LICENSE.

(1) IF AN INDIVIDUAL IS CONVICTED OF A DRUG CRIME, THE COURT:

(I) SHALL DETERMINE AT SENTENCING WHETHER THE INDIVIDUAL HOLDS A LICENSE; AND

(II) IF THE INDIVIDUAL HOLDS A LICENSE, SHALL OBTAIN THE LICENSING INFORMATION.

(2) IF THE INDIVIDUAL HOLDS A LICENSE, AT SENTENCING, THE COURT SHALL MAKE A PRIMA FACIE FINDING OF FACT AS TO WHETHER A RELATIONSHIP EXISTS BETWEEN THE CONVICTION AND THE LICENSE INCLUDING:

(I) A DETERMINATION OF THE INDIVIDUAL'S ABILITY TO PERFORM THE TASKS AUTHORIZED BY THE LICENSE;

(II) A FINDING OF WHETHER THE PUBLIC WILL BE PROTECTED IF THE INDIVIDUAL CONTINUES TO PERFORM THE TASKS AUTHORIZED BY THE LICENSE;

(III) A FINDING OF WHETHER THE NATURE AND CIRCUMSTANCES OF THE DRUG CRIME MERIT REFERRAL TO THE LICENSING AUTHORITY; AND

(IV) A FINDING OF ANY OTHER FACTS THAT THE COURT CONSIDERS RELEVANT.

(3) IF THE COURT MAKES A PRIMA FACIE FINDING OF FACT THAT A RELATIONSHIP BETWEEN THE CONVICTION AND THE LICENSE EXISTS, THE COURT SHALL FOLLOW THE PROCEDURES UNDER SUBSECTION (C) OF THIS SECTION.

(C) REPORT OF DETERMINATION OF RELATIONSHIP -- WHEN REQUIRED.

(1) THIS SUBSECTION APPLIES TO A CONVICTION OF A LICENSEE FOR A DRUG CRIME IF:

(I) THE LICENSEE HAS AT LEAST ONE PRIOR CONVICTION OR PROBATION BEFORE JUDGMENT FOR A DRUG CRIME COMMITTED ON OR AFTER JANUARY 1, 1991; OR

(II) 1. THE LICENSEE DOES NOT HAVE A PRIOR CONVICTION OR PROBATION BEFORE JUDGMENT FOR A DRUG CRIME COMMITTED ON OR AFTER JANUARY 1, 1991; AND

2. THE COURT MAKES A PRIMA FACIE FINDING OF FACT THAT A RELATIONSHIP EXISTS BETWEEN THE CONVICTION AND THE LICENSE UNDER SUBSECTION (B) OF THIS SECTION.

(2) ON CONVICTION OF A LICENSEE, THE COURT SHALL:

(I) NOTIFY THE CLERK OF THE COURT OF THE DETERMINATION; AND

(II) PROVIDE THE CLERK OF THE COURT WITH THE LICENSING INFORMATION.

(3) THE CLERK OF THE COURT SHALL CERTIFY AND REPORT THE CONVICTION AND THE LICENSING INFORMATION TO THE LICENSING AUTHORITY, UNDER ADMINISTRATIVE ORDERS THAT THE CHIEF JUDGE OF THE COURT OF APPEALS ADOPTS.

(D) SAME -- WHEN PROHIBITED.

IF THE COURT MAKES A PRIMA FACIE FINDING OF FACT UNDER SUBSECTION (B) OF THIS SECTION THAT A RELATIONSHIP BETWEEN THE CONVICTION AND THE LICENSE DOES NOT EXIST, THE CLERK MAY NOT CERTIFY OR REPORT TO A LICENSING AUTHORITY THE CONVICTION OR THE LICENSING INFORMATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 298A(a), (c), (e), (f), and (d)(2).

In subsection (a)(2) of this section, the former reference to "any provision" of this title is deleted as surplusage.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (a)(2) of this section, which defines "drug crime", formerly "controlled dangerous substance offense", refers to a violation of this "title", formerly a violation of the predecessor "subheading". Because violations of this title may involve matters other than a controlled dangerous substance, *e.g.* a firearm crime under § 5-622 of this title or a prescription drug crime under Subtitle 7 of this title, the General Assembly may wish to consider narrowing the scope of this section or further altering the defined term.

In subsection (b)(1)(i) of this section, the former reference to "time of" sentencing is deleted as surplusage in light of subsection (c) of this section.

In subsection (b)(2)(i) of this section, the reference to "a determination of" the individual's ability to perform tasks is added to explicitly state what was implicit in the former law. Similarly, in subsection (b)(2)(ii), (iii), and (iv) of this section, the references to "a finding of" whether the public will be protected, "a finding of" whether the nature and circumstances of the controlled dangerous substance crime warrant referral, and "a finding of" any other relevant facts are added.

In subsection (c) of this section, the reference to "administrative orders" adopted by the Chief Judge of the Court of Appeals is substituted for the former erroneous reference to "regulations" adopted by the Chief Judge. The Chief Judge has the authority only to adopt administrative orders, not regulations.

Former Art. 27, § 298A(b) and (d)(1), which limited the application of former Art. 28, § 298A to convictions for drug crimes committed on or after January 1, 1991 and to individuals with no prior drug crime conviction or probation before judgment for a drug crime committed on or after January 1, 1991, are deleted as redundant in light of former Art. 27, § 298A(e) -- now subsection (c) of this section.

Defined term: "Controlled dangerous substance" § 5-101

SUBTITLE 9. CRIMINAL AND CIVIL LIABILITY.

5-901. VIOLATIONS OF TITLE CONSIDERED FELONIES.

NOTWITHSTANDING ANY OTHER LAW, A VIOLATION OF THIS TITLE SHALL BE TREATED AS IF IT WERE A FELONY FOR PURPOSES OF ARREST, SEARCH, AND SEIZURE, WHETHER OR NOT A DEFENDANT IS SUBSEQUENTLY CHARGED WITH OR CONVICTED OF A VIOLATION THAT IS A MISDEMEANOR.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 298(c).

The former phrase "to the contrary" is deleted as implicit in the phrase "[n]otwithstanding any other law".

5-902. PROHIBITED ACTS.

(A) IN GENERAL.

EXCEPT AS OTHERWISE AUTHORIZED BY THIS TITLE, A PERSON MAY NOT:

(1) OMIT, REMOVE, ALTER, OR OBLITERATE A SYMBOL REQUIRED BY FEDERAL LAW FOR A SUBSTANCE GOVERNED BY THIS TITLE;

(2) REFUSE OR FAIL TO MAKE, KEEP, OR FURNISH A RECORD, NOTIFICATION, ORDER FORM, STATEMENT, INVOICE, OR INFORMATION REQUIRED UNDER THIS TITLE;

(3) REFUSE ENTRY INTO A PREMISES OR INSPECTION, IF THE ENTRY OR INSPECTION IS AUTHORIZED UNDER THIS TITLE; OR

(4) AS A REGISTRANT OR OTHER AUTHORIZED PERSON UNDER THIS TITLE, KEEP OR MAINTAIN A STORE, SHOP, WAREHOUSE, DWELLING HOUSE, BUILDING, VEHICLE, BOAT, AIRCRAFT, OR OTHER PLACE THAT IS:

(I) RESORTED TO BY PERSONS USING A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THIS TITLE FOR THE PURPOSE OF USING A CONTROLLED DANGEROUS SUBSTANCE; OR

(II) USED FOR KEEPING OR SELLING A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THIS TITLE.

(B) UNAUTHORIZED MANUFACTURING, DISTRIBUTING, OR DISPENSING A CONTROLLED DANGEROUS SUBSTANCE.

UNLESS AUTHORIZED BY THE REGISTRANT'S REGISTRATION, A REGISTRANT MAY NOT MANUFACTURE, DISTRIBUTE, OR DISPENSE A CONTROLLED DANGEROUS SUBSTANCE TO ANOTHER REGISTRANT OR OTHER AUTHORIZED PERSON.

(C) AUTHORIZED PROVIDERS.

AN AUTHORIZED PROVIDER MAY NOT PRESCRIBE, ADMINISTER, MANUFACTURE, DISTRIBUTE, DISPENSE, OR POSSESS A CONTROLLED DANGEROUS SUBSTANCE OR CONTROLLED PARAPHERNALIA EXCEPT:

(1) IN THE COURSE OF REGULAR PROFESSIONAL DUTIES; AND

(2) IN CONFORMITY WITH THIS TITLE AND THE STANDARDS OF THE AUTHORIZED PROVIDER'S PROFESSION RELATING TO CONTROLLED DANGEROUS SUBSTANCES OR CONTROLLED PARAPHERNALIA.

(D) CONTRABAND.

A CONTROLLED DANGEROUS SUBSTANCE OR CONTROLLED PARAPHERNALIA MANUFACTURED, DISTRIBUTED, DISPENSED, POSSESSED, PRESCRIBED, OR ADMINISTERED IN VIOLATION OF SUBSECTION (C) OF THIS SECTION IS CONTRABAND.

(E) PENALTIES.

(1) IF THE TRIER OF FACT SPECIFICALLY FINDS THAT A PERSON HAS KNOWINGLY OR INTENTIONALLY VIOLATED THIS SECTION, THE PERSON IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $100,000 OR BOTH.

(2) IN ALL OTHER CASES, A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $50,000.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 288(b), (c), and (a)(2) through (6).

In subsection (a) of this section, the reference to a symbol "for a substance governed by this title" is added for clarity.

In subsection (e) of this section, the defined term "person" is substituted for the former references to a "practitioner" for consistency within this article. Because only an "authorized provider", formerly defined as a "practitioner", may violate this section, the substitution does not render a substantive change.

In subsection (e)(2) of this section, the former reference to a prosecution "by an information or indictment" is deleted as implicit in the reference to

being "guilty of a misdemeanor".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsections (c) and (d) of this section are derived from former Art. 27, § 288(c), which was enacted by Chapter 403 of the Acts of 1970 and became effective July 1, 1970. It refers only to "controlled paraphernalia", also enacted by Chapter 403, not to "drug paraphernalia". "Drug paraphernalia" is a later term, first defined in Art. 27, § 287A(a), which was enacted by Chapter 874 of the Acts of 1980 and became effective May 27, 1980. The General Assembly may wish to consider adding a reference to "drug paraphernalia" to subsections (c) and (d) of this section.

Defined terms: "Administer" § 5-101

"Authorized provider" § 5-101

"Controlled dangerous substance" § 5-101

"Controlled paraphernalia" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

"Possess" § 5-101

"Registrant" § 5-101

5-903. USE OF FALSE REGISTRATION.

(A) PROHIBITED.

IN MANUFACTURING OR DISTRIBUTING A CONTROLLED DANGEROUS SUBSTANCE, A PERSON MAY NOT WILLFULLY USE A REGISTRATION NUMBER THAT IS FICTITIOUS, REVOKED, SUSPENDED, OR ISSUED TO ANOTHER.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $100,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 289(b) and (a)(2).

In subsection (a) of this section, the reference to "willfully" using a registration number is substituted for the former reference in subsection (b) of this section to "willfully" violating this section for clarity. The Criminal Law Article Review Committee calls this substitution to the attention of the General Assembly.

Defined terms: "Controlled dangerous substance" § 5-101
"Distribute" § 5-101

"Manufacture" § 5-101

"Person" § 1-101

5-904. UNLAWFULLY DISTRIBUTING CONTROLLED DANGEROUS SUBSTANCE.

(A) PROHIBITED.

A REGISTRANT MAY NOT:

(1) DISTRIBUTE OR DISPENSE A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE I OR SCHEDULE II IN VIOLATION OF § 5-303(D) OF THIS TITLE; OR

(2) DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE I OR SCHEDULE II IN THE COURSE OF THE REGISTRANT'S LEGITIMATE BUSINESS, EXCEPT IN ACCORDANCE WITH AN ORDER FORM UNDER § 5-303(D) OF THIS TITLE.

(B) PENALTIES.

(1) IF THE TRIER OF FACT SPECIFICALLY FINDS THAT A PERSON KNOWINGLY OR INTENTIONALLY VIOLATED SUBSECTION (A)(1) OF THIS SECTION, THE PERSON IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $100,000 OR BOTH.

(2) IN ALL OTHER CASES, A PERSON WHO VIOLATES SUBSECTION (A)(1) OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $50,000.

(3) A PERSON WHO WILLFULLY VIOLATES SUBSECTION (A)(2) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $100,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 288(b), (a)(1), and, as it related to penalties, the second sentence of (c), and § 289(b) and (a)(1).

In the introductory language of subsection (a) of this section, the defined term "registrant" is substituted for the former reference to a "person ... [w]ho is subject to the requirements of §§ 281 through 284 of this subheading, as amended from time to time", for brevity and clarity.

In subsection (a)(1) of this section, the reference to a controlled dangerous substance "listed in Schedule I or Schedule II" is added for clarity. Section 5-303(d) of this title, concerning the requirement for using order forms, only applies to controlled dangerous substances listed on those schedules.

In subsection (b)(1) of this section, the former reference to prosecution "by an information or indictment" is deleted as implicit in the reference to being "guilty of a misdemeanor".

Defined terms: "Controlled dangerous substance" § 5-101

"Dispense" § 5-101

"Distribute" § 5-101

"Person" § 1-101

"Registrant" § 5-101

"Schedule I" § 5-101

"Schedule II" § 5-101

5-905. REPEAT OFFENDERS.

(A) IN GENERAL.

A PERSON CONVICTED OF A SUBSEQUENT CRIME UNDER THIS TITLE IS SUBJECT TO:

(1) A TERM OF IMPRISONMENT TWICE THAT OTHERWISE AUTHORIZED;

(2) TWICE THE FINE OTHERWISE AUTHORIZED; OR

(3) BOTH.

(B) RULE OF INTERPRETATION.

FOR PURPOSES OF THIS SECTION, A CRIME IS CONSIDERED A SUBSEQUENT CRIME, IF, BEFORE THE CONVICTION FOR THE CRIME, THE OFFENDER HAS EVER BEEN CONVICTED OF A CRIME UNDER THIS TITLE OR UNDER ANY LAW OF THE UNITED STATES OR OF THIS OR ANOTHER STATE RELATING TO OTHER CONTROLLED DANGEROUS SUBSTANCES.

(C) SUPERSEDED LAWS -- PAROLE, PROBATION, SUSPENSION OF SENTENCE.

A PERSON CONVICTED OF A SUBSEQUENT CRIME UNDER A LAW SUPERSEDED BY THIS TITLE IS ELIGIBLE FOR PAROLE, PROBATION, AND SUSPENSION OF SENTENCE IN THE SAME MANNER AS THOSE PERSONS CONVICTED UNDER THIS TITLE.

(D) SENTENCING IN CONJUNCTION WITH OTHER SENTENCES.

A SENTENCE ON A SINGLE COUNT UNDER THIS SECTION MAY BE IMPOSED IN CONJUNCTION WITH OTHER SENTENCES UNDER THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 293.

Throughout this section, the references to a "crime" are substituted for the former references to an "offense" for consistency throughout this article. *See* General Revisor's Note to article.

In subsections (a), (b), and (c) of this section, the former references to a "second" violation are deleted as included in the references to a "subsequent" violation.

Defined terms: "Controlled dangerous substance" § 5-101

"Person" § 1-101

"State" § 1-101

5-906. EDUCATION PROGRAM ON AIDS.

IN ADDITION TO A PENALTY IMPOSED UNDER THIS TITLE, A COURT MAY REQUIRE AN INDIVIDUAL TO COMPLETE THE EDUCATIONAL PROGRAM ON ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) DEVELOPED UNDER § 18-339 OF THE HEALTH - GENERAL ARTICLE IF:

(1) THE INDIVIDUAL PLEADS GUILTY OR NOLO CONTENDERE TO, OR IS FOUND GUILTY OF, VIOLATING THIS TITLE; AND

(2) THE JUDGE BELIEVES THE INDIVIDUAL WILL ATTEND AND BENEFIT FROM THE PROGRAM.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 303.

The reference to an "individual" is substituted for the former reference to a "person" to reflect that only a human being, and not the other entities included in the defined term "person", may attend and benefit from an educational program.

5-907. ADDITIONAL PENALTIES.

A PENALTY IMPOSED FOR VIOLATION OF THIS TITLE IS IN ADDITION TO, AND NOT INSTEAD OF, ANY OTHER CIVIL OR ADMINISTRATIVE PENALTY OR SANCTION AUTHORIZED BY LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 291.

SUBTITLE 10. SHORT TITLE.

5-1001. SHORT TITLE.

THIS TITLE MAY BE CITED AS THE "MARYLAND CONTROLLED DANGEROUS SUBSTANCES ACT".

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 302(f).

GENERAL REVISOR'S NOTE TO TITLE

Former Art. 27, § 302(d), which provided that the provisions of the former subheading be applicable to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations that occur following its effective dates, is deleted as obsolete. Similarly, former Art. 27, § 302(e), which

required any orders, rules, and regulations that had been promulgated under any law affected by the former subheading and that were in effect on June 30, 1970, to continue in effect until modified, superseded, or repealed by the Department, is deleted as obsolete.

TITLE 6. CRIMES AGAINST PROPERTY.

SUBTITLE 1. ARSON AND BURNING.

6-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 5(a).

The only changes are in style.

(B) DWELLING.

(1) "DWELLING" MEANS A STRUCTURE ANY PART OF WHICH HAS BEEN ADAPTED FOR OVERNIGHT ACCOMMODATION OF AN INDIVIDUAL, REGARDLESS OF WHETHER AN INDIVIDUAL IS ACTUALLY PRESENT.

(2) "DWELLING" INCLUDES A KITCHEN, SHOP, BARN, STABLE, OR OUTBUILDING THAT IS A PARCEL TO, BELONGS TO, OR ADJOINS THE DWELLING.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 5(b).

In paragraph (2) of this subsection, the reference to an "outbuilding" is substituted for the former reference to an "outhouse" for clarity.

Also in paragraph (2) of this subsection, the phrase "or parcel to" is retained for consistency with case law concerning arson, although the phrase "part of" may be an accurate and more modern substitute. The term "parcel" in this sense is only used in § 2-201(a)(4)(ii)1 of this article, relating to murder in the first degree involving arson. In § 8-701 of this article, relating to embezzlement involving certain documents, the reference to "part of" a document is substituted for the former reference to a "parcel of" a document. The Criminal Law Article Review Committee brings the retention of the original term in this section to the attention of the General Assembly.

(C) MALICIOUSLY.

"MALICIOUSLY" MEANS ACTING WITH INTENT TO HARM A PERSON OR PROPERTY.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 5(c).

The only changes are in style.

Defined term: "Person" § 1-101

(D) STRUCTURE.

(1) "STRUCTURE" MEANS A BUILDING OR OTHER CONSTRUCTION, A VEHICLE, OR WATERCRAFT.

(2) "STRUCTURE" INCLUDES A:

(I) BARN, STABLE, PIER, WHARF, AND ANY FACILITY ATTACHED TO A PIER OR WHARF;

(II) TENT, PUBLIC BUILDING, OR PUBLIC BRIDGE; AND

(III) RAILROAD CAR.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 5(e).

In item (2)(i) of this subsection, the former references to a "garage" and a "boathouse" are deleted as included in the comprehensive reference to a "building" in item (1) of this subsection. Similarly, in item (2)(ii) of this subsection, the former references to a "shop", "storehouse", "warehouse", "factory", "mill", "house of worship", "meeting house", "courthouse", "workhouse", and "school" are deleted as included in the comprehensive references to a "building" and "other construction". Also similarly, in item (2)(iii) of this subsection, the former references to a "motor vehicle", "aircraft", "boat", and "ship" are deleted in light of the comprehensive references to a "vehicle" and a "watercraft".

(E) WILLFULLY.

"WILLFULLY" MEANS ACTING INTENTIONALLY, KNOWINGLY, AND PURPOSELY.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 5(f).

The only changes are in style.

REVISOR'S NOTE TO SECTION

The former defined term "occupied structure" from former Art. 27, § 5(d) is revised in § 6-102 of this subtitle.

6-102. ARSON IN THE FIRST DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY SET FIRE TO OR BURN:

(1) A DWELLING; OR

(2) A STRUCTURE IN OR ON WHICH AN INDIVIDUAL WHO IS NOT A PARTICIPANT IS PRESENT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF ARSON IN THE FIRST DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS OR A FINE NOT EXCEEDING $50,000 OR BOTH.

(C) PROHIBITED DEFENSE.

IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE PERSON OWNS THE PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 6 and 5(d).

Subsection (a) of this section incorporates the substance of the term "occupied structure", formerly defined in Art. 27, § 5(d), in the prohibited act relating to burning of an occupied structure, because the defined term was only used once, in the source material for this section.

Subsection (c) of this section is revised as a prohibited defense rather than as a qualification of affected property for clarity.

Defined terms: "Dwelling" § 6-101

"Maliciously" § 6-101

"Person" § 1-101

"Willfully" § 6-101

6-103. ARSON IN THE SECOND DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY SET FIRE TO OR BURN A STRUCTURE THAT BELONGS TO THE PERSON OR TO ANOTHER.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF ARSON IN THE SECOND DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $30,000 OR BOTH.

(C) PROHIBITED DEFENSE.

IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE PERSON OWNS THE PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 7.

In subsection (a) of this section, the reference to a structure "that belongs to" the person or to another is substituted for the former reference to a structure "whether the property of" the person and another for clarity and consistency within this subtitle.

Subsection (c) of this section is revised as a prohibited defense rather than as a qualification of affected property for clarity.

Defined terms: "Maliciously" § 6-101

"Person" § 1-101

"Structure" § 6-101

"Willfully" § 6-101

6-104. MALICIOUS BURNING OF PERSONAL PROPERTY IN THE FIRST DEGREE.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A VIOLATION INVOLVING PROPERTY DAMAGE OF $1,000 OR MORE.

(B) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY SET FIRE TO OR BURN THE PERSONAL PROPERTY OF ANOTHER.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF MALICIOUS BURNING IN THE FIRST DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS 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, § 8(a)(1) and (3).

In subsection (b) of this section, the former reference to another "person" is deleted as implicit and for consistency within this article.

Defined terms: "Maliciously" § 6-101

"Person" § 1-101

"Willfully" § 6-101

6-105. MALICIOUS BURNING OF PERSONAL PROPERTY IN THE SECOND DEGREE.

(A) SCOPE.

THIS SECTION APPLIES TO A VIOLATION INVOLVING PROPERTY DAMAGE OF LESS THAN $1,000.

(B) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY SET FIRE TO OR BURN THE PERSONAL PROPERTY OF ANOTHER.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF MALICIOUS BURNING IN THE SECOND DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 8(a)(1) and (2).

In subsection (b) of this section, the former reference to another "person" is deleted as implicit and for consistency within this article.

Defined terms: "Maliciously" § 6-101

"Person" § 1-101

"Willfully" § 6-101

6-106. BURNING WITH INTENT TO DEFRAUD.

(A) PROHIBITED.

A PERSON MAY NOT SET FIRE TO OR BURN PROPERTY OF ANY KIND WITH THE INTENT TO DEFRAUD ANOTHER.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 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.

(D) SENTENCE.

A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 8(b).

In subsection (a) of this section, the reference to defrauding "another" is added for clarity.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

In subsection (d) of this section, the reference to any "crime" is substituted for the former reference to any "offense" for consistency within this article. *See* General Revisor's Note to article.

Also in subsection (d) of this section, the reference to establishing the "violation of this section" is substituted for the former reference to establishing the "offense" for clarity.

Also in subsection (d) of this section, the former reference to "acts" is deleted as unnecessary in light of Art. 1, § 8, which provides that the singular includes the plural.

Defined term: "Person" § 1-101

6-107. THREAT OF ARSON.

(A) PROHIBITED.

A PERSON MAY NOT THREATEN VERBALLY OR IN WRITING TO:

(1) SET FIRE TO OR BURN A STRUCTURE; OR

(2) EXPLODE A DESTRUCTIVE DEVICE, AS DEFINED IN § 4-501 OF THIS ARTICLE, IN, ON, OR UNDER A STRUCTURE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 9.

For provisions on false statements relating to and representations of destructive devices, *see* §§ 9-504 and 9-505 of this article.

Defined terms: "Person" § 1-101

"Structure" § 6-101

6-108. BURNING TRASH CONTAINER.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY SET FIRE TO OR BURN THE CONTENTS OF A DUMPSTER OR TRASH RECEPTACLE THAT BELONGS TO ANOTHER.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section formerly was Art. 27, § 9A.

In subsection (a) of this section, the former reference to a "trash container" is deleted as included in the reference to a "trash receptacle".

Also in subsection (a) of this section, the former reference to another "person" is deleted as implicit and for consistency within this article.

The only other changes are in style.

Defined terms: "Maliciously" § 6-101

"Person" § 1-101

"Willfully" § 6-101

6-109. ATTEMPT TO BURN STRUCTURE OR PROPERTY.

PLACING OR DISTRIBUTING A FLAMMABLE, EXPLOSIVE, OR COMBUSTIBLE MATERIAL OR DEVICE IN OR NEAR A STRUCTURE OR PERSONAL PROPERTY IN PREPARATION FOR BURNING THE STRUCTURE OR PROPERTY IS AN ATTEMPT TO BURN THE STRUCTURE OR PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 9B(a).

The former reference to a "substance" is deleted as included in the reference to a "material".

Defined term: "Structure" § 6-101

6-110. SEPARATE UNITS -- SEPARATE VIOLATIONS.

IF A STRUCTURE IS DIVIDED INTO SEPARATELY OWNED OR LEASED UNITS, EACH UNIT IS A SEPARATE STRUCTURE FOR PURPOSES OF PROSECUTION UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 9B(b).

Defined term: "Structure" § 6-101

6-111. CHARGING DOCUMENT.

(A) IN GENERAL.

AN INDICTMENT, INFORMATION, WARRANT, OR OTHER CHARGING DOCUMENT FOR A CRIME UNDER THIS SUBTITLE IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) BURNED OR SET FIRE TO (DESCRIBE PROPERTY) OR (DESCRIBE OTHER VIOLATION) IN VIOLATION OF (SECTION VIOLATED) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) BILL OF PARTICULARS.

IF THE GENERAL FORM OF INDICTMENT OR INFORMATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS USED TO CHARGE A CRIME UNDER THIS SUBTITLE IN A CASE IN THE CIRCUIT COURT, THE DEFENDANT, ON TIMELY DEMAND, IS ENTITLED TO A BILL OF PARTICULARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 11.

In subsection (a) of this section, the former references to "unlawfully" burning or setting fire to property is deleted as implicit in the reference to "a violation of (section violated)".

Also in subsection (a) of this section, the former archaic phrase "contrary to the form of the act of assembly in such case made and provided" is deleted as surplusage.

For specific time limits relating to a bill of particulars, *see* Md. Rule 4-241.

Defined term: "County" § 1-101

SUBTITLE 2. BURGLARY AND RELATED CRIMES.

6-201. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 28(a).

In this subsection and throughout this subtitle, the references to this "subtitle" are substituted for the former references to this "subheading" to reflect the reorganization of material derived from the former "Burglary and Related Offenses" subheading of Article 27.

No other changes are made.

(B) BREAK.

"BREAK" RETAINS ITS JUDICIALLY DETERMINED MEANING EXCEPT TO THE EXTENT THAT ITS MEANING IS EXPRESSLY OR IMPLIEDLY CHANGED IN THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 28(d) as it related to the defined term "break".

(C) BURGLAR'S TOOL.

(1) "BURGLAR'S TOOL" MEANS A TOOL, INSTRUMENT, OR DEVICE ADAPTED, DESIGNED, OR USED TO COMMIT OR FACILITATE THE COMMISSION OF A BURGLARY CRIME.

(2) "BURGLAR'S TOOL" INCLUDES:

(I) A PICKLOCK, KEY, CROWBAR, PRYBAR, JACK, OR BIT;

(II) EXPLOSIVE MATERIAL INCLUDING NITROGLYCERINE, DYNAMITE, OR GUNPOWDER; AND

(III) A DEVICE CAPABLE OF BURNING THROUGH METAL, CONCRETE, OR OTHER SOLID MATERIAL, INCLUDING AN ACETYLENE TORCH, ELECTRIC ARC, BURNING BAR, THERMAL LANCE, OR OXYGEN LANCE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 28(b).

(D) CRIME OF VIOLENCE.

"CRIME OF VIOLENCE" HAS THE MEANING STATED IN § 14-101 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 28(c).

(E) DWELLING.

"DWELLING" RETAINS ITS JUDICIALLY DETERMINED MEANING EXCEPT TO THE EXTENT THAT ITS MEANING IS EXPRESSLY OR IMPLIEDLY CHANGED IN THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 28(d) as it related to the defined term "dwelling".

(F) ENTER.

"ENTER" RETAINS ITS JUDICIALLY DETERMINED MEANING EXCEPT TO THE EXTENT THAT ITS MEANING IS EXPRESSLY OR IMPLIEDLY CHANGED IN THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 28(d) as it related to the defined term "enter".

(G) FIREARM.

(1) "FIREARM" INCLUDES:

(I) A HANDGUN, ANTIQUE FIREARM, RIFLE, SHOTGUN, SHORT-BARRELED SHOTGUN, AND SHORT-BARRELED RIFLE, AS THOSE TERMS ARE DEFINED IN § 4-201 OF THIS ARTICLE;

(II) A MACHINE GUN, AS DEFINED IN § 4-401 OF THIS ARTICLE; AND

(III) A REGULATED FIREARM, AS DEFINED IN ARTICLE 27, § 441 OF THE CODE.

(2) "FIREARM" DOES NOT INCLUDE A FIREARM THAT HAS BEEN MODIFIED TO BE PERMANENTLY INOPERATIVE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 28(f).

In paragraph (1)(i) of this subsection, the Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the terms "short-barreled shotgun" and "short-barreled rifle", as defined in § 4-201 of this article, are included in the term "handgun" as defined in the same section. It is unclear whether the terms "short-barreled shotgun" and "short-barreled rifle" as used in this section are redundant of the term "handgun", or differ in some way from those terms used in the definition of "handgun".

(H) STOREHOUSE.

(1) "STOREHOUSE" RETAINS ITS JUDICIALLY DETERMINED MEANING.

(2) "STOREHOUSE" INCLUDES:

(I) A BUILDING OR OTHER CONSTRUCTION, OR A WATERCRAFT;

(II) A BARN, STABLE, PIER, WHARF, AND ANY FACILITY ATTACHED TO A PIER OR WHARF;

(III) A STOREROOM OR PUBLIC BUILDING; AND

(IV) A TRAILER, AIRCRAFT, VESSEL, OR RAILROAD CAR.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 28(e).

In paragraph (2)(ii) of this subsection, the former references to a "garage"

and a "boathouse" are deleted as included in the comprehensive references to a "building" and "other construction" and for consistency with the definition of "structure" in § 6-101 of this title. Similarly, in paragraph (2)(iii) of this section, the former references to a "shop", "warehouse", "factory", "mill", "house of worship", "meeting house", "courthouse", "workhouse", and "school" are deleted as included in the comprehensive references to a "building" and "other construction".

In paragraph (2)(iv) of this subsection, the reference to a "vessel" is substituted for the former references to "boat" and "ship" for consistency with other revised articles of the Code.

6-202. BURGLARY IN THE FIRST DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT BREAK AND ENTER THE DWELLING OF ANOTHER WITH THE INTENT TO COMMIT THEFT OR A CRIME OF VIOLENCE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF BURGLARY IN THE FIRST DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 29.

Defined terms: "Break" § 6-201

"Crime of violence" § 6-201

"Dwelling" § 6-201

"Enter" § 6-201

"Person" § 1-101

6-203. BURGLARY IN THE SECOND DEGREE.

(A) PROHIBITED -- BREAKING AND ENTERING WITH INTENT TO COMMIT THEFT, VIOLENCE, OR ARSON.

A PERSON MAY NOT BREAK AND ENTER THE STOREHOUSE OF ANOTHER WITH THE INTENT TO COMMIT THEFT, A CRIME OF VIOLENCE, OR ARSON IN THE SECOND DEGREE.

(B) SAME -- BREAKING AND ENTERING WITH INTENT TO STEAL FIREARM.

A PERSON MAY NOT BREAK AND ENTER THE STOREHOUSE OF ANOTHER IF THE PERSON INTENDS TO STEAL, TAKE, OR CARRY AWAY A FIREARM.

(C) PENALTIES.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF BURGLARY IN THE SECOND DEGREE AND ON CONVICTION IS SUBJECT TO:

(1) FOR A VIOLATION OF SUBSECTION (A) OF THIS SECTION, IMPRISONMENT NOT EXCEEDING 15 YEARS; AND

(2) FOR A VIOLATION OF SUBSECTION (B) OF THIS SECTION, IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 30.

Defined terms: "Break" § 6-201

"Crime of violence" § 6-201

"Enter" § 6-201

"Person" § 1-101

"Storehouse" § 6-201

6-204. BURGLARY IN THE THIRD DEGREE.

(A) PROHIBITED.

A PERSON MAY NOT BREAK AND ENTER THE DWELLING OF ANOTHER WITH THE INTENT TO COMMIT A CRIME.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF BURGLARY IN THE THIRD DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 31.

Defined terms: "Break" § 6-201

"Dwelling" § 6-201

"Enter" § 6-201

"Person" § 1-101

6-205. BURGLARY IN THE FOURTH DEGREE.

(A) PROHIBITED -- BREAKING AND ENTERING DWELLING.

A PERSON MAY NOT BREAK AND ENTER THE DWELLING OF ANOTHER.

(B) SAME -- BREAKING AND ENTERING STOREHOUSE.

A PERSON MAY NOT BREAK AND ENTER THE STOREHOUSE OF ANOTHER.

(C) SAME -- BEING IN OR ON DWELLING, STOREHOUSE, OR ENVIRONS.

A PERSON, WITH THE INTENT TO COMMIT THEFT, MAY NOT BE IN OR ON:

(1) THE DWELLING OR STOREHOUSE OF ANOTHER; OR

(2) A YARD, GARDEN, OR OTHER AREA BELONGING TO THE DWELLING OR STOREHOUSE OF ANOTHER.

(D) SAME -- POSSESSION OF BURGLAR'S TOOL.

A PERSON MAY NOT POSSESS A BURGLAR'S TOOL WITH THE INTENT TO USE OR ALLOW THE USE OF THE BURGLAR'S TOOL IN THE COMMISSION OF A VIOLATION OF THIS SUBTITLE.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF BURGLARY IN THE FOURTH DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS.

(F) CONVICTION OF THEFT.

A PERSON WHO IS CONVICTED OF VIOLATING § 7-104 OF THIS ARTICLE MAY NOT ALSO BE CONVICTED OF VIOLATING SUBSECTION (C) OF THIS SECTION BASED ON THE ACT ESTABLISHING THE VIOLATION OF § 7-104 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 32.

In subsection (f) of this section, the former reference to "acts" is deleted in light of Art. 1, § 8, which provides that the singular includes the plural.

Defined terms: "Break" § 6-201

"Burglar's tool" § 6-201

"Dwelling" § 6-201

"Enter" § 6-201

"Person" § 1-101

"Storehouse" § 6-201

6-206. BREAKING AND ENTERING MOTOR VEHICLE -- ROGUE AND VAGABOND.

(A) PROHIBITED -- POSSESSION OF BURGLAR'S TOOL.

A PERSON MAY NOT POSSESS A BURGLAR'S TOOL WITH THE INTENT TO USE OR ALLOW THE USE OF THE BURGLAR'S TOOL IN THE COMMISSION OF A CRIME INVOLVING THE BREAKING AND ENTERING OF A MOTOR VEHICLE.

(B) SAME -- PRESENCE IN ANOTHER'S VEHICLE.

A PERSON MAY NOT BE IN OR ON THE MOTOR VEHICLE OF ANOTHER WITH THE INTENT TO COMMIT THEFT OF THE MOTOR VEHICLE OR PROPERTY THAT IS IN THE MOTOR VEHICLE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR, SHALL BE CONSIDERED A ROGUE AND VAGABOND, AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 35.

Defined terms: "Break" § 6-201

"Burglar's tool" § 6-201

"Enter" § 6-201

"Person" § 1-101

6-207. BURGLARY WITH EXPLOSIVES.

(A) PROHIBITED.

A PERSON MAY NOT OPEN OR ATTEMPT TO OPEN A VAULT, SAFE, OR OTHER SECURE REPOSITORY BY THE USE OF A DESTRUCTIVE DEVICE, AS DEFINED IN § 4-501 OF THIS ARTICLE, WHILE COMMITTING BURGLARY IN THE FIRST, SECOND, OR THIRD DEGREE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF BURGLARY WITH EXPLOSIVES AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

(C) SENTENCE.

A SENTENCE IMPOSED FOR A VIOLATION OF THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANOTHER CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 33.

In subsection (c) of this section, the reference to establishing the violation "of this section" is added for clarity and consistency within this title.

Also in subsection (c) of this section, the former reference to "acts" is deleted as unnecessary in light of Art. 1, § 8 which provides that the singular includes the plural.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the name of the crime stated in subsection (b) of this section, "burglary with explosives", uses the obsolete term "explosives", although the substance of the crime uses the more inclusive term "destructive device" defined in § 4-501 of this article. "Destructive

device" includes explosive material, incendiary material, and toxic material.

Defined term: "Person" § 1-101

6-208. BREAKING AND ENTERING A RESEARCH FACILITY.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "ENCLOSURE" MEANS A BUILDING, STRUCTURE, AIRCRAFT, WATERCRAFT, OR VEHICLE, AND EACH:

1. SEPARATELY SECURED OR OCCUPIED PORTION OF IT; AND

2. STRUCTURE APPURTENANT OR CONNECTED TO IT.

(II) "ENCLOSURE" INCLUDES A TRAILER AND A SLEEPING CAR.

(3) "RESEARCH" MEANS A STUDIOUS AND SERIOUS INQUIRY, EXAMINATION, INVESTIGATION, OR EXPERIMENTATION DESIGNED TO DISCOVER OR ACCUMULATE DATA, THEORIES, TECHNOLOGIES, OR APPLICATIONS FOR A GOVERNMENTAL, SCIENTIFIC, EDUCATIONAL, OR PROPRIETARY PURPOSE.

(4) "RESEARCH FACILITY" MEANS AN ENCLOSURE OR SEPARATELY SECURED YARD, PAD, POND, LABORATORY, PASTURE, OR PEN USED TO CONDUCT RESEARCH, HOUSE RESEARCH SUBJECTS, OR STORE SUPPLIES, RECORDS, DATA, PROTOTYPES, OR EQUIPMENT NECESSARY TO OR DERIVED FROM RESEARCH.

(5) (I) "RESEARCH PROPERTY" MEANS PROPERTY, REGARDLESS OF VALUE, RELATED TO RESEARCH IN A RESEARCH FACILITY.

(II) "RESEARCH PROPERTY" INCLUDES A SAMPLE, SPECIMEN, RESEARCH SUBJECT, RECORD, DATA, TEST RESULT, OR PROPRIETARY INFORMATION.

(B) PROHIBITED.

A PERSON MAY NOT BREAK AND ENTER A RESEARCH FACILITY WITHOUT THE PERMISSION OF THE RESEARCH FACILITY WITH THE INTENT TO:

(1) OBTAIN UNAUTHORIZED CONTROL OVER RESEARCH PROPERTY;

(2) ALTER OR ERADICATE RESEARCH PROPERTY;

(3) DAMAGE OR DEFACE RESEARCH PROPERTY;

(4) MOVE RESEARCH PROPERTY IN A MANNER INTENDED TO CAUSE HARM TO IT;

(5) DESTROY OR REMOVE RESEARCH PROPERTY; OR

(6) ENGAGE IN CONDUCT THAT RESULTS IN THE REMOVAL OF RESEARCH PROPERTY.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS 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, § 34.

In subsection (a)(3) of this section, the former reference to "facts" is deleted as surplusage in light of the use of the term "data".

Defined terms: "Break" § 6-201

"Enter" § 6-201

"Person" § 1-101

6-209. SEPARATE UNITS -- SEPARATE VIOLATIONS.

FOR PURPOSES OF PROSECUTION UNDER THIS SUBTITLE, A UNIT IN A BUILDING OR STRUCTURE THAT IS DIVIDED INTO SEPARATELY OWNED OR LEASED UNITS MAY NOT BE CONSIDERED A SEPARATE DWELLING OR STOREHOUSE UNLESS IT IS OBJECTIVELY APPARENT THAT EACH UNIT CONSTITUTES A SEPARATE DWELLING OR STOREHOUSE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 35A.

Defined terms: "Dwelling" § 6-201

"Storehouse" § 6-201

6-210. CHARGING DOCUMENT.

(A) IN GENERAL.

AN INDICTMENT, INFORMATION, WARRANT, OR OTHER CHARGING DOCUMENT FOR BURGLARY OR ANOTHER CRIME UNDER THIS SUBTITLE IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) DID BREAK AND ENTER (DESCRIBE PROPERTY) OR (DESCRIBE OTHER CRIME) IN VIOLATION OF (SECTION VIOLATED) AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) BILL OF PARTICULARS.

IF THE GENERAL FORM OF INDICTMENT OR INFORMATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS USED TO CHARGE A CRIME UNDER THIS

SUBTITLE IN A CASE IN THE CIRCUIT COURT, THE DEFENDANT, ON TIMELY DEMAND, IS ENTITLED TO A BILL OF PARTICULARS.

(C) LESSER INCLUDED CRIMES OF BURGLARY IN THE FIRST DEGREE.

A PERSON CHARGED WITH A VIOLATION OF § 6-202 OF THIS SUBTITLE MAY BE CONVICTED OF A VIOLATION OF § 6-204 OR § 6-205(A) OF THIS SUBTITLE.

(D) LESSER INCLUDED CRIMES OF BURGLARY IN THE SECOND DEGREE.

A PERSON CHARGED WITH A VIOLATION OF § 6-203 OF THIS SUBTITLE MAY BE CONVICTED OF A VIOLATION OF § 6-205(B) OF THIS SUBTITLE.

(E) LESSER INCLUDED CRIMES OF BURGLARY IN THE THIRD DEGREE.

A PERSON CHARGED WITH A VIOLATION OF § 6-204 OF THIS SUBTITLE MAY BE CONVICTED OF A VIOLATION OF § 6-205(A) OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 35B.

In subsection (a) of this section, the former archaic phrase "contrary to the form of the act of assembly in such case made and provided" is deleted as surplusage.

Defined terms: "County" § 1-101

"Person" § 1-101

SUBTITLE 3. MALICIOUS DESTRUCTION AND RELATED CRIMES.

6-301. MALICIOUS DESTRUCTION -- GENERALLY.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY DESTROY, INJURE, OR DEFACE THE REAL OR PERSONAL PROPERTY OF ANOTHER.

(B) PENALTY -- PROPERTY DAMAGE OF AT LEAST $500.

A PERSON WHO, IN VIOLATION OF THIS SECTION, CAUSES DAMAGE OF AT LEAST $500 TO THE PROPERTY IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $2,500 OR BOTH.

(C) SAME -- PROPERTY DAMAGE OF LESS THAN $500.

A PERSON WHO, IN VIOLATION OF THIS SECTION, CAUSES DAMAGE OF LESS THAN $500 TO THE PROPERTY IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 60 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

(D) SAME -- RESTITUTION FOR GRAFFITI.

(1) FOR PURPOSES OF THIS SUBSECTION, AN ACT OF "GRAFFITI" MEANS A PERMANENT DRAWING, PERMANENT PAINTING, OR A PERMANENT MARK OR INSCRIPTION ON THE PROPERTY OF ANOTHER WITHOUT THE PERMISSION OF THE OWNER OF THE PROPERTY.

(2) IN ADDITION TO THE PENALTIES SET FORTH IN SUBSECTIONS (B) AND (C) OF THIS SECTION, THE COURT SHALL ORDER A PERSON CONVICTED OF CAUSING MALICIOUS DESTRUCTION BY AN ACT OF GRAFFITI TO PAY RESTITUTION OR PERFORM COMMUNITY SERVICE OR BOTH.

(3) TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE APPLIES TO AN ORDER OF RESTITUTION UNDER THIS SUBSECTION.

(E) AGGREGATION OF DAMAGES.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, TO DETERMINE A PENALTY, THE COURT MAY CONSIDER AS ONE CRIME THE AGGREGATE VALUE OF DAMAGE TO EACH PROPERTY RESULTING FROM ONE SCHEME OR CONTINUING COURSE OF CONDUCT.

(2) IF SEPARATE ACTS RESULTING IN DAMAGE TO THE PROPERTIES OF ONE OR MORE OWNERS ARE SET FORTH BY SEPARATE COUNTS IN ONE OR MORE CHARGING DOCUMENTS, THE SEPARATE COUNTS MAY NOT BE MERGED FOR SENTENCING.

(F) VALUE OF DAMAGES.

(1) THE VALUE OF DAMAGE IS NOT A SUBSTANTIVE ELEMENT OF A CRIME UNDER THIS SECTION AND NEED NOT BE STATED IN THE CHARGING DOCUMENT.

(2) THE VALUE OF DAMAGE SHALL BE BASED ON THE EVIDENCE AND THAT VALUE SHALL BE APPLIED FOR THE PURPOSE OF IMPOSING THE PENALTIES ESTABLISHED IN THIS SECTION.

(3) IF IT CANNOT BE DETERMINED FROM THE EVIDENCE WHETHER THE VALUE OF THE DAMAGE TO THE PROPERTY IS MORE OR LESS THAN $500, THE VALUE IS DEEMED TO BE LESS THAN $500.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 111.

In subsection (a) of this section, the former reference to "molest[ing]" property is deleted in light of the references to "injur[ing]" and "defac[ing]" the property.

In subsections (b) and (c) of this section, the former references to property "defaced, destroyed, injured, or molested" are deleted as included in the

references to "caus[ing] damage" "in violation of this section".

In subsection (d)(1) and (3) of this section, the references to this "subsection" are substituted for the former references to this "section", for clarity and to correct a drafting error.

In subsection (d)(1) of this section, the former reference to "a violation of this section" is deleted as surplusage.

In subsections (d)(2) and (e)(1) of this section, the references to actions of "the court" are added for clarity.

In subsection (d)(3) of this section, the former limitation "[e]xcept as otherwise provided by this section" is deleted as surplusage.

In subsection (e)(1) of this section, the former references to "two or more acts in violation of this section", "the same or several acts", property "of one or several property owners", and damage "to the various properties" are deleted as implicit in the comprehensive reference to the "aggregate value of damage to each property resulting from one scheme or continuing course of conduct".

Defined term: "Person" § 1-101

6-302. SAME -- THROWING OBJECT AT VEHICLE.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY THROW, SHOOT, OR PROPEL A ROCK, BRICK, PIECE OF IRON, STEEL, OR OTHER SIMILAR METAL, OR A DANGEROUS MISSILE AT OR INTO A VEHICLE OR OTHER MEANS OF TRANSPORTATION THAT IS OCCUPIED BY AN INDIVIDUAL.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 111B.

In subsection (a) of this section, the former reference to a "deadly" missile is deleted as implicit in the reference to a "dangerous" missile that is thrown, shot, or propelled.

In subsection (b) of this section, the former phrase "at the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined term: "Person" § 1-101

6-303. PUBLIC UTILITY INTERFERENCE -- ELECTRICAL EQUIPMENT.

(A) "ELECTRIC COMPANY" DEFINED.

IN THIS SECTION, "ELECTRIC COMPANY" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) AN EMPLOYEE OF OR A PERSON AUTHORIZED BY AN ELECTRIC COMPANY; AND

(2) SUPERVISION AND CONTROL OF AN ELECTRIC COMPANY AND ITS MATERIAL, EQUIPMENT, OR FACILITIES BY THE MUNICIPAL CORPORATION WITHIN WHICH THE ELECTRIC COMPANY IS DOING BUSINESS.

(C) PROHIBITED.

A PERSON MAY NOT WILLFULLY:

(1) TAMPER OR INTERFERE WITH THE MATERIAL, EQUIPMENT, OR FACILITIES OF AN ELECTRIC COMPANY;

(2) MAKE A CONNECTION WITH AN ELECTRICAL CONDUCTOR TO USE THE ELECTRICITY; OR

(3) TAMPER WITH A METER USED TO REGISTER ELECTRICITY CONSUMED.

(D) PRIMA FACIE EVIDENCE OF VIOLATION.

PRIMA FACIE EVIDENCE OF INTENT TO VIOLATE THIS SECTION BY A PERSON WHO USES OR DIRECTLY BENEFITS FROM THE USE OR DIVERSION OF ELECTRICITY INCLUDES:

(1) A CONNECTION, WIRE, CONDUCTOR, METER ALTERATION, OR OTHER DEVICE THAT DIVERTS ELECTRICITY WITHOUT THE ELECTRIC CURRENT BEING REGISTERED BY THE METER INSTALLED BY THE ELECTRIC COMPANY THAT SUPPLIES THE ELECTRICITY;

(2) THE USE OF ELECTRICITY SUPPLIED BY AN ELECTRIC COMPANY WITHOUT THE ELECTRICITY BEING REGISTERED ON A METER THAT THE ELECTRIC COMPANY SUPPLIED; AND

(3) A SHOWING BY A CHECK OR TEST METER USED BY THE ELECTRIC COMPANY THAT A CUSTOMER USES MORE ELECTRICITY THAN IS REGISTERED ON THE METER THAT THE ELECTRIC COMPANY SUPPLIED FOR THE CUSTOMER'S PREMISES.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section formerly was Art. 27, § 194.

In subsection (b)(1) of this section, the reference to an "authorized" employee is added for clarity.

In subsection (b)(2) of this section, the reference to "material, equipment, or facilities" of an electric company is substituted for the former reference to "electric conductors, appliances, machinery, and poles" for consistency within this subtitle and with terminology used in the Public Utility Companies Article.

In subsection (d)(1) and (2) of this section, the former references to electric current or electricity being "measured" are deleted as included in the references to their being "registered".

The only other changes are in style.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b)(2) of this section exempts "supervision ... of an electric company ... by the municipal corporation" where the company does business. The provision does not address similar supervisory activities by other forms of government, such as charter counties, that may not have existed in 1898 when this provision was first enacted. The General Assembly may wish to consider adding other forms of local government to the exemption in this provision.

Defined term: "Person" § 1-101

6-304. SAME -- GAS EQUIPMENT.

(A) "GAS COMPANY" DEFINED.

IN THIS SECTION, "GAS COMPANY" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(B) PROHIBITED.

(1) A PERSON MAY NOT WRONGFULLY AND MALICIOUSLY DAMAGE, CONNECT, DISCONNECT, TAP, OR INTERFERE OR TAMPER WITH MATERIAL, EQUIPMENT, OR FACILITIES OF A GAS COMPANY.

(2) A PERSON MAY NOT INTENTIONALLY DAMAGE OR DEFRAUD A GAS COMPANY BY:

(I) BYPASSING A METER PROVIDED FOR REGISTERING THE GAS CONSUMED;

(II) WILLFULLY TAMPERING WITH, DAMAGING, OR PREVENTING THE ACTION OF A METER TO REGISTER GAS; OR

(III) CAUSING OR PROCURING A METER TO BE DAMAGED OR ALTERED.

(C) PRIMA FACIE EVIDENCE OF VIOLATION.

PRIMA FACIE EVIDENCE OF A VIOLATION OF THIS SECTION BY THE PERSON WHO WOULD DIRECTLY BENEFIT FROM THE USE OF THE GAS PASSING THROUGH THE METER INCLUDES:

(1) A DEVICE THAT ALLOWS THE USE OF GAS SUPPLIED BY A GAS COMPANY WITHOUT THE GAS BEING REGISTERED ON A METER PROVIDED BY THE GAS COMPANY; AND

(2) DAMAGE OR ALTERATION TO A METER SO AS TO PREVENT THE ACTION OF THE METER.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $250 OR BOTH.

REVISOR'S NOTE: This section formerly was Art. 27, § 192.

In subsection (c) of this section, the reference to the person who would "directly benefit from the use of the gas passing through the meter" is substituted for the former reference to the person who would "receive the direct benefits from the use of the gas without it being measured or registered on a meter" for clarity and consistency within this subtitle.

In subsections (b)(2)(i) and (ii) and (c)(1) of this section, the former references to "measur[ing]" gas are deleted as included in the references to "register[ing]" gas.

The only other changes are in style.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that unlike §§ 6-303 and 6-305 of this subtitle, this section has no exception for activities incident to local or other governmental regulation of public utility service. It is unclear how much such regulation existed in 1886 when this provision was first enacted. The General Assembly may wish to consider adding an exemption to this section patterned after the exemptions in §§ 6-303(b)(2) and 6-305(b)(2) of this subtitle.

Defined term: "Person" § 1-101

6-305. SAME -- WATER EQUIPMENT.

(A) "WATER EQUIPMENT" DEFINED.

IN THIS SECTION, "WATER EQUIPMENT" INCLUDES A CANAL, SPRING, RESERVOIR, TUNNEL, MOUND, DAM, PLUG, MAIN, PIPE, CONDUIT, CONNECTION, TAP, VALVE, ENGINE, OR MACHINERY.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) A PERSON WHO IS AUTHORIZED BY THE COMPANY, MUNICIPAL CORPORATION, COUNTY, OR UNIT OF STATE OR LOCAL GOVERNMENT THAT USES OR SUPPLIES WATER FOR DOMESTIC, AGRICULTURAL, OR MANUFACTURING PURPOSES OR AN AUTHORIZED EMPLOYEE OF THE COMPANY, MUNICIPAL CORPORATION, COUNTY, OR UNIT OF STATE OR LOCAL GOVERNMENT; OR

(2) GOVERNMENTAL REGULATION OF:

(I) WATER EQUIPMENT; OR

(II) WATER COMPANIES, AS DEFINED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(C) PROHIBITED.

A PERSON MAY NOT WRONGFULLY AND MALICIOUSLY:

(1) CONNECT, DISCONNECT, TAP, INTERFERE OR TAMPER WITH, OR MAKE A CONNECTION WITH WATER EQUIPMENT THAT BELONGS TO A COMPANY, MUNICIPAL CORPORATION, COUNTY, OR UNIT OF STATE OR LOCAL GOVERNMENT THAT USES OR SUPPLIES WATER FOR DOMESTIC, AGRICULTURAL, OR MANUFACTURING PURPOSES; OR

(2) TAMPER WITH A METER USED TO REGISTER THE WATER CONSUMED.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section formerly was Art. 27, § 118.

In subsection (b)(1) of this section, the reference to an "authorized" employee is added for clarity.

The only other changes are in style.

Defined terms: "County" § 1-101

"Person" § 1-101

6-306. SERIAL NUMBER -- ALTERATION AND SALE OF GOOD.

(A) PROHIBITED -- ALTERATION.

A PERSON MAY NOT REMOVE, DEFACE, OR OBLITERATE A MANUFACTURER'S SERIAL NUMBER THAT IS PUNCHED ON OR AFFIXED BY PLATE TO A MANUFACTURED GOOD WITH THE INTENT TO PREVENT TRACING OR IDENTIFYING THAT GOOD.

(B) SAME -- SALE OF GOOD.

EXCEPT AS PROVIDED IN § 14-107(M) OF THE TRANSPORTATION ARTICLE, A PERSON MAY NOT KNOWINGLY KEEP OR OFFER FOR SALE A MANUFACTURED GOOD FROM WHICH THE MANUFACTURER'S SERIAL NUMBER HAS BEEN REMOVED, DEFACED, OR OBLITERATED IN VIOLATION OF SUBSECTION (A) OF THIS SECTION.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 389(a), (b), and (d).

In subsections (a) and (b) of this section, the word "good" is substituted for the former phrase "article or product", for brevity.

In subsection (c) of this section, the reference to "each violation" is substituted for the former reference to "each and every offense" for consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

6-307. SAME -- POSSESSION AND USE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) SELL OR POSSESS A STOLEN:

(I) MANUFACTURED SERIAL NUMBER; OR

(II) VEHICLE IDENTIFICATION PLATE OR LABEL; OR

(2) POSSESS A MANUFACTURED SERIAL NUMBER OR VEHICLE IDENTIFICATION PLATE OR LABEL IF THE PERSON INTENDS IT TO BE:

(I) AFFIXED TO STOLEN PROPERTY; OR

(II) USED FOR FRAUDULENT PURPOSES.

(B) PENALTY.

A PERSON WHO VIOLATES A PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 389(c) and (d).

In subsection (b) of this section, the reference to "each violation" is substituted for the former reference to "each and every offense" for consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

SUBTITLE 4. TRESPASS.

6-401. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 576(a).

The only changes are in style.

(B) OFF-ROAD VEHICLE.

(1) "OFF-ROAD VEHICLE" MEANS A MOTORIZED VEHICLE DESIGNED FOR OR CAPABLE OF CROSS-COUNTRY TRAVEL ON OR IMMEDIATELY OVER LAND, WATER, SNOW, ICE, MARSH, SWAMPLAND, OR OTHER NATURAL TERRAIN.

(2) "OFF-ROAD VEHICLE" INCLUDES:

(I) A FOUR-WHEEL DRIVE OR LOW-PRESSURE-TIRE VEHICLE;

(II) A MOTORCYCLE OR A RELATED TWO-WHEEL VEHICLE;

(III) AN AMPHIBIOUS MACHINE;

(IV) A GROUND-EFFECT VEHICLE; AND

(V) AN AIR-CUSHION VEHICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 576(c)(1)(ii).

The former reference to a "vehicle as defined in § 11-176 of the Transportation Article" is revised as a separate defined term "vehicle", to reflect more correctly the application of the term "off-road vehicle" as formerly defined to certain on-road as well as off-road vehicles. Similarly, the former exclusion of any "boat, military, fire or law enforcement vehicles, ..." from the term "off-road vehicle" as formerly defined is revised as a scope provision in each substantive provision where the term "off-road vehicle" is used. *See* §§ 6-404 and 6-405 of this subtitle.

(C) VEHICLE.

"VEHICLE" HAS THE MEANING STATED IN § 11-176 OF THE TRANSPORTATION ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 576(c)(1)(i).

Because the term "off-road vehicle" as formerly defined applied to on-road as well as off-road vehicles, contrary to standard usage, the revision of this subtitle uses the newly defined term "vehicle" as well as the redefined term "off-road vehicle" in instances where the former defined term "off-road vehicle" was used.

(D) WANTON.

"WANTON" RETAINS ITS JUDICIALLY DETERMINED MEANING.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 576(d).

No changes are made.

6-402. TRESPASS ON POSTED PROPERTY.

(A) PROHIBITED.

A PERSON MAY NOT ENTER OR TRESPASS ON PROPERTY THAT IS POSTED CONSPICUOUSLY AGAINST TRESPASS BY:

(1) SIGNS PLACED WHERE THEY REASONABLY MAY BE SEEN; OR

(2) PAINT MARKS THAT:

(I) CONFORM WITH REGULATIONS THAT THE DEPARTMENT OF NATURAL RESOURCES ADOPTS UNDER § 5-209 OF THE NATURAL RESOURCES ARTICLE; AND

(II) ARE MADE ON TREES OR POSTS THAT ARE LOCATED:

1. AT EACH ROAD ENTRANCE TO THE PROPERTY; AND

2. ADJACENT TO PUBLIC ROADWAYS, PUBLIC WATERWAYS, AND OTHER LAND ADJOINING THE PROPERTY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 577(a)(1) and (b).

In the introductory language of subsection (a) of this section, the reference to property being posted against "trespass" is substituted for the former reference to property being posted against "trespassers" for clarity and consistency within this subtitle.

In subsection (a)(1) of this section, the phrase "signs placed where they reasonably may be seen" is substituted for the former phrase "[s]igns where they may reasonably be seen" to clarify that the requirement that signs be posted conspicuously applies to the location as well as the content of the signs.

In subsection (a)(2)(i), the reference to regulations that the Department of Natural Resources adopts "under § 5-209 of the Natural Resources Article" is added for clarity.

For the statutory requirement that the Department of Natural Resources adopt regulations that prescribe the type and color of paint to be used for posting private property under the provisions of this section, *see* NR § 5-209(e). As to the content of the regulations, *see* COMAR 08.01.05.01.

Defined term: "Person" § 1-101

6-403. WANTON TRESPASS ON PRIVATE PROPERTY.

(A) PROHIBITED -- ENTERING AND CROSSING PROPERTY.

A PERSON MAY NOT ENTER OR CROSS OVER PRIVATE PROPERTY OR BOARD THE BOAT OR OTHER MARINE VESSEL OF ANOTHER, AFTER HAVING BEEN NOTIFIED BY THE OWNER OR THE OWNER'S AGENT NOT TO DO SO, UNLESS ENTERING OR CROSSING UNDER A GOOD FAITH CLAIM OF RIGHT OR OWNERSHIP.

(B) SAME -- REMAINING ON PROPERTY.

A PERSON MAY NOT REMAIN ON PRIVATE PROPERTY INCLUDING THE BOAT OR OTHER MARINE VESSEL OF ANOTHER, AFTER HAVING BEEN NOTIFIED BY THE OWNER OR THE OWNER'S AGENT NOT TO DO SO.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

(D) CONSTRUCTION OF SECTION.

THIS SECTION PROHIBITS ONLY WANTON ENTRY ON PRIVATE PROPERTY.

(E) APPLICABILITY TO HOUSING PROJECTS.

THIS SECTION ALSO APPLIES TO PROPERTY THAT IS USED AS A HOUSING PROJECT AND OPERATED BY A HOUSING AUTHORITY OR STATE PUBLIC BODY, AS THOSE TERMS ARE DEFINED IN ARTICLE 44A OF THE CODE, IF AN AUTHORIZED AGENT OF THE HOUSING AUTHORITY OR STATE PUBLIC BODY GIVES THE REQUIRED NOTICE SPECIFIED IN SUBSECTION (A) OR (B) OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 577(a)(2) and (b).

In subsection (a) of this section, the former references to "land" and "premises" are deleted as included in the reference to "private property".

Also in subsection (a) of this section, the former reference to being "duly" notified is deleted as surplusage.

In subsection (d) of this section, the reference to entry "on private property" is added for clarity and consistency with subsection (a) of this section. Correspondingly, the reference to "private property" is substituted for the former reference to "land".

In subsection (e) of this section, the former reference to a "duly" authorized agent is deleted as implicit in the reference to an "authorized agent".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (d) of this section appears to prohibit only "wanton" entry onto private property, but not "wanton[ly]" remaining on private property after being notified not to do so.

Defined terms: "Person" § 1-101

"Wanton" § 6-401

6-404. USE OF A VEHICLE ON PRIVATE PROPERTY.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) A VESSEL;

(2) A MILITARY, FIRE OR LAW ENFORCEMENT VEHICLE;

(3) A FARM-TYPE TRACTOR, OTHER AGRICULTURAL EQUIPMENT USED FOR AGRICULTURAL PURPOSES, OR CONSTRUCTION EQUIPMENT USED FOR AGRICULTURAL PURPOSES OR EARTH MOVING;

(4) EARTH-MOVING OR CONSTRUCTION EQUIPMENT USED FOR THOSE PURPOSES; OR

(5) A LAWN MOWER, SNOWBLOWER, GARDEN OR LAWN TRACTOR, OR GOLF CART WHILE BEING USED FOR ITS DESIGNED PURPOSE.

(B) PROHIBITED.

EXCEPT WHEN TRAVELING ON A CLEARLY DESIGNATED PRIVATE DRIVEWAY, A PERSON MAY NOT USE A VEHICLE OR OFF-ROAD VEHICLE ON PRIVATE PROPERTY UNLESS THE PERSON HAS IN THE PERSON'S POSSESSION THE WRITTEN PERMISSION OF THE OWNER OR TENANT OF THE PRIVATE PROPERTY.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 576(c)(2) and 577(a)(3) and (b).

Subsection (a) of this section is revised as a scope provision excluding the application of this section from certain on-road and off-road vehicles. This corrects the usage of the former defined term "off-road vehicle", which included on-road vehicles, and excluded the on-road and off-road vehicles listed in this subsection.

In subsection (a)(1) of this section, the reference to a "vessel" is substituted for the former reference to a "boat" for consistency with other revised articles.

In subsection (a)(3) of this section, the reference to construction equipment used for "agricultural purposes or earth moving" is substituted for the former reference to "those purposes" for clarity. Similarly, in subsection (a)(5) of this section, the reference to a lawn mower, snowblower, garden or lawn tractor "while being used for its designed purpose" is added for clarity.

In subsection (b) of this section, the reference to the defined term "vehicle" is added to reflect the correction of usage of the former defined term "off-road vehicle", which included on-road as well as off-road vehicles.

Also in subsection (b) of this section, the former reference to "operat[ing]"

an off-road vehicle is deleted as included in the reference to "us[ing]" a vehicle or off-road vehicle.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that it is not clear whether subsection (b) of this section is intended to allow the use of either a "vehicle" or an "off-road vehicle" on a clearly designated private driveway, without the permission of the property owner or tenant. The General Assembly may wish to address this issue in clarifying legislation.

Defined terms: "Off-road vehicle" § 6-401

"Person" § 1-101

"Vehicle" § 6-401

6-405. USE OF AN OFF-ROAD VEHICLE ON PUBLIC PROPERTY.

(A) "POLITICAL SUBDIVISION" DEFINED.

IN THIS SECTION, "POLITICAL SUBDIVISION" INCLUDES A:

(1) COUNTY;

(2) MUNICIPAL CORPORATION;

(3) BICOUNTY OR MULTICOUNTY AGENCY;

(4) COUNTY BOARD OF EDUCATION;

(5) PUBLIC AUTHORITY; OR

(6) SPECIAL TAXING DISTRICT.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) A VESSEL;

(2) A MILITARY, FIRE OR LAW ENFORCEMENT VEHICLE;

(3) A FARM-TYPE TRACTOR, OTHER AGRICULTURAL EQUIPMENT USED FOR AGRICULTURAL PURPOSES, OR CONSTRUCTION EQUIPMENT USED FOR AGRICULTURAL PURPOSES OR EARTH MOVING;

(4) EARTH-MOVING OR CONSTRUCTION EQUIPMENT USED FOR THOSE PURPOSES; OR

(5) A LAWN MOWER, SNOWBLOWER, GARDEN OR LAWN TRACTOR, OR GOLF CART WHILE BEING USED FOR ITS DESIGNED PURPOSE.

(C) PROHIBITED.

EXCEPT AS OTHERWISE ALLOWED BY LAW, A PERSON MAY NOT USE AN OFF-ROAD VEHICLE ON PROPERTY KNOWN BY THE PERSON TO BE OWNED OR LEASED BY THE STATE OR A POLITICAL SUBDIVISION.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 576(c)(2) and 577(a)(4) and (b).

Subsection (b) of this section is revised as a scope provision excluding the application of this section from certain on-road and off-road vehicles. This corrects the usage of the former defined term "off-road vehicle", which included on-road vehicles, and excluded the on-road and off-road vehicles listed in this subsection.

In subsection (b)(1) of this section, the reference to a "vessel" is substituted for the former reference to a "boat" for consistency with other revised articles.

In subsection (b)(3) of this section, the reference to construction equipment used for "agricultural purposes or earth moving" is substituted for the former reference to "those purposes" for clarity. Similarly, in subsection (b)(5) of this section, the reference to a lawn mower, snowblower, garden or lawn tractor "while being used for its designed purpose" is added for clarity.

In subsection (c) of this section, the reference to property "known by the person" to be owned or leased by a public entity is substituted for the former phrase "with knowledge" to clarify that the person using the vehicle or off-road vehicle must know that the property is public, in order to be charged with violating this section. The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

Also in subsection (c) of this section, the former reference to "operat[ing]" an off-road vehicle is deleted as included in the reference to "us[ing]" a vehicle or off-road vehicle.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (c) of this section, the reference to an "off-road vehicle" is retained, although the term defined in § 6-401 of this section does not include the on-road vehicles that were included in the same term defined in the former law. Context appeared to limit the prohibition in subsection (c) of this section only to true off-road vehicles. No substantive change is intended by the substitution.

Defined terms: "County" § 1-101

"Off-road vehicle" § 6-401

"Person" § 1-101

"Vehicle" § 6-401

6-406. WANTON ENTRY ON CULTIVATED LAND.

(A) "CULTIVATED LAND" DEFINED.

"CULTIVATED LAND" MEANS LAND THAT HAS BEEN CLEARED OF ITS NATURAL VEGETATION AND IS CURRENTLY PLANTED WITH A CROP OR ORCHARD.

(B) PROHIBITED.

UNLESS A PERSON HAS PERMISSION FROM THE OWNER OF CULTIVATED LAND OR AN AGENT OF THE OWNER, A PERSON MAY NOT ENTER ON THE CULTIVATED LAND OF ANOTHER.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

(D) CONSTRUCTION OF SECTION.

THIS SECTION:

(1) PROHIBITS ONLY WANTON ENTRY ON CULTIVATED LAND; AND

(2) DOES NOT:

(I) PREVENT A PERSON WHO RESIDES ON CULTIVATED LAND FROM RECEIVING A PERSON WHO SEEKS TO PROVIDE A LAWFUL SERVICE; OR

(II) APPLY TO A PERSON ENTERING CULTIVATED LAND UNDER COLOR OF LAW OR COLOR OF TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 576(b) and 577(a)(5) and (b).

In subsection (a) of this section, the former reference to land that is "presently" planted is deleted as surplusage.

In subsection (b) of this section, the reference to the owner "of cultivated land" is added for clarity.

Defined terms: "Person" § 1-101

"Wanton" § 6-401

6-407. TRESPASS IN STABLE AREA OF RACETRACK.

(A) PROHIBITED.

A PERSON MAY NOT ENTER OR REMAIN IN THE STABLE AREA OF A RACETRACK AFTER BEING NOTIFIED BY A RACETRACK OFFICIAL, SECURITY GUARD, OR LAW ENFORCEMENT OFFICER THAT THE PERSON IS NOT ALLOWED IN THE STABLE AREA.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 577(a)(6) and (b).

In subsection (a) of this section, the former reference to being "duly" notified is deleted as surplusage.

Also in subsection (a) of this section, the reference to "the stable" area is substituted for the former reference to "that" area for clarity and consistency.

Defined term: "Person" § 1-101

6-408. ENTRY ON PROPERTY FOR PURPOSE OF INVADING PRIVACY OF OCCUPANTS.

(A) PROHIBITED.

A PERSON MAY NOT ENTER ON THE PROPERTY OF ANOTHER FOR THE PURPOSE OF INVADING THE PRIVACY OF AN OCCUPANT OF A BUILDING OR ENCLOSURE LOCATED ON THE PROPERTY BY LOOKING INTO A WINDOW, DOOR, OR OTHER OPENING.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 577(a)(7) and (b).

In subsection (a) of this section, the word "property" is substituted for the former phrase "land or premises" for brevity.

Also in subsection (a) of this section, the former reference to looking into a window, door, or other opening "of the building or enclosure" is deleted as surplusage.

Defined term: "Person" § 1-101

6-409. REFUSAL OR FAILURE TO LEAVE PUBLIC BUILDING OR GROUNDS.

(A) PROHIBITED -- DURING REGULARLY CLOSED HOURS.

A PERSON MAY NOT REFUSE OR FAIL TO LEAVE A PUBLIC BUILDING OR GROUNDS, OR A SPECIFIC PART OF A PUBLIC BUILDING OR GROUNDS, DURING THE TIME WHEN THE PUBLIC BUILDING OR GROUNDS, OR SPECIFIC PART OF THE PUBLIC BUILDING OR GROUNDS, IS REGULARLY CLOSED TO THE PUBLIC IF:

(1) THE SURROUNDING CIRCUMSTANCES WOULD INDICATE TO A REASONABLE PERSON THAT THE PERSON WHO REFUSES OR FAILS TO LEAVE HAS NO APPARENT LAWFUL BUSINESS TO PURSUE AT THE PUBLIC BUILDING OR GROUNDS; AND

(2) A REGULARLY EMPLOYED GUARD, WATCHMAN, OR OTHER AUTHORIZED EMPLOYEE OF THE GOVERNMENT UNIT THAT OWNS, OPERATES, OR MAINTAINS THE PUBLIC BUILDING OR GROUNDS ASKS THE PERSON TO LEAVE.

(B) SAME -- DURING REGULAR BUSINESS HOURS.

A PERSON MAY NOT REFUSE OR FAIL TO LEAVE A PUBLIC BUILDING OR GROUNDS, OR A SPECIFIC PART OF A PUBLIC BUILDING OR GROUNDS, DURING REGULAR BUSINESS HOURS IF:

(1) THE SURROUNDING CIRCUMSTANCES WOULD INDICATE TO A REASONABLE PERSON THAT THE PERSON WHO REFUSES OR FAILS TO LEAVE:

(I) HAS NO APPARENT LAWFUL BUSINESS TO PURSUE AT THE PUBLIC BUILDING OR GROUNDS; OR

(II) IS ACTING IN A MANNER DISRUPTIVE OF AND DISTURBING TO THE CONDUCT OF NORMAL BUSINESS BY THE GOVERNMENT UNIT THAT OWNS, OPERATES, OR MAINTAINS THE PUBLIC BUILDING OR GROUNDS; AND

(2) AN AUTHORIZED EMPLOYEE OF THE GOVERNMENT UNIT ASKS THE PERSON TO LEAVE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 578(a), (b), and (d).

In the introductory language of subsection (a) of this section, the reference to "the time" is substituted for the former reference to "those hours of the day or night" for brevity.

In subsection (a)(1) and the introductory language of subsection (b)(1) of this section, the references to the person "who refuses or fails to leave" are added for clarity.

In subsections (a)(2) and (b)(1)(ii) and (2) of this section, the phrase "government unit" is substituted for the former phrase "public agency or institution" for consistency within this article. *See* General Revisor's Note to article.

In subsection (b)(1)(ii) of this section, the reference to "grounds" is substituted for the former reference to "property" for consistency within this section.

Defined term: "Person" § 1-101

6-410. WANTON TRESPASS ON PROPERTY OF GOVERNMENT HOUSE.

(A) PROHIBITED.

A PERSON MAY NOT COMMIT WANTON TRESPASS ON THE PROPERTY OF GOVERNMENT HOUSE.

(B) POSTING NOT NECESSARY.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PROPERTY OF GOVERNMENT HOUSE NEED NOT BE POSTED AGAINST TRESPASS.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 578(c) and (d).

In subsection (b) of this section, the former phrase "unlawful entry" is deleted as included in the word "trespass".

Defined terms: "Person" § 1-101

"Wanton" § 6-401

SUBTITLE 5. CRIMES INVOLVING RAILROADS.

6-501. "RAILROAD VEHICLE" DEFINED.

IN THIS SUBTITLE, "RAILROAD VEHICLE" INCLUDES A CAR, CARRIAGE, ENGINE, LOCOMOTIVE, OR TENDER.

REVISOR'S NOTE: This section formerly was Art. 27, § 453.

The reference to "this subtitle" is substituted for the former reference to "this subheading" to reflect the organization of material derived from the former subheading on railroads.

No other changes are made.

6-502. INTERFERENCE WITH RAILROAD.

(A) "RAILROAD" DEFINED.

IN THIS SECTION, "RAILROAD" INCLUDES A SWITCH, FROG, RAIL, ROADBED, TIE, VIADUCT, BRIDGE, TRESTLE, CULVERT, EMBANKMENT, STRUCTURE, OR APPLIANCE THAT PERTAINS TO OR CONNECTS WITH A RAILROAD.

(B) PROHIBITED.

A PERSON MAY NOT, WITH THE INTENT TO OBSTRUCT OR DERAIL A RAILROAD VEHICLE IN THE STATE:

(1) BREAK OR DAMAGE A RAILROAD; OR

(2) PLACE OR CAUSE ANYTHING TO BE PLACED ON A RAILROAD.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS 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, § 453A.

In subsection (a) of this section, the reference to a "tie" is substituted for the former reference to a "sleeper" for clarity.

In subsection (b) of this section, the phrase "with the intent" is new language added for clarity.

Also in subsection (b) of this section, the word "derail" is substituted for the former references to "overthrow" and "direct" for clarity.

Defined terms: "Person" § 1-101

"Railroad vehicle" § 6-501

6-503. UNAUTHORIZED ACCESS TO RAILROAD VEHICLE.

(A) PROHIBITED.

EXCEPT AS AUTHORIZED BY LAW OR THE RULES OF THE RAILROAD COMPANY, A PERSON MAY NOT BE IN OR ON A RAILROAD VEHICLE ON A RAILROAD TRACK IN THE STATE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 MONTH OR A FINE NOT EXCEEDING $25 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 455.

In subsection (a) of this section, the former reference to "regulations" is deleted as surplusage.

Defined terms: "Person" § 1-101

"Railroad vehicle" § 6-501

6-504. GIVING A FALSE TRAIN SIGNAL.

(A) PROHIBITED.

A PERSON MAY NOT GIVE A TRAIN SIGNAL TO START A STOPPED TRAIN OR TO STOP A MOVING TRAIN UNLESS THE PERSON IS AN AUTHORIZED EMPLOYEE OF A RAILROAD COMPANY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 456.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (a) of this section appears to allow an authorized employee of any railroad company to start or stop a train, not merely the railroad company that is operating the train.

Defined term: "Person" § 1-101

6-505. STRIKING RAILROAD VEHICLE WITH OBJECT.

(A) "RAILROAD" DEFINED.

IN THIS SECTION, "RAILROAD" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(B) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY STRIKE A RAILROAD VEHICLE ON A RAILROAD OR ON AN ELECTRIC RAILWAY IN THE STATE BY:

(1) SHOOTING OR THROWING AN OBJECT AT THE RAILROAD VEHICLE; OR

(2) CAUSING AN OBJECT TO FALL ON THE RAILROAD VEHICLE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 458.

In subsection (a) of this section, the reference to "§ 1-101 of" the Public Utility Companies Article is added for clarity.

In subsection (b) of this section, the former reference to "causing an object to" strike a railroad vehicle is deleted as included in the references to striking a railroad vehicle by "shooting or throwing an object" at and "causing an object to fall" on the vehicle.

Defined terms: "Person" § 1-101

"Railroad vehicle" § 6-501

6-506. UNAUTHORIZED BUYING OR SELLING TICKETS.

(A) PROHIBITED.

UNLESS AUTHORIZED BY A RAILROAD COMPANY THAT MAINTAINS OFFICES IN THE STATE, A PERSON MAY NOT:

(1) BUY, SELL, OR ENGAGE IN THE BUSINESS OF BUYING OR SELLING RAILROAD TICKETS OR THE UNUSED PARTS OF RAILROAD TICKETS;

(2) ACT AS VENDOR OR BROKER OF WHOLE OR PARTLY USED RAILROAD TICKETS;

(3) SOLICIT PERSONALLY OR BY SIGN, ADVERTISEMENT, OR OTHERWISE TO BUY OR SELL RAILROAD TICKETS; OR

(4) AID OR ABET IN BUYING OR SELLING RAILROAD TICKETS IN THE STATE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $100 OR BOTH.

(C) SEPARATE VIOLATION.

EACH ACT OF BUYING OR SELLING RAILROAD TICKETS IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 460(a).

In subsection (a)(1), (3), and (4) of this section, the references to "railroad" tickets are added for clarity.

Former Art. 27, § 460(b), which provided that if a violation of this section occurs in a county or the City of Baltimore, the State's Attorney for the affected county or the City shall enforce this section, is deleted as unnecessary. A violation of this section that occurs anywhere in the State will occur either in a county or Baltimore City. Furthermore, even without this provision, a violation of this section is a criminal violation subject to enforcement by the State's Attorney. Finally, the specific reference to Baltimore City is not necessary in light of Art. 1, § 14(a) and the term "county" defined in § 1-101 of this article, which includes Baltimore City.

Defined term: "Person" 1-101

TITLE 7. THEFT AND RELATED CRIMES.

SUBTITLE 1. CRIMES INVOLVING THEFT.

PART I. THEFT.

7-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the introductory language of former Art. 27, § 340.

(B) DECEPTION.

(1) "DECEPTION" MEANS KNOWINGLY TO:

(I) CREATE OR CONFIRM IN ANOTHER A FALSE IMPRESSION THAT THE OFFENDER DOES NOT BELIEVE TO BE TRUE;

(II) FAIL TO CORRECT A FALSE IMPRESSION THAT THE OFFENDER PREVIOUSLY HAS CREATED OR CONFIRMED;

(III) PREVENT ANOTHER FROM ACQUIRING INFORMATION PERTINENT TO THE DISPOSITION OF THE PROPERTY INVOLVED;

(IV) SELL OR OTHERWISE TRANSFER OR ENCUMBER PROPERTY WITHOUT DISCLOSING A LIEN, ADVERSE CLAIM, OR OTHER LEGAL IMPEDIMENT TO THE ENJOYMENT OF THE PROPERTY, REGARDLESS OF WHETHER THE IMPEDIMENT IS OF VALUE OR A MATTER OF OFFICIAL RECORD;

(V) INSERT OR DEPOSIT A SLUG IN A VENDING MACHINE;

(VI) REMOVE OR ALTER A LABEL OR PRICE TAG;

(VII) PROMISE PERFORMANCE THAT THE OFFENDER DOES NOT INTEND TO PERFORM OR KNOWS WILL NOT BE PERFORMED; OR

(VIII) MISREPRESENT THE VALUE OF A MOTOR VEHICLE OFFERED FOR SALE BY TAMPERING OR INTERFERING WITH ITS ODOMETER, OR BY DISCONNECTING, RESETTING, OR ALTERING ITS ODOMETER WITH THE INTENT TO CHANGE THE MILEAGE INDICATED.

(2) "DECEPTION" DOES NOT INCLUDE PUFFING OR FALSE STATEMENTS OF IMMATERIAL FACTS AND EXAGGERATED REPRESENTATIONS THAT ARE UNLIKELY TO DECEIVE AN ORDINARY INDIVIDUAL.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(b), except as it related to establishing the deceiver's intention to not perform a promise.

In paragraph (1)(vi) of this subsection, the former reference to acts that "otherwise disfigure" a label or price tag is deleted as redundant in light of the reference "alter[ing]".

In paragraph (1)(viii) of this subsection, the reference to "disconnecting" a motor vehicle's odometer with the intent to change the number of miles indicated is added for consistency with § 22-415(2) of the Transportation Article, which prohibits tampering or interfering with, or disconnecting, resetting, or altering an odometer with that intent.

In paragraph (2) of this subsection, the reference to an ordinary "individual" is substituted for the former reference to ordinary "persons" for clarity.

(C) DEPRIVE.

"DEPRIVE" MEANS TO WITHHOLD PROPERTY OF ANOTHER:

(1) PERMANENTLY;

(2) FOR A PERIOD THAT RESULTS IN THE APPROPRIATION OF A PART OF THE PROPERTY'S VALUE;

(3) WITH THE PURPOSE TO RESTORE IT ONLY ON PAYMENT OF A REWARD OR OTHER COMPENSATION; OR

(4) TO DISPOSE OF THE PROPERTY OR USE OR DEAL WITH THE PROPERTY IN A MANNER THAT MAKES IT UNLIKELY THAT THE OWNER WILL RECOVER IT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(c).

In item (4) of this subsection, the reference to disposing of property "or" using or dealing with it is substituted for the former reference to disposing of property "and" dealing with it for clarity.

(D) EXERT CONTROL.

(1) "EXERT CONTROL" INCLUDES TO TAKE, CARRY AWAY, APPROPRIATE TO A PERSON'S OWN USE OR SELL, CONVEY, OR TRANSFER TITLE TO AN INTEREST IN OR POSSESSION OF PROPERTY.

(2) "EXERT CONTROL" DOES NOT INCLUDE:

(I) TO TRESPASS ON THE LAND OF ANOTHER; OR

(II) TO OCCUPY THE LAND OF ANOTHER WITHOUT AUTHORIZATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(d).

In paragraph (1) of this subsection, the reference to the appropriation of property to "a person's" own use is substituted for the former reference to the appropriation of property to "one's" own use for clarity.

Defined term: "Person" § 1-101

(E) MOTOR VEHICLE.

"MOTOR VEHICLE" HAS THE MEANING STATED IN § 11-135 OF THE TRANSPORTATION ARTICLE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 340(f).

No changes are made.

(F) OBTAIN.

"OBTAIN" MEANS:

(1) IN RELATION TO PROPERTY, TO BRING ABOUT A TRANSFER OF INTEREST IN OR POSSESSION OF THE PROPERTY; AND

(2) IN RELATION TO A SERVICE, TO SECURE THE PERFORMANCE OF THE SERVICE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(g).

In item (1) of this subsection, the former reference to transfer "whether to the offender or to another" is deleted as surplusage.

In item (2) of this subsection, the former reference to services and the performance "thereof" is deleted as surplusage.

(G) OWNER.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PART, "OWNER" MEANS A PERSON, OTHER THAN THE OFFENDER:

(1) WHO HAS AN INTEREST IN OR POSSESSION OF PROPERTY REGARDLESS OF WHETHER THE PERSON'S INTEREST OR POSSESSION IS UNLAWFUL; AND

(2) WITHOUT WHOSE CONSENT THE OFFENDER HAS NO AUTHORITY TO EXERT CONTROL OVER THE PROPERTY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(h).

In the introductory language of this subsection, the phrase "[e]xcept as otherwise expressly provided in this part," is added in light of the use of a different definition of "owner" in § 7-105 of this part.

Defined term: "Person" § 1-101

(H) PROPERTY.

(1) "PROPERTY" MEANS ANYTHING OF VALUE.

(2) "PROPERTY" INCLUDES:

(I) REAL ESTATE;

(II) MONEY;

(III) A COMMERCIAL INSTRUMENT;

(IV) AN ADMISSION OR TRANSPORTATION TICKET;

(V) A WRITTEN INSTRUMENT REPRESENTING OR EMBODYING RIGHTS CONCERNING ANYTHING OF VALUE, OR SERVICES, OR ANYTHING OTHERWISE OF VALUE TO THE OWNER;

(VI) A THING GROWING ON OR AFFIXED TO, OR FOUND ON LAND, OR PART OF OR AFFIXED TO ANY BUILDING;

(VII) ELECTRICITY, GAS, AND WATER;

(VIII) A BIRD, ANIMAL, OR FISH THAT ORDINARILY IS KEPT IN A STATE OF CONFINEMENT;

(IX) FOOD OR DRINK;

(X) A SAMPLE, CULTURE, MICROORGANISM, OR SPECIMEN;

(XI) A RECORD, RECORDING, DOCUMENT, BLUEPRINT, DRAWING, MAP, OR A WHOLE OR PARTIAL COPY, DESCRIPTION, PHOTOGRAPH, PROTOTYPE, OR MODEL OF ANY OF THEM;

(XII) AN ARTICLE, MATERIAL, DEVICE, SUBSTANCE, OR A WHOLE OR PARTIAL COPY, DESCRIPTION, PHOTOGRAPH, PROTOTYPE, OR MODEL OF ANY OF THEM THAT REPRESENTS EVIDENCE OF, REFLECTS, OR RECORDS A SECRET:

1. SCIENTIFIC, TECHNICAL, MERCHANDISING, PRODUCTION, OR MANAGEMENT INFORMATION; OR

2. DESIGNED PROCESS, PROCEDURE, FORMULA, INVENTION, TRADE SECRET, OR IMPROVEMENT;

(XIII) A FINANCIAL INSTRUMENT; AND

(XIV) INFORMATION, ELECTRONICALLY PRODUCED DATA, AND A COMPUTER SOFTWARE OR PROGRAM IN A FORM READABLE BY MACHINE OR INDIVIDUAL.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(i).

In paragraph (1) of this subsection, the former reference to property including "but not limited to" specified items is deleted as unnecessary. *See* Art. 1, § 30.

In paragraph (2)(v) of this subsection, the reference to "anything of value" is deleted as unnecessary in light of paragraph (1) of this subsection.

In paragraph (2)(viii) of this subsection, the former reference to "a state of" confinement is deleted as surplusage.

In item (2)(xii)1 of this subsection, a comma is added between "merchandising" and "production" for clarity.

In item (2)(xii)2 of this subsection, the phrase "designed process," is retained, although substituting the phrase "design, process," may be more accurate. The Criminal Law Article Review Committee calls this retention to the attention of the General Assembly.

In item (2)(xiv) of this subsection, the former reference to "other tangible or

intangible items of value" is deleted as included in the comprehensive reference to "anything of value" in item (1) of this subsection.

(I) PROPERTY OF ANOTHER.

"PROPERTY OF ANOTHER" MEANS PROPERTY IN WHICH A PERSON OTHER THAN THE OFFENDER HAS AN INTEREST THAT THE OFFENDER DOES NOT HAVE THE AUTHORITY TO DEFEAT OR IMPAIR, EVEN THOUGH THE OFFENDER ALSO MAY HAVE AN INTEREST IN THE PROPERTY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(j).

The former reference to "real or personal" property is deleted as surplusage.

Defined term: "Person" § 1-101

(J) SERVICE.

"SERVICE" INCLUDES:

(1) LABOR OR PROFESSIONAL SERVICE;

(2) TELECOMMUNICATION, PUBLIC UTILITY, TOLL FACILITY, OR TRANSPORTATION SERVICE;

(3) LODGING, ENTERTAINMENT, OR RESTAURANT SERVICE; AND

(4) THE USE OF COMPUTERS, DATA PROCESSING, OR OTHER EQUIPMENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(k).

In the introductory language of this subsection, the former reference to service including, but "not limited to" specified activities is deleted as unnecessary. Similarly, in item (4) of this subsection, the former reference to service "including, but not limited to" certain types of equipment is deleted as unnecessary. *See* Art. 1, § 30.

(K) SLUG.

"SLUG" MEANS AN OBJECT THAT, BECAUSE OF ITS SIZE, SHAPE, OR OTHER QUALITY, CAN BE DEPOSITED OR INSERTED IN A VENDING MACHINE AS AN IMPROPER SUBSTITUTE FOR THE PAYMENT REQUIRED TO OPERATE THE VENDING MACHINE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(l).

The former reference to "article" is deleted as unnecessary in light of the use of the word "object".

The word "payment" is substituted for the former reference to "a coin, bill, or token" for brevity.

The defined term "vending machine" is substituted for the former defined term "coin machine" for clarity since a vending machine need not necessarily use a "coin" in order to function as described in subsection (m) of this section [former Art. 27, § 340(a)].

(L) THEFT.

(1) "THEFT" MEANS THE CONDUCT DESCRIBED IN §§ 7-104 THROUGH 7-107 OF THIS SUBTITLE.

(2) "THEFT" INCLUDES MOTOR VEHICLE THEFT, UNLESS OTHERWISE INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(m).

(M) VENDING MACHINE.

"VENDING MACHINE" MEANS A DEVICE DESIGNED TO RECEIVE A SPECIFIED PAYMENT AND IN EXCHANGE AUTOMATICALLY OFFER, PROVIDE, ASSIST IN PROVIDING, OR ALLOW A PERSON TO ACQUIRE PROPERTY OR SERVICE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 340(a).

The reference to a "[v]ending machine" is substituted for the former reference to a "[c]oin machine" for clarity since a "coin machine" need not necessarily use a "coin" in order to function as described in former Art. 27, § 340(a) or in this revised subsection.

The reference to a "device" is substituted for the former reference to a "coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle" for brevity.

The reference to a "specified payment" is substituted for the former reference to "a coin, or bill, or a token made to be received by the machine" for brevity.

The reference to the receipt of the specified payment by the device "in exchange" for property or service is substituted for the former reference to the requirement that the vending device, "in return for the insertion or deposit" of the payment, render some property or service for clarity.

The requirement that the device provide or allow "a person" to acquire the

designated property or service is added for clarity.

The former reference to acquiring "some" property or service is deleted as surplusage.

Defined term: "Person" § 1-101

7-102. RULES OF CONSTRUCTION.

(A) INTERPRETATION OF PART.

CONDUCT DESCRIBED AS THEFT IN THIS PART CONSTITUTES A SINGLE CRIME AND INCLUDES THE SEPARATE CRIMES FORMERLY KNOWN AS:

(1) LARCENY;

(2) LARCENY BY TRICK;

(3) LARCENY AFTER TRUST;

(4) EMBEZZLEMENT;

(5) FALSE PRETENSES;

(6) SHOPLIFTING; AND

(7) RECEIVING STOLEN PROPERTY.

(B) KNOWING CONDUCT.

(1) A PERSON ACTS "KNOWINGLY":

(I) WITH RESPECT TO CONDUCT OR A CIRCUMSTANCE AS DESCRIBED BY A STATUTE THAT DEFINES A CRIME, WHEN THE PERSON IS AWARE OF THE CONDUCT OR THAT THE CIRCUMSTANCE EXISTS;

(II) WITH RESPECT TO THE RESULT OF CONDUCT AS DESCRIBED BY A STATUTE THAT DEFINES A CRIME, WHEN THE PERSON IS PRACTICALLY CERTAIN THAT THE RESULT WILL BE CAUSED BY THE PERSON'S CONDUCT; AND

(III) WITH RESPECT TO A PERSON'S KNOWLEDGE OF THE EXISTENCE OF A PARTICULAR FACT, IF THAT KNOWLEDGE IS AN ELEMENT OF A CRIME, WHEN THE PERSON IS PRACTICALLY CERTAIN OF THE EXISTENCE OF THAT FACT.

(2) THE TERMS "KNOWING" AND "WITH KNOWLEDGE" ARE CONSTRUED IN THE SAME MANNER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 340(e) and the first sentence of § 341.

In the introductory language of subsection (a) of this section, the word "includes" is substituted for the former reference to the crime of theft "embracing, among others" certain formerly designated crimes for consistency with other revised articles of the Code. *See* Art. 1, § 30.

Throughout subsection (b) of this section, the references to "a person's" conduct or "a person's" knowledge are added for clarity.

In subsection (b)(1)(i) through (iii) of this section, the term "crime" is substituted for the former references to an "offense" for consistency within this article. *See* General Revisor's Note to article.

In subsection (b)(1)(iii) of this section, the requirement that a person act "with respect to" the knowledge of a particular fact is added for clarity.

Defined terms: "Person" § 1-101

"Property" § 7-101

"Theft" § 7-101

7-103. DETERMINATION OF VALUE.

(A) "VALUE" DEFINED.

IN THIS SECTION, "VALUE" MEANS:

(1) THE MARKET VALUE OF THE PROPERTY OR SERVICE AT THE TIME AND PLACE OF THE CRIME; OR

(2) IF THE MARKET VALUE CANNOT SATISFACTORILY BE ASCERTAINED, THE COST OF THE REPLACEMENT OF THE PROPERTY OR SERVICE WITHIN A REASONABLE TIME AFTER THE CRIME.

(B) IN GENERAL.

THE VALUE OF PROPERTY OR SERVICE UNDER THIS PART SHALL BE DETERMINED IN ACCORDANCE WITH THIS SECTION.

(C) WRITTEN INSTRUMENT.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SUBSECTION APPLIES TO A WRITTEN INSTRUMENT WHETHER OR NOT THE INSTRUMENT HAS BEEN ISSUED OR DELIVERED.

(2) THIS SUBSECTION DOES NOT APPLY TO A WRITTEN INSTRUMENT THAT HAS A READILY ASCERTAINABLE MARKET VALUE.

(3) (I) FOR PURPOSES OF THIS PART, A WRITTEN INSTRUMENT IS VALUED AS PROVIDED BY THIS PARAGRAPH.

(II) THE VALUE OF AN INSTRUMENT CONSTITUTING EVIDENCE OF DEBT, INCLUDING A CHECK, DRAFT, OR PROMISSORY NOTE, IS THE AMOUNT DUE OR

COLLECTIBLE ON THE INSTRUMENT. THAT VALUE IS ORDINARILY THE FACE AMOUNT OF THE INSTRUMENT, LESS ANY PORTION THAT HAS BEEN SATISFIED.

(III) THE VALUE OF ANY OTHER INSTRUMENT THAT CREATES, RELEASES, DISCHARGES, OR OTHERWISE AFFECTS A VALUABLE LEGAL RIGHT, PRIVILEGE, OR OBLIGATION IS THE AMOUNT OF ECONOMIC LOSS THE OWNER OF THE INSTRUMENT MIGHT REASONABLY SUFFER BECAUSE OF THE LOSS OF THE INSTRUMENT.

(D) TRADE SECRET.

THE VALUE OF A TRADE SECRET LACKING A READILY ASCERTAINABLE MARKET VALUE IS A REASONABLE VALUE THAT REPRESENTS THE DAMAGE THE OWNER SUFFERED BY THE LOSS OF AN ADVANTAGE OVER THOSE WHO DO NOT KNOW OR USE THE TRADE SECRET.

(E) WHEN VALUE CANNOT BE DETERMINED.

WHEN IT CANNOT BE DETERMINED WHETHER THE VALUE OF THE PROPERTY OR SERVICE IS MORE OR LESS THAN $500 UNDER THE STANDARDS OF THIS SECTION, THE VALUE IS DEEMED TO BE LESS THAN $500.

(F) COURSE OF CONDUCT -- AGGREGATION.

WHEN THEFT IS COMMITTED IN VIOLATION OF THIS PART UNDER ONE SCHEME OR CONTINUING COURSE OF CONDUCT, WHETHER FROM THE SAME OR SEVERAL SOURCES:

(1) THE CONDUCT MAY BE CONSIDERED AS ONE CRIME; AND

(2) THE VALUE OF THE PROPERTY OR SERVICES MAY BE AGGREGATED IN DETERMINING WHETHER THE THEFT IS A FELONY OR A MISDEMEANOR.

REVISOR'S NOTE: Subsections (a) and (c) through (f) of this section are new language derived without substantive change from former Art. 27, § 340(n).

Subsection (b) of this section is new language added for clarity.

In subsection (a)(2) of this section, the reference to the replacement of "service" is added as implicit in light of subsection (a)(1) of this section.

Defined terms: "Owner" § 7-101

"Property" § 7-101

"Service" § 7-101

"Theft" § 7-101

7-104. GENERAL THEFT PROVISIONS.

(A) UNAUTHORIZED CONTROL OVER PROPERTY.

A PERSON MAY NOT WILLFULLY OR KNOWINGLY OBTAIN OR EXERT UNAUTHORIZED CONTROL OVER PROPERTY, IF THE PERSON:

(1) INTENDS TO DEPRIVE THE OWNER OF THE PROPERTY;

(2) WILLFULLY OR KNOWINGLY USES, CONCEALS, OR ABANDONS THE PROPERTY IN A MANNER THAT DEPRIVES THE OWNER OF THE PROPERTY; OR

(3) USES, CONCEALS, OR ABANDONS THE PROPERTY KNOWING THE USE, CONCEALMENT, OR ABANDONMENT PROBABLY WILL DEPRIVE THE OWNER OF THE PROPERTY.

(B) SAME -- BY DECEPTION.

A PERSON MAY NOT OBTAIN CONTROL OVER PROPERTY BY WILLFULLY OR KNOWINGLY USING DECEPTION, IF THE PERSON:

(1) INTENDS TO DEPRIVE THE OWNER OF THE PROPERTY;

(2) WILLFULLY OR KNOWINGLY USES, CONCEALS, OR ABANDONS THE PROPERTY IN A MANNER THAT DEPRIVES THE OWNER OF THE PROPERTY; OR

(3) USES, CONCEALS, OR ABANDONS THE PROPERTY KNOWING THE USE, CONCEALMENT, OR ABANDONMENT PROBABLY WILL DEPRIVE THE OWNER OF THE PROPERTY.

(C) POSSESSING STOLEN PERSONAL PROPERTY.

(1) A PERSON MAY NOT POSSESS STOLEN PERSONAL PROPERTY KNOWING THAT IT HAS BEEN STOLEN, OR BELIEVING THAT IT PROBABLY HAS BEEN STOLEN, IF THE PERSON:

(I) INTENDS TO DEPRIVE THE OWNER OF THE PROPERTY;

(II) WILLFULLY OR KNOWINGLY USES, CONCEALS, OR ABANDONS THE PROPERTY IN A MANNER THAT DEPRIVES THE OWNER OF THE PROPERTY; OR

(III) USES, CONCEALS, OR ABANDONS THE PROPERTY KNOWING THAT THE USE, CONCEALMENT, OR ABANDONMENT PROBABLY WILL DEPRIVE THE OWNER OF THE PROPERTY.

(2) IN THE CASE OF A PERSON IN THE BUSINESS OF BUYING OR SELLING GOODS, THE KNOWLEDGE REQUIRED UNDER THIS SUBSECTION MAY BE INFERRED IF:

(I) THE PERSON POSSESSES OR EXERTS CONTROL OVER PROPERTY STOLEN FROM MORE THAN ONE PERSON ON SEPARATE OCCASIONS;

(II) DURING THE YEAR PRECEDING THE CRIMINAL POSSESSION CHARGED, THE PERSON HAS ACQUIRED STOLEN PROPERTY IN A SEPARATE TRANSACTION; OR

(III) BEING IN THE BUSINESS OF BUYING OR SELLING PROPERTY OF THE SORT POSSESSED, THE PERSON ACQUIRED IT FOR A CONSIDERATION THAT THE PERSON KNEW WAS FAR BELOW A REASONABLE VALUE.

(3) IN A PROSECUTION FOR THEFT BY POSSESSION OF STOLEN PROPERTY UNDER THIS SUBSECTION, IT IS NOT A DEFENSE THAT:

(I) THE PERSON WHO STOLE THE PROPERTY HAS NOT BEEN CONVICTED, APPREHENDED, OR IDENTIFIED;

(II) THE DEFENDANT STOLE OR PARTICIPATED IN THE STEALING OF THE PROPERTY; OR

(III) THE STEALING OF THE PROPERTY DID NOT OCCUR IN THE STATE.

(4) UNLESS THE PERSON WHO CRIMINALLY POSSESSES STOLEN PROPERTY PARTICIPATED IN THE STEALING, THE PERSON WHO CRIMINALLY POSSESSES STOLEN PROPERTY AND A PERSON WHO HAS STOLEN THE PROPERTY ARE NOT ACCOMPLICES IN THEFT FOR THE PURPOSE OF ANY RULE OF EVIDENCE REQUIRING CORROBORATION OF THE TESTIMONY OF AN ACCOMPLICE.

(D) CONTROL OVER PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE.

A PERSON MAY NOT OBTAIN CONTROL OVER PROPERTY KNOWING THAT THE PROPERTY WAS LOST, MISLAID, OR WAS DELIVERED UNDER A MISTAKE AS TO THE IDENTITY OF THE RECIPIENT OR NATURE OR AMOUNT OF THE PROPERTY, IF THE PERSON:

(1) KNOWS OR LEARNS THE IDENTITY OF THE OWNER OR KNOWS, IS AWARE OF, OR LEARNS OF A REASONABLE METHOD OF IDENTIFYING THE OWNER;

(2) FAILS TO TAKE REASONABLE MEASURES TO RESTORE THE PROPERTY TO THE OWNER; AND

(3) INTENDS TO DEPRIVE THE OWNER PERMANENTLY OF THE USE OR BENEFIT OF THE PROPERTY WHEN THE PERSON OBTAINS THE PROPERTY OR AT A LATER TIME.

(E) SERVICES AVAILABLE ONLY FOR COMPENSATION.

A PERSON MAY NOT OBTAIN THE SERVICES OF ANOTHER THAT ARE AVAILABLE ONLY FOR COMPENSATION:

(1) BY DECEPTION; OR

(2) WITH KNOWLEDGE THAT THE SERVICES ARE PROVIDED WITHOUT THE CONSENT OF THE PERSON PROVIDING THEM.

(F) INFERENCE OF INTENTION OR KNOWLEDGE.

UNDER THIS SECTION, AN OFFENDER'S INTENTION OR KNOWLEDGE THAT A PROMISE WOULD NOT BE PERFORMED MAY NOT BE ESTABLISHED BY OR INFERRED SOLELY FROM THE FACT THAT THE PROMISE WAS NOT PERFORMED.

(G) PENALTY.

(1) A PERSON CONVICTED OF THEFT OF PROPERTY OR SERVICES WITH A VALUE OF $500 OR MORE IS GUILTY OF A FELONY AND:

(I) IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH; AND

(II) SHALL RESTORE THE PROPERTY TAKEN TO THE OWNER OR PAY THE OWNER THE VALUE OF THE PROPERTY OR SERVICES.

(2) A PERSON CONVICTED OF THEFT OF PROPERTY OR SERVICES WITH A VALUE OF LESS THAN $500 IS GUILTY OF A MISDEMEANOR AND:

(I) IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH; AND

(II) SHALL RESTORE THE PROPERTY TAKEN TO THE OWNER OR PAY THE OWNER THE VALUE OF THE PROPERTY OR SERVICES.

(H) STATUTE OF LIMITATIONS.

AN ACTION OR PROSECUTION FOR THEFT OF PROPERTY OR SERVICES WITH A VALUE OF LESS THAN $500 SHALL BE COMMENCED WITHIN 2 YEARS AFTER THE COMMISSION OF THE CRIME.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 342 and the second sentence of § 340(b)(1)(vii).

In subsections (a), (b), (c), (d), and (e) of this section, the former references to "commit[ting] the offense of theft" are deleted as redundant of the definition of "theft" in § 7-101 of this subtitle.

In subsection (c)(2) of this section, the reference to knowledge "required under this subsection" is added for clarity.

Also in subsection (c)(2) of this section, the references to "the person" are added for clarity.

In subsection (c)(2)(i) of this section, the defined term "exert control" is substituted for the former reference to "control" for clarity.

In subsection (d) of this section, the reference to a person's obtaining control over property of another person knowing that "the property" has been lost, mislaid, or delivered under a mistake is added for clarity.

Also in subsection (d) of this section, the former reference to obtaining control of the lost or mislaid property "of another" is deleted as implicit in the references to identifying the owner and intending to deprive the owner of the property permanently.

In subsection (g)(1) and (2) of this section, the former references to punishment "in the discretion of the court" are deleted as implicit in the establishment of maximum penalties.

Defined terms: "Deception" § 7-101

"Deprive" § 7-101

"Exert control" § 7-101

"Obtain" § 7-101

"Owner" § 7-101

"Person" § 1-101

"Property" § 7-101

"Theft" § 7-101

"Service" § 7-101

7-105. MOTOR VEHICLE THEFT.

(A) "OWNER" DEFINED.

IN THIS SECTION, "OWNER" MEANS A PERSON WHO HAS A LAWFUL INTEREST IN OR IS IN LAWFUL POSSESSION OF A MOTOR VEHICLE BY CONSENT OR CHAIN OF CONSENT OF THE TITLE OWNER.

(B) PROHIBITED.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY TAKE A MOTOR VEHICLE OUT OF THE OWNER'S LAWFUL CUSTODY, CONTROL, OR USE WITHOUT THE OWNER'S CONSENT.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION:

(1) IS GUILTY OF THE FELONY OF TAKING A MOTOR VEHICLE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH; AND

(2) SHALL RESTORE THE MOTOR VEHICLE OR, IF UNABLE TO RESTORE THE MOTOR VEHICLE, PAY TO THE OWNER THE FULL VALUE OF THE MOTOR VEHICLE.

(D) EFFECT ON GENERAL THEFT PROSECUTION; MERGER.

(1) THIS SECTION DOES NOT PRECLUDE PROSECUTION FOR THEFT OF A MOTOR VEHICLE UNDER § 7-104 OF THIS PART.

(2) IF A PERSON IS CONVICTED UNDER § 7-104 OF THIS PART AND THIS SECTION FOR THE SAME ACT OR TRANSACTION, THE CONVICTION UNDER THIS SECTION SHALL MERGE FOR SENTENCING PURPOSES INTO THE CONVICTION UNDER § 7-104 OF THIS PART.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 342A.

In subsection (a) of this section, the former reference to the "actual" title owner is deleted as surplusage.

In subsection (b) of this section, the former reference to "the person's aiders or abettors" is deleted in light of the abrogation of the distinction between principals and accessories. *See* General Revisor's Note to article.

Defined terms: "Motor vehicle" § 7-101

"Person" § 1-101

7-106. NEWSPAPER THEFT.

(A) "NEWSPAPER" DEFINED.

IN THIS SECTION, "NEWSPAPER" MEANS A PERIODICAL THAT IS DISTRIBUTED ON A COMPLIMENTARY OR COMPENSATORY BASIS.

(B) PROHIBITED.

A PERSON MAY NOT KNOWINGLY OR WILLFULLY OBTAIN OR EXERT CONTROL THAT IS UNAUTHORIZED OVER NEWSPAPERS WITH THE INTENT TO PREVENT ANOTHER FROM READING THE NEWSPAPERS.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 60 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 345.

In subsection (b) of this section, the reference to "another" is substituted for the former reference to "other individuals" for consistency within this article.

Also in subsection (b) of this section, the former reference to "commit[ting] the offense of theft" is deleted as redundant of the definition of "theft" in § 7-101 of this subtitle.

Defined terms: "Exert control" § 7-101

"Obtain" § 7-101

"Person" § 1-101

7-107. BAD CHECKS -- PROSECUTION AS THEFT.

(A) SCOPE OF SECTION.

A PERSON WHO OBTAINS PROPERTY OR A SERVICE BY A BAD CHECK UNDER THE CIRCUMSTANCES DESCRIBED IN TITLE 8, SUBTITLE 1 OF THIS ARTICLE MAY NOT BE PROSECUTED FOR THEFT UNDER THIS PART UNLESS THAT PERSON:

(1) MAKES A FALSE REPRESENTATION THAT THERE ARE SUFFICIENT FUNDS IN THE DRAWEE BANK TO COVER THE CHECK; AND

(2) COMMITS DECEPTION AS PROVIDED UNDER § 7-104(B) OR (E) OF THIS PART.

(B) PRESUMPTIONS.

IF A PERSON IS PROSECUTED FOR THEFT UNDER THIS SECTION, THE PRESUMPTIONS OF § 8-104 OF THIS ARTICLE APPLY TO THE SAME EXTENT AS IF THE PERSON WERE PROSECUTED UNDER § 7-104 OF THIS PART.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 344(c).

In subsection (a) of this section, the reference to "[a] person" is substituted for the former reference to "the defendant" for clarity.

In subsection (a)(1) of this section, the former reference to "false representations" is deleted in light of the reference to a "false representation", the singular form of the term. *See* Art. 1, § 8.

In subsection (b) of this section, the reference to a prosecution for theft "under this section" is added for clarity.

Throughout this section, other references to a "person" are added for clarity.

Defined terms: "Deception" § 7-101

"Obtain" § 7-101

"Person" § 1-101

"Property" § 7-101

"Service" § 7-101

"Theft" § 7-101

7-108. CHARGING DOCUMENTS.

(A) THEFT OTHER THAN TAKING A MOTOR VEHICLE.

AN INDICTMENT, INFORMATION, WARRANT, OR OTHER CHARGING DOCUMENT FOR THEFT UNDER THIS PART, OTHER THAN FOR TAKING A MOTOR VEHICLE UNDER § 7-105 OF THIS PART, IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) STOLE (PROPERTY OR SERVICES STOLEN) OF

(NAME OF VICTIM), HAVING A VALUE OF (LESS THAN $500, OR $500 OR MORE) IN VIOLATION OF § 7-104 OF THE CRIMINAL LAW ARTICLE, AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(B) TAKING A MOTOR VEHICLE.

AN INDICTMENT, INFORMATION, WARRANT, OR OTHER CHARGING DOCUMENT FOR THEFT UNDER THIS PART FOR TAKING A MOTOR VEHICLE UNDER § 7-105 OF THIS PART IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY) KNOWINGLY AND WILLFULLY TOOK A MOTOR VEHICLE OUT OF (NAME OF VICTIM)'S LAWFUL CUSTODY, CONTROL, OR USE, WITHOUT THE CONSENT OF (NAME OF VICTIM), IN VIOLATION OF § 7-105 OF THE CRIMINAL LAW ARTICLE, AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

(C) BILL OF PARTICULARS.

IN A CASE IN THE CIRCUIT COURT IN WHICH THE GENERAL FORM OF INDICTMENT OR INFORMATION IS USED TO CHARGE A DEFENDANT WITH A CRIME UNDER THIS PART, THE DEFENDANT, ON TIMELY DEMAND, IS ENTITLED TO A BILL OF PARTICULARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 344(a), (b), and (d).

In subsections (a) and (b) of this section, the former archaic phrases "contrary to the form of the Act of Assembly in such case made and provided" are deleted as surplusage.

In subsection (a) of this section, the references to "$500" are substituted for the former obsolete references to "$300" for accuracy. *See* Ch. 288, Acts of 2000.

In subsection (c) of this section, the reference to the use of a charging document to charge "a defendant with" a crime is added for clarity.

Defined terms: "County" § 1-101

"Motor vehicle" § 7-101

"Property" § 7-101

"Service" § 7-101

"Theft" § 7-101

7-109. PROOF OF THEFT.

(A) IN GENERAL.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, A CHARGE OF THEFT MAY BE PROVED BY EVIDENCE THAT THE THEFT WAS COMMITTED IN A MANNER THAT IS THEFT UNDER THIS PART, EVEN IF A DIFFERENT MANNER IS SPECIFIED IN THE INFORMATION, INDICTMENT, WARRANT, OR OTHER CHARGING DOCUMENT.

(B) CONTINUANCE OR OTHER RELIEF.

A COURT MAY GRANT A CONTINUANCE OR OTHER APPROPRIATE RELIEF:

(1) TO ENSURE A FAIR TRIAL; AND

(2) IF THE CONDUCT OF THE DEFENSE WOULD BE PREJUDICED BY LACK OF FAIR NOTICE OR BY SURPRISE.

REVISOR'S NOTE: This section is new language derived without substantive change from the second sentence of former Art. 27, § 341.

Defined term: "Theft" § 7-101

7-110. DEFENSES AND PRESUMPTIONS.

(A) PROHIBITED DEFENSE -- INTEREST IN PROPERTY.

(1) IT IS NOT A DEFENSE TO THE CRIME OF THEFT THAT THE DEFENDANT HAS AN INTEREST IN THE PROPERTY THAT WAS THE SUBJECT OF THE THEFT IF ANOTHER ALSO HAS AN INTEREST IN OR RIGHT TO POSSESS THE PROPERTY THAT THE DEFENDANT IS NOT ENTITLED TO INFRINGE.

(2) IN DETERMINING THE RIGHT OF POSSESSION:

(I) A JOINT OR COMMON OWNER OF THE PROPERTY DOES NOT HAVE A RIGHT OF POSSESSION OF THE PROPERTY THAT IS SUPERIOR TO THE RIGHT OF ANY OTHER JOINT OR COMMON OWNER OF THE PROPERTY; AND

(II) IN THE ABSENCE OF A CONTRARY AGREEMENT, A PERSON IN LAWFUL POSSESSION OF THE PROPERTY HAS A RIGHT OF POSSESSION SUPERIOR TO THE RIGHT OF POSSESSION OF A PERSON WHO HAS ONLY A SECURITY INTEREST IN THE PROPERTY, EVEN IF LEGAL TITLE TO THE PROPERTY LIES WITH THE HOLDER OF THE SECURITY INTEREST UNDER A CONDITIONAL SALE CONTRACT OR OTHER SECURITY AGREEMENT.

(B) SAME -- ILLEGALLY OBTAINED PROPERTY.

IT IS NOT A DEFENSE TO THE CRIME OF THEFT THAT THE PROPERTY WAS TAKEN, OBTAINED, OR WITHHELD FROM A PERSON WHO HAD OBTAINED THE PROPERTY BY ILLEGAL MEANS.

(C) ALLOWED DEFENSES.

IT IS A DEFENSE TO THE CRIME OF THEFT THAT:

(1) THE DEFENDANT ACTED UNDER A GOOD FAITH CLAIM OF RIGHT TO THE PROPERTY INVOLVED;

(2) THE DEFENDANT ACTED IN THE HONEST BELIEF THAT THE DEFENDANT HAD THE RIGHT TO OBTAIN OR EXERT CONTROL OVER THE PROPERTY AS THE DEFENDANT DID;

(3) THE PROPERTY INVOLVED WAS THAT OF THE DEFENDANT'S SPOUSE, UNLESS THE DEFENDANT AND THE DEFENDANT'S SPOUSE WERE NOT LIVING TOGETHER AS HUSBAND AND WIFE AND WERE LIVING IN SEPARATE RESIDENCES AT THE TIME OF THE ALLEGED THEFT; OR

(4) IN A CASE OF THEFT OF A TRADE SECRET, THE DEFENDANT RIGHTFULLY KNEW THE TRADE SECRET, OR THE TRADE SECRET WAS AVAILABLE TO THE DEFENDANT FROM A SOURCE OTHER THAN THE OWNER.

(D) COMMON LAW AND EVIDENTIARY PRESUMPTIONS.

ANY COMMON LAW AND EVIDENTIARY PRESUMPTION APPLICABLE ON JULY 1, 1979 TO THE CRIMES CONSOLIDATED UNDER THIS PART ALSO APPLY TO THE CRIME OF THEFT, UNLESS THE PRESUMPTION:

(1) IS REPEALED OR MODIFIED UNDER THIS PART; OR

(2) IS MODIFIED BY A COURT DECISION RENDERED AFTER JULY 1, 1979.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 343.

The references to "crime[s]" are substituted for the former references to "offense[s]" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Exert control" § 7-101

"Obtain" § 7-101

"Owner" § 7-101

"Person" § 1-101

"Property" § 7-101

"Theft" § 7-101

7-111. RESERVED.

7-112. RESERVED.

PART II. RELATED CRIMES.

7-113. EMBEZZLEMENT -- FRAUDULENT MISAPPROPRIATION BY FIDUCIARIES.

(A) PROHIBITED.

A FIDUCIARY MAY NOT:

(1) FRAUDULENTLY AND WILLFULLY APPROPRIATE MONEY OR A THING OF VALUE THAT THE FIDUCIARY HOLDS IN A FIDUCIARY CAPACITY CONTRARY TO THE REQUIREMENTS OF THE FIDUCIARY'S TRUST RESPONSIBILITY; OR

(2) SECRETE MONEY OR A THING OF VALUE THAT THE FIDUCIARY HOLDS IN A FIDUCIARY CAPACITY WITH A FRAUDULENT INTENT TO USE THE MONEY OR THING OF VALUE CONTRARY TO THE REQUIREMENTS OF THE FIDUCIARY'S TRUST RESPONSIBILITY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF EMBEZZLEMENT AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF AT LEAST 1 YEAR AND NOT EXCEEDING 5 YEARS.

(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, § 132.

In subsection (a) of this section, the reference to a "fiduciary" is substituted for the former reference to any "executor, administrator, guardian, committee, trustee, receiver, or ... any ... fiduciary" for brevity.

In subsection (a)(1) of this section, the reference to appropriating "contrary to the requirements of the fiduciary's trust responsibility" is substituted for the former reference to appropriating "to any use and purpose not in the due and lawful execution of his trust" for clarity. Similarly, in subsection (a)(2) of this section, the reference to a fiduciary's use of money or thing of value contrary to the "requirements of the fiduciary's trust responsibility" is substituted for the former reference to "such use or purpose" for clarity.

In subsection (b) of this section, the reference to a person being guilty "of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

7-114. DEFALCATION.

(A) "REVENUE OFFICER" DEFINED.

(1) IN THIS SECTION, "REVENUE OFFICER" MEANS AN OFFICER WITH THE DUTY TO COLLECT REVENUE DUE TO THE STATE OR A COUNTY.

(2) "REVENUE OFFICER" INCLUDES:

(I) A CLERK;

(II) A NOTARY PUBLIC;

(III) A REGISTER OF WILLS;

(IV) A SHERIFF; AND

(V) A TAX COLLECTOR.

(B) PROHIBITED.

A REVENUE OFFICER MAY NOT WILLFULLY DETAIN AND NEGLECT TO PAY MONEY DUE TO THE STATE, A COUNTY, OR OTHER GOVERNMENTAL ENTITY INTO THE TREASURY OF THE STATE OR A COUNTY OR TO ANOTHER REVENUE OFFICER AUTHORIZED TO RECEIVE THE MONEY LONGER THAN:

(1) 60 DAYS AFTER THE DATE SPECIFIED BY LAW FOR THE REVENUE OFFICER TO MAKE PAYMENT; OR

(2) 6 MONTHS AFTER THE DATE THAT THE MONEY IS COLLECTED, IF THE LAW DOES NOT SPECIFY A DATE FOR THE REVENUE OFFICER TO MAKE PAYMENT.

(C) PENALTY.

(1) A REVENUE OFFICER WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF DEFALCATION.

(2) ON CONVICTION, AND UNLESS THE REVENUE OFFICER PAYS THE AMOUNT IN DEFAULT SOONER, A REVENUE OFFICER WHO VIOLATES THIS SECTION:

(I) FOR EACH VIOLATION, IS SUBJECT TO IMPRISONMENT OF AT LEAST 1 YEAR AND NOT EXCEEDING 5 YEARS; AND

(II) IS SUBJECT TO ANY OTHER PENALTY PROVIDED BY LAW.

(D) STATUTE OF LIMITATIONS AND IN BANC REVIEW.

A REVENUE OFFICER WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.

(E) EVIDENCE.

IN A PROSECUTION UNDER THIS SECTION, A CERTIFICATE OF THE COMPTROLLER OF THE STATE OR OF A REVENUE OFFICER OF A COUNTY SHOWING THAT THE DEFENDANT IS A DEFAULTER IS ADMISSIBLE AS PRIMA FACIE EVIDENCE OF DEFALCATION UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 80.

In subsection (b) of this section, the term "county" is substituted for the former reference to the "county commissioners" for clarity, because some counties have the charter form of government and no longer have county commissioners, but, rather, county councils.

In subsection (c) of this section, the reference to being guilty "of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a)(1) of this section, the defined term "revenue officer" appears to encompass only an officer collecting revenue for the State or a county, and not any other political subdivision such as a municipal corporation, special taxing district, or bi-county agency. The General Assembly may wish to address this apparent omission in substantive legislation.

Defined term: "County" § 1-101

7-115. REHYPOTHECATION OF PERSONAL SECURITIES.

(A) PROHIBITED.

WHILE A CONTRACT OF PLEDGE OR HYPOTHECATION IS IN EFFECT, A PERSON MAY NOT, WITHOUT THE CONSENT OF THE PLEDGOR, REPLEDGE OR REHYPOTHECATE A SECURITY, THE TITLE TO WHICH PASSES BY DELIVERY OR

ENDORSEMENT RECEIVED OR HELD BY THE PERSON AS GUARANTY FOR MONEY LENT OR ADVANCED TO THE OWNER OR HOLDER OF THE SECURITY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE OF AT LEAST $500 AND 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, § 215.

In subsection (a) of this section, the former reference to any "bank, building association or corporation" is deleted as included in the defined term "person". Similarly, in subsection (b) of this section, the former reference to every "officer of such bank, building association or corporation" is deleted as included in the defined term "person". *See* § 1-101 of this article.

Also in subsection (a) of this section, the former references to "stocks, bonds" are deleted as included in the comprehensive references to "security" for brevity.

In subsection (b) of this section, the former reference to a fine or sentence of imprisonment being imposed "in the discretion of the court" is deleted as surplusage.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

7-116. FAILURE TO DELIVER DOCUMENTS FOR MERCHANDISE.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A PERSON WHO IS ENTRUSTED WITH MONEY AS AN ADVANCE AGAINST GRAIN OR OTHER MERCHANDISE:

(1) THAT IS PURCHASED AND STORED IN AN ELEVATOR; AND

(2) FOR WHICH A CERTIFICATE OR RECEIPT HAS BEEN DELIVERED TO AN OFFICIAL OF THE ELEVATOR STORAGE FACILITY OR TO THE PARTY WITH WHOM

THE GRAIN OR OTHER MERCHANDISE IS STORED FOR SHIPMENT AND TRANSPORT FROM BALTIMORE CITY TO THE PURCHASER.

(B) PROHIBITED.

A PERSON MAY NOT, FOR THE PERSON'S OWN BENEFIT AND IN BAD FAITH, FAIL TO DELIVER TO THE PARTY WHO ENTRUSTED THE PERSON WITH MONEY UNDER THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (A) OF THIS SECTION AS SOON AS THE SHIPMENT OF GRAIN OR OTHER MERCHANDISE IS COMPLETED AND THE BILL OF LADING IS DELIVERED TO THE PURCHASER:

(1) THE DRAFT OR BILL OF EXCHANGE AND OTHER DOCUMENT REQUIRED FOR SHIPMENT OF THE CARGO OF GRAIN OR OTHER MERCHANDISE; AND

(2) ANY POLICY OF INSURANCE ON THE GRAIN OR OTHER MERCHANDISE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF AT LEAST 1 YEAR AND NOT EXCEEDING 10 YEARS OR A FINE OF AT LEAST $500 AND NOT EXCEEDING $5,000 OR BOTH.

(D) 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, § 229.

Throughout this section, the references to "money" are substituted for the former references to "money, drafts or checks" for brevity and for consistency with §§ 7-113 and 7-114 of this part.

In subsection (a)(2) of this section, the reference to the delivery of receipts to "an official of the elevator storage facility" is substituted for the former reference to "such elevator" for clarity.

In the introductory language of subsection (b) of this section, the reference to the delivery of the bill of lading "to the purchaser" is added for clarity.

Also in the introductory language of subsection (b) of this section, the imperative that a person may not "fail" to deliver certain documents to another person is substituted for the former injunction that a person may not "neglect or refuse" to deliver the documents, for clarity.

Also in the introductory language of subsection (b) of this section, the reference to the delivery of documents "to the party who entrusted the

person with money" is added for clarity.

In subsection (b)(1) of this section, the reference to the draft or bill of exchange and other document "required" for shipment of cargo is added for clarity.

In subsection (c) of this section, the former reference to punishment "in the discretion of the court" is deleted as implicit in the establishment of minimum and maximum penalties.

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a) of this section, there appears to be an inconsistency between subsection (a)(1), which formerly referred to grain or merchandise in an elevator "in Baltimore City or elsewhere", and subsection (a)(2), transport of the grain or merchandise "from Baltimore City" to the purchaser. If the grain is stored in an elevator that is not in Baltimore City, and is transported to a purchaser who is not in Baltimore City, without passing through an elevator in Baltimore City, this section appears not to apply. The inconsistency dates from the original enactment of the former law. *See* Ch. 223, Acts of 1890. The General Assembly may wish to explore whether this section is still needed and, if so, whether it should apply to grain and merchandise shipped from elevators outside Baltimore City.

Defined term: "Person" § 1-101

SUBTITLE 2. UNLAWFUL USE OF GOODS.

7-201. THEFT OF GROCERY CARTS.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES ONLY TO A WHEELED CART OR OTHER SIMILAR DEVICE THAT IS CLEARLY MARKED WITH THE NAME AND ADDRESS OF ITS OWNER AND IF NOTICE OF THIS SECTION IS CLEARLY AND PROMINENTLY DISPLAYED AT EACH PUBLIC EXIT FROM THE GROCERY STORE, STORE, OR MARKET THAT OWNS THE WHEELED CART OR OTHER SIMILAR DEVICE.

(B) PROHIBITED.

(1) A PERSON MAY NOT:

(I) WITHOUT THE PERMISSION OF THE OWNER OR AGENT OF THE OWNER, REMOVE A WHEELED CART OR OTHER SIMILAR DEVICE PROVIDED FOR THE

PURPOSE OF ASSEMBLING OR CARRYING PURCHASED MATERIALS FROM A GROCERY STORE, STORE, OR MARKET, INCLUDING ITS PARKING FACILITIES;

(II) DAMAGE ANY WHEELED CART OR OTHER DEVICE OWNED BY THE GROCERY STORE, STORE, OR MARKET FROM WHICH THE CART WAS OBTAINED; OR

(III) ABANDON A WHEELED CART OR OTHER DEVICE ON THE STREETS OR ALLEYS OF THE STATE.

(2) A PERSON MAY ABANDON A WHEELED CART OR OTHER DEVICE ON THE PARKING FACILITIES OF THE GROCERY STORE, STORE, OR MARKET FROM WHICH THE CART WAS OBTAINED.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $25 FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 120A.

In subsection (b)(1)(i) of this section, the former phrase "the premises ... of" is deleted as implicit in the reference to the "grocery store, store, or market".

In subsection (b)(1)(ii) of this section, the former reference to "destroy[ing], mutilat[ing]" a wheeled cart is deleted as included in the reference to "damag[ing]" a wheeled cart.

In subsection (b)(1)(iii) and (2) of this section, the reference to an "other" device is added for consistency and clarity.

In subsection (b)(1)(iii) of this section, the former reference to "highways" is deleted as included in the reference to "streets".

Defined term: "Person" § 1-101

7-202. MISAPPROPRIATION BY BAILEE.

(A) PROHIBITED.

A BAILEE FOR HIRE, OR A SERVANT, AGENT, OR EMPLOYEE OF THE BAILEE, MAY NOT WILLFULLY APPROPRIATE AND USE, OR ALLOW THE APPROPRIATION AND USE OF, ANY PROPERTY THAT IS THE SUBJECT MATTER OF THE BAILMENT WITHOUT THE CONSENT OF THE OWNER OF THAT PROPERTY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $100 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 4.

In subsection (a) of this section, the former phrase "or any part thereof" is deleted as surplusage.

In subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as unnecessary.

Defined term: "Person" § 1-101

7-203. UNAUTHORIZED REMOVAL OF PROPERTY.

(A) PROHIBITED.

WITHOUT THE PERMISSION OF THE OWNER, A PERSON MAY NOT ENTER OR BE ON THE PREMISES OF ANOTHER, AND TAKE AND CARRY AWAY FROM THE PREMISES OR OUT OF THE CUSTODY OR USE OF THE OTHER, OR THE OTHER'S AGENT, OR A GOVERNMENTAL UNIT ANY PROPERTY, INCLUDING:

(1) A VEHICLE;

(2) A MOTOR VEHICLE;

(3) A VESSEL; OR

(4) LIVESTOCK.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION:

(1) IS SUBJECT TO IMPRISONMENT OF AT LEAST 6 MONTHS AND NOT EXCEEDING 4 YEARS OR A FINE OF AT LEAST $50 AND NOT EXCEEDING $100 OR BOTH; AND

(2) SHALL RESTORE THE PROPERTY TAKEN AND CARRIED AWAY IN VIOLATION OF THIS SECTION OR, IF UNABLE TO RESTORE THE PROPERTY, SHALL PAY TO THE OWNER THE FULL VALUE OF THE PROPERTY.

(C) PROHIBITED DEFENSE.

IT IS NOT A DEFENSE TO THIS SECTION THAT THE PERSON INTENDS TO HOLD OR KEEP THE PROPERTY FOR THE PERSON'S PRESENT USE AND NOT WITH THE INTENT OF APPROPRIATING OR CONVERTING THE PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 349.

Throughout this section, the former phrase "his or their aiders and abettors" is deleted in light of the abrogation of the distinction between principals and accessories before the fact. *See* General Revisor's Note to article and CP § 204.

In subsection (a) of this section, the term "governmental unit" is substituted for the former phrase "body ... politic in the State", for clarity.

Also in subsection (a) of this section, the former reference to a "body corporate" in the State is deleted as included in the defined term "person".

In subsection (a)(1) of this section, the reference to a "vehicle" is substituted for the former reference to any "carriage, wagon, buggy, [or] cart", for clarity and brevity.

Also in subsection (a)(1) of this section, the former phrase "shall enter, or being upon" is deleted as implicit in the reference to "premises".

In subsection (a)(2) of this section, the former reference to a motor vehicle "as defined in the laws of this State relating to such" is deleted as surplusage.

In subsection (a)(3) of this section, the reference to a "vessel" is substituted for the former reference to a "boat, craft, [or] vessel", for clarity and brevity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a)(4) of this section, the reference to "livestock" is substituted for the former reference to a "horse, mare, colt, gelding, mule, ass, sheep, hog, ox or cow", for clarity and brevity. The substitution may include other, more exotic livestock, such as bison and llamas, which would otherwise fall under the general reference to "any property" in the introductory language to this section. No substantive change is intended.

In subsection (b)(2) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of minimum and maximum penalties.

Also in subsection (b)(2) of this section, the former phrase "or be imprisoned in the county or city jail, or the house of correction" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed into a particular facility. *See* CS § 9-103.

Defined term: "Person" § 1-101

7-204. THEFT OR DUPLICATION OF STATE-OWNED KEYS.

(A) PROHIBITED.

A PERSON MAY NOT USE, DISTRIBUTE, MANUFACTURE, DUPLICATE, OR POSSESS KEYS CAPABLE OF BEING USED IN LOCKS IN OR ON REAL PROPERTY THAT THE STATE OWNS OR LEASES UNLESS THE USE, DISTRIBUTION, MANUFACTURE, DUPLICATION, OR POSSESSION IS IN ACCORDANCE WITH THE REGULATIONS ADOPTED UNDER SUBSECTION (C) OF THIS SECTION.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $500 FOR EACH VIOLATION.

(C) REGULATION OF USE AND DISTRIBUTION OF STATE-OWNED KEYS.

(1) THE DEPARTMENT OF GENERAL SERVICES SHALL ADOPT REGULATIONS TO GOVERN THE USE, DISTRIBUTION, MANUFACTURE, DUPLICATION, AND POSSESSION OF KEYS CAPABLE OF BEING USED IN LOCKS IN OR ON REAL PROPERTY THAT THE STATE OWNS OR LEASES.

(2) EACH KEY SUBJECT TO THE REGULATIONS ADOPTED UNDER THIS SUBSECTION SHALL BE CLEARLY IDENTIFIED BY:

(I) THE WORDS "DO NOT DUPLICATE" OR "UNLAWFUL TO DUPLICATE"; AND

(II) A SYMBOL INDICATING STATE OWNERSHIP.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 336B.

In subsections (a) and (b) of this section, the former phrase "firm, or organization" is deleted as included in the defined term "person".

As to the substitution of "adopted" for the former term "established" and the deletion of the former term "rules", throughout this section, *see* General Revisor's Note to article.

Defined term: "Person" § 1-101

7-205. FAILURE TO RETURN RENTAL VEHICLE.

(A) PROHIBITED.

A PERSON WHO LEASES OR RENTS A MOTOR VEHICLE UNDER AN AGREEMENT TO RETURN THE MOTOR VEHICLE AT THE END OF THE LEASING OR RENTAL PERIOD MAY NOT ABANDON THE MOTOR VEHICLE OR REFUSE OR WILLFULLY NEGLECT TO RETURN IT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 206.

In subsection (a) of this section, the former terms "hiring" and "hired" are deleted as implicit in the terms "leases" and "rents".

For fraudulent conversion of leased goods that are not returned, *see* § 8-407 of this article.

Defined term: "Person" § 1-101

SUBTITLE 3. CRIMES INVOLVING TELECOMMUNICATIONS AND ELECTRONICS.

PART I. GENERAL PROVISIONS.

7-301. CODE GRABBING DEVICES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CODE GRABBING DEVICE" MEANS A DEVICE THAT IS CAPABLE OF:

(I) RECEIVING AND RECORDING THE CODED SIGNAL TRANSMITTED BY AN ELECTRONIC SECURITY SYSTEM; AND

(II) PLAYING BACK THE CODED SIGNAL TO DISARM THE ELECTRONIC SECURITY SYSTEM.

(3) "ELECTRONIC SECURITY SYSTEM" INCLUDES:

(I) AN ELECTRONIC HOME SECURITY SYSTEM;

(II) A MOTOR VEHICLE SECURITY ALARM SYSTEM;

(III) AN AUTOMATIC GARAGE DOOR OPENER;

(IV) A HOME DETENTION MONITORING DEVICE; AND

(V) AN ELECTRONIC OR MAGNETIC THEFT DETECTION DEVICE USED IN A RETAIL ESTABLISHMENT.

(B) PROHIBITED -- CODE GRABBING DEVICE.

A PERSON MAY NOT MANUFACTURE, SELL, USE, OR POSSESS A CODE GRABBING DEVICE WITH THE INTENT THAT THE CODE GRABBING DEVICE BE USED IN THE COMMISSION OF A CRIME.

(C) SAME -- SHIELDING DEVICE.

A PERSON MAY NOT KNOWINGLY POSSESS A DEVICE INTENDED TO SHIELD MERCHANDISE FROM DETECTION BY AN ELECTRONIC SECURITY SYSTEM WITH THE INTENT TO COMMIT THEFT.

(D) SAME -- DEACTIVATION TOOL OR DEVICE.

A PERSON MAY NOT KNOWINGLY POSSESS A TOOL OR DEVICE DESIGNED TO ALLOW THE DEACTIVATION OR REMOVAL FROM ANY MERCHANDISE AN ELECTRONIC SECURITY SYSTEM OR A DEVICE USED AS PART OF AN ELECTRONIC SECURITY SYSTEM WITH THE INTENT TO:

(1) USE THE TOOL OR DEVICE TO DEACTIVATE ANY ELECTRONIC SECURITY SYSTEM; OR

(2) REMOVE ANY ELECTRONIC SECURITY SYSTEM OR DEVICE USED AS PART OF AN ELECTRONIC SECURITY SYSTEM FROM ANY MERCHANDISE WITHOUT THE PERMISSION OF THE MERCHANT OR PERSON OWNING OR LAWFULLY HOLDING THE MERCHANDISE.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 40B.

In subsection (a)(2)(ii) of this section, the reference to a "coded" signal is added for clarity.

In subsection (a)(3)(v) of this section, the former phrase "designed to prevent theft" is deleted as unnecessary.

In subsection (e) of this section, the former reference to "a term of" imprisonment is deleted as unnecessary.

Defined term: "Person" § 1-101

7-302. UNAUTHORIZED ACCESS TO COMPUTERS AND RELATED MATERIAL.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "ACCESS" MEANS TO INSTRUCT, COMMUNICATE WITH, STORE DATA IN, RETRIEVE OR INTERCEPT DATA FROM, OR OTHERWISE USE THE RESOURCES OF A COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK.

(3) (I) "AGGREGATE AMOUNT" MEANS A DIRECT LOSS OF PROPERTY OR SERVICES INCURRED BY A VICTIM.

(II) "AGGREGATE AMOUNT" INCLUDES:

1. THE VALUE OF ANY MONEY, PROPERTY, OR SERVICE LOST, STOLEN, OR RENDERED UNRECOVERABLE BY THE CRIME; OR

2. ANY ACTUAL REASONABLE EXPENDITURE INCURRED BY THE VICTIM TO VERIFY WHETHER A COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK WAS ALTERED, ACQUIRED, DAMAGED, DELETED, DISRUPTED, OR DESTROYED BY ACCESS IN VIOLATION OF THIS SECTION.

(4) (I) "COMPUTER" MEANS AN ELECTRONIC, MAGNETIC, OPTICAL, ORGANIC, OR OTHER DATA PROCESSING DEVICE OR SYSTEM THAT PERFORMS LOGICAL, ARITHMETIC, MEMORY, OR STORAGE FUNCTIONS.

(II) "COMPUTER" INCLUDES PROPERTY, A DATA STORAGE FACILITY, OR A COMMUNICATIONS FACILITY THAT IS DIRECTLY RELATED TO OR OPERATED WITH A COMPUTER.

(III) "COMPUTER" DOES NOT INCLUDE AN AUTOMATED TYPEWRITER, A TYPESETTER, OR A PORTABLE CALCULATOR.

(5) "COMPUTER CONTROL LANGUAGE" MEANS ORDERED STATEMENTS THAT DIRECT A COMPUTER TO PERFORM SPECIFIC FUNCTIONS.

(6) "COMPUTER DATABASE" MEANS A REPRESENTATION OF INFORMATION, KNOWLEDGE, FACTS, CONCEPTS, OR INSTRUCTIONS THAT:

(I) IS INTENDED FOR USE IN A COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK; AND

(II) 1. IS BEING PREPARED OR HAS BEEN PREPARED IN A FORMALIZED MANNER; OR

2. IS BEING PRODUCED OR HAS BEEN PRODUCED BY A COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK.

(7) "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF ONE OR MORE COMPUTERS THROUGH:

(I) THE USE OF A SATELLITE, MICROWAVE, LINE, OR OTHER COMMUNICATION MEDIUM; AND

(II) TERMINALS OR A COMPLEX CONSISTING OF TWO OR MORE INTERCONNECTED COMPUTERS REGARDLESS OF WHETHER THE INTERCONNECTION IS CONTINUOUSLY MAINTAINED.

(8) "COMPUTER PROGRAM" MEANS AN ORDERED SET OF INSTRUCTIONS OR STATEMENTS THAT MAY INTERACT WITH RELATED DATA AND, WHEN EXECUTED IN A COMPUTER SYSTEM, CAUSES A COMPUTER TO PERFORM SPECIFIED FUNCTIONS.

(9) "COMPUTER SERVICES" INCLUDES COMPUTER TIME, DATA PROCESSING, AND STORAGE FUNCTIONS.

(10) "COMPUTER SOFTWARE" MEANS A COMPUTER PROGRAM, INSTRUCTION, PROCEDURE, OR ASSOCIATED DOCUMENT REGARDING THE OPERATION OF A COMPUTER SYSTEM.

(11) "COMPUTER SYSTEM" MEANS ONE OR MORE CONNECTED OR UNCONNECTED COMPUTERS, PERIPHERAL DEVICES, COMPUTER SOFTWARE, DATA, OR COMPUTER PROGRAMS.

(B) APPLICATION OF OTHER PROVISIONS.

THIS SECTION DOES NOT PRECLUDE THE APPLICABILITY OF ANY OTHER PROVISION OF THIS CODE.

(C) PROHIBITED.

(1) A PERSON MAY NOT INTENTIONALLY, WILLFULLY, AND WITHOUT AUTHORIZATION ACCESS, ATTEMPT TO ACCESS, CAUSE TO BE ACCESSED, OR EXCEED THE PERSON'S AUTHORIZED ACCESS TO ALL OR PART OF A COMPUTER NETWORK, COMPUTER CONTROL LANGUAGE, COMPUTER, COMPUTER SOFTWARE, COMPUTER SYSTEM, COMPUTER SERVICES, OR COMPUTER DATABASE.

(2) A PERSON MAY NOT COMMIT AN ACT PROHIBITED BY PARAGRAPH (1) OF THIS SUBSECTION WITH THE INTENT TO:

(I) CAUSE THE MALFUNCTION OR INTERRUPT THE OPERATION OF ALL OR ANY PART OF A COMPUTER, COMPUTER NETWORK, COMPUTER CONTROL LANGUAGE, COMPUTER SOFTWARE, COMPUTER SYSTEM, COMPUTER SERVICES, OR COMPUTER DATA; OR

(II) ALTER, DAMAGE, OR DESTROY ALL OR ANY PART OF DATA OR A COMPUTER PROGRAM STORED, MAINTAINED, OR PRODUCED BY A COMPUTER, COMPUTER NETWORK, COMPUTER SOFTWARE, COMPUTER SYSTEM, COMPUTER SERVICES, OR COMPUTER DATABASE.

(3) A PERSON MAY NOT INTENTIONALLY, WILLFULLY, AND WITHOUT AUTHORIZATION:

(I) POSSESS, IDENTIFY, OR ATTEMPT TO IDENTIFY A VALID ACCESS CODE; OR

(II) PUBLICIZE OR DISTRIBUTE A VALID ACCESS CODE TO AN UNAUTHORIZED PERSON.

(D) PENALTY.

(1) A PERSON WHO VIOLATES SUBSECTION (C)(1) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(2) A PERSON WHO VIOLATES SUBSECTION (C)(2) OR (3) OF THIS SECTION:

(I) IF THE AGGREGATE AMOUNT OF THE LOSS IS $10,000 OR MORE, IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH; OR

(II) IF THE AGGREGATE AMOUNT OF THE LOSS IS LESS THAN $10,000, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(E) COURSE OF CONDUCT.

ACCESS ACHIEVED IN VIOLATION OF THIS SECTION UNDER A SINGLE SCHEME OR A CONTINUING COURSE OF CONDUCT MAY BE CONSIDERED AS ONE VIOLATION.

(F) VENUE.

A COURT OF COMPETENT JURISDICTION MAY TRY A PERSON PROSECUTED UNDER THIS SECTION IN ANY COUNTY IN THIS STATE WHERE:

(1) THE DEFENDANT PERFORMED THE ACT; OR

(2) THE ACCESSED COMPUTER IS LOCATED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 146.

In subsection (a)(4)(ii) of this section, the phrase "with a computer" is substituted for the former phrase "in conjunction with that device or system" for clarity.

In subsection (a)(9) of this section, the former phrase "but is not limited to" is deleted as unnecessary in light of Art. 1, § 30.

In subsection (a)(11) of this section, the word "computer" is added to modify the terms "software" and "programs" for consistency with other terms that are defined in this section.

In the introductory language of subsection (c)(2) of this section, the cross-reference to a violation of paragraph (1) of this subsection is

substituted for the former reiteration of prohibitions for brevity.

In subsection (c)(2)(ii) of this section, the reference to "computer software" is added for consistency with subsection (c)(1) of this section.

In subsection (e) of this section, the reference to "[a]ccess achieved in violation of this section" is substituted for the former itemization of various types of illegal access for clarity.

Defined terms: "County" § 1-101

"Person" § 1-101

7-303. INTERFERENCE WITH CABLE TELEVISION SERVICE.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CABLE TELEVISION COMPANY" MEANS A FRANCHISED OR PRIVATE CABLE TELEVISION COMPANY.

(3) "CABLE TELEVISION SERVICE" MEANS:

(I) CABLE AND SATELLITE CABLE PROGRAMMING;

(II) SERVICE PROVIDED BY OR THROUGH THE FACILITY OF A CABLE TELEVISION SYSTEM OR A CLOSED CIRCUIT COAXIAL CABLE COMMUNICATION SYSTEM; OR

(III) A MICROWAVE, SATELLITE, OR SIMILAR TRANSMISSION SERVICE USED WITH A CABLE TELEVISION SYSTEM OR A CLOSED CIRCUIT COAXIAL CABLE COMMUNICATION SYSTEM.

(B) PRIMA FACIE EVIDENCE OF INTENT.

(1) DESTROYING, DAMAGING, CUTTING, TAMPERING WITH, INSTALLING, TAPPING, REMOVING, DISPLACING, OR CONNECTING WITH A WIRE, CONDUIT, APPARATUS, OR OTHER EQUIPMENT OF A CABLE TELEVISION COMPANY IS PRIMA FACIE EVIDENCE OF AN INTENT TO RECEIVE CABLE TELEVISION SERVICES WITHOUT PAYMENT.

(2) ACTUAL POSSESSION OF A DEVICE DESIGNED TO FACILITATE AN ACT PROHIBITED BY THIS SECTION, OR POSSESSION AND CONTROL OF A QUANTITY OF THOSE DEVICES INDICATING POSSESSION FOR RESALE, IS PRIMA FACIE EVIDENCE OF AN INTENT TO VIOLATE THIS SECTION.

(C) PROHIBITED.

A PERSON MAY NOT:

(1) DESTROY, DAMAGE, CUT, TAMPER WITH, INSTALL, TAP, REMOVE, DISPLACE, OR CONNECT WITH A WIRE, CONDUIT, APPARATUS, OR OTHER EQUIPMENT OF A CABLE TELEVISION COMPANY WITH THE INTENT TO RECEIVE CABLE TELEVISION SERVICES WITHOUT PAYMENT;

(2) PREVENT, OBSTRUCT, OR DELAY THE SENDING, CONVEYANCE, DISTRIBUTION, OR RECEIVING OF PROGRAMMING MATERIAL TRANSMITTED BY A CABLE TELEVISION COMPANY;

(3) WITH THE INTENT TO DEPRIVE A PERSON OF LAWFUL COMPENSATION, RECEIVE, ATTEMPT TO RECEIVE, OR ASSIST ANOTHER TO RECEIVE:

(I) CABLE TELEVISION SERVICE BY TRICK, USE OF A DECODER, OR OTHER FRAUDULENT MEANS; OR

(II) SATELLITE CABLE PROGRAMMING THAT IS:

1. OFFERED FOR SALE IN THE PERSON'S AREA THROUGH AN UNAUTHORIZED MARKETING SYSTEM; OR

2. RECEIVED BY DECODING ENCRYPTED SATELLITE CABLE PROGRAMMING;

(4) WITHOUT AUTHORITY FROM THE CABLE TELEVISION COMPANY, CONNECT WITH A CABLE, WIRE, COMPONENT, OR OTHER DEVICE USED TO DISTRIBUTE CABLE TELEVISION SERVICE;

(5) ALTER:

(I) A DEVICE INSTALLED WITH THE AUTHORIZATION OF A CABLE TELEVISION COMPANY TO INTERCEPT OR RECEIVE A PROGRAM OR SERVICE CARRIED BY THE COMPANY; OR

(II) EQUIPMENT CAPABLE OF DECODING ENCRYPTED SATELLITE CABLE PROGRAMMING TO INTERCEPT OR RECEIVE SATELLITE CABLE PROGRAMMING; OR

(6) SELL, RENT, OR OFFER FOR SALE OR RENT A DEVICE OR A PLAN FOR A DEVICE KNOWING THAT THE RECIPIENT INTENDS TO USE THE DEVICE OR TO PLAN TO DO AN ACT PROHIBITED BY THIS SECTION.

(D) PENALTY.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH; OR

(II) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $2,500 OR BOTH.

(2) A PERSON WHO COMMITS AN ACT PROHIBITED BY THIS SECTION FOR PAYMENT OR OFFER OF PAYMENT IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(E) INJUNCTIVE RELIEF.

A CABLE TELEVISION COMPANY MAY BRING AN ACTION TO ENJOIN A VIOLATION OF THIS SECTION.

(F) CIVIL LIABILITY.

IN ADDITION TO THE PENALTIES UNDER SUBSECTION (D) OF THIS SECTION, A PERSON WHO VIOLATES SUBSECTION (C)(3) OR (6) OF THIS SECTION IS LIABLE TO THE AGGRIEVED CABLE TELEVISION COMPANY FOR ALL APPROPRIATE CIVIL DAMAGES AWARDED BY A COURT.

(G) SEIZURE AND FORFEITURE.

A DEVICE USED TO VIOLATE THIS SECTION IS SUBJECT TO SEIZURE BY AND FORFEITURE TO THE STATE.

REVISOR'S NOTE: Subsections (a)(3) and (b) through (g) of this section are new language derived without substantive change from former Art. 27, § 194B.

Subsection (a)(1) of this section is new language added as the standard introductory language of a definition subsection.

Subsection (a)(2) of this section is new language added to avoid the repetition of the former phrase "franchised cable television company or private cable television company" throughout this section.

In subsection (c)(3) of this section, the former reference to deprivation of compensation "for services provided" is deleted as surplusage.

In subsection (c)(6) of this section, the former reference to selling or renting "to any person" is deleted as surplusage.

Also in subsection (c)(6) of this section, the reference to the "recipient" is added for clarity.

In subsection (d)(1)(ii) of this section, the reference to "each" subsequent violation is substituted for the former reference to a "second or" subsequent violation for consistency within this article.

In subsection (e) of this section, the former reference to the authority to "restrain" is deleted as unnecessary in light of the reference to the

authority "to enjoin".

In subsection (f) of this section, the reference to "the penalties under" subsection (d) of this section is added for clarity.

Also in subsection (f) of this section, the former reference to being "civilly" liable is deleted as implicit in the reference to being liable for "civil damages".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (c)(3) of this section the reference to depriving a "person" of lawful compensation is substituted for the former reference to depriving a "company" of lawful compensation. The Committee believes that the reference to a "company" in the former law was intended to be broader than merely a "cable television company", including installers and other persons who might benefit from lawfully conducted activities relating to receiving cable television service or satellite cable programming.

Defined term: "Person" § 1-101

7-304. RESERVED.

7-305. RESERVED.

PART II. RECORDED ARTICLES.

7-306. APPLICATION OF PART.

THIS PART DOES NOT APPLY TO:

(1) A RADIO OR TELEVISION BROADCASTER OR CABLE RADIO OR TELEVISION OPERATOR WHO TRANSFERS SOUNDS OR IMAGES:

(I) AS PART OF OR WITH A RADIO OR TELEVISION TRANSMISSION; OR

(II) FOR ARCHIVAL PRESERVATION; OR

(2) A PERSON WHO TRANSFERS SOUNDS OR IMAGES IN THE PERSON'S HOME FOR THE PERSON'S PERSONAL USE WITHOUT CONSIDERATION BEING DERIVED BY THE PERSON, OR ANY OTHER, FROM THE TRANSFER.

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

In item (1)(i) of this section, the word "with" is substituted for the former phrase "in connection with" for clarity.

In item (1)(ii) of this section, the conjunction "or" is added to clarify that

both items contain exclusions to the application of the part.

In item (2) of this section, the reference to a "person's" home is added for clarity.

Also in item (2) of this section, the former reference to "any compensation or other" consideration is deleted as included in the comprehensive reference to "consideration".

Defined term: "Person" § 1-101

7-307. EFFECT ON PRIVATE LITIGATION.

THIS PART DOES NOT AFFECT THE RIGHTS OF PARTIES IN PRIVATE LITIGATION.

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

The phrase "does not affect" is substituted for the former phrase "shall neither enlarge nor diminish", for clarity and brevity.

7-308. PROHIBITED TRANSFER OF RECORDED SOUNDS OR IMAGES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DELIVER" MEANS TO SELL, RENT, DISTRIBUTE, OR CIRCULATE.

(3) "PERFORMANCE" INCLUDES A LIVE PERFORMANCE AND A PERFORMANCE THAT IS TRANSMITTED BY WIRE, RADIO, OR TELEVISION.

(4) "RECORDED ARTICLE" MEANS A PHONOGRAPH RECORD, DISC, WIRE, TAPE, FILM, VIDEOCASSETTE, OR OTHER ARTICLE ON WHICH SOUNDS ARE RECORDED OR OTHERWISE STORED.

(B) PROHIBITED -- TRANSFER WITHOUT CONSENT OF SOUND RECORDINGS INITIALLY FIXED BEFORE FEBRUARY 15, 1972.

(1) THIS SUBSECTION APPLIES ONLY TO SOUND RECORDINGS INITIALLY FIXED BEFORE FEBRUARY 15, 1972.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON MAY NOT KNOWINGLY TRANSFER OR CAUSE TO BE TRANSFERRED ANY SOUNDS RECORDED ON A RECORDED ARTICLE TO ANY OTHER RECORDED ARTICLE:

(I) WITH THE INTENT TO SELL OR CAUSE TO BE SOLD FOR PROFIT OR USED TO PROMOTE THE SALE OF ANY PRODUCT; AND

(II) WITHOUT THE CONSENT OF THE OWNER OF THE ORIGINAL FIXATION OF SOUNDS EMBODIED IN THE MASTER RECORDED ARTICLE.

(C) SAME -- DELIVERY OF A RECORDED ARTICLE OR DEVICE WITHOUT CONSENT.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON MAY NOT KNOWINGLY DELIVER, OFFER FOR DELIVERY, POSSESS FOR DELIVERY, CAUSE TO BE DELIVERED, CAUSE TO BE OFFERED FOR DELIVERY, OR CAUSE TO BE POSSESSED FOR DELIVERY A RECORDED ARTICLE OR DEVICE:

(1) ON WHICH SOUNDS HAVE BEEN TRANSFERRED WITHOUT THE CONSENT OF THE OWNER OF THE ORIGINAL FIXATION OF SOUNDS EMBODIED IN THE MASTER RECORDED ARTICLE; OR

(2) EMBODYING A PERFORMANCE WITHOUT THE CONSENT OF THE PERFORMER.

(D) SAME -- TRANSFER OF SOUND OR IMAGES WITHOUT CONSENT AND WITHOUT CREDIT.

(1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON MAY NOT KNOWINGLY TRANSFER TO OR CAUSE TO BE TRANSFERRED TO A RECORDED ARTICLE ON WHICH SOUNDS OR IMAGES HAVE BEEN TRANSFERRED OR STORED ANY PERFORMANCE:

(I) WITH THE INTENT TO SELL OR CAUSE TO BE SOLD FOR PROFIT OR USED TO PROMOTE THE SALE OF ANY PRODUCT; AND

(II) WITHOUT THE CONSENT OF THE PERFORMER.

(2) A PERSON MAY NOT KNOWINGLY DELIVER, OFFER FOR DELIVERY, OR POSSESS FOR THE PURPOSE OF DELIVERY A RECORDED ARTICLE ON WHICH SOUNDS OR IMAGES HAVE BEEN TRANSFERRED OR STORED, UNLESS THE RECORDED ARTICLE BEARS IN A PROMINENT PLACE ON ITS OUTSIDE FACE OR PACKAGE:

(I) THE ACTUAL NAME AND STREET ADDRESS OF THE TRANSFEROR OF THE SOUNDS OR IMAGES; AND

(II) THE ACTUAL NAME OF THE PERFORMER OR GROUP.

REVISOR'S NOTE: Subsection (a) of this section is new language added to avoid unnecessary repetition of identical phrases.

Subsections (b), (c), and (d) of this section are new language derived without substantive change from former Art. 27, § 467A(a) and (b).

In subsection (a)(2) of this section, the defined term "deliver" is substituted for the former references to "sell, rent, distribute, circulate" and similar references.

In subsection (a)(3) of this section, the defined term "performance" is substituted for the former reference to "any performance whether live before an audience or transmitted by wire or through the air by radio or television".

In subsection (a)(4) of this section, the defined term "recorded article" is substituted for the former references to "phonograph record, disc, wire, tape, film, videocassette, or other article on which sounds are recorded or otherwise stored" and similar references.

Throughout this section, the defined term "person" is substituted for the former reference to a "person, firm, partnership, corporation, or association", for brevity.

In subsection (b)(2) of this section, the term "master recorded article" is substituted for the former phrase "master recording, film, or other such article" for brevity.

In subsection (c)(1) of this section, the phrase "the owner of the original fixation of sounds embodied in the master recorded article" is substituted for the former reference to "the owner as defined in (a)(1)" for clarity.

In subsection (d) of this section, the term "recorded article on which sounds or images have been transferred or stored" is substituted for the former phrase "phonograph record, disc, wire, tape, film, videocassette, or other article on which sounds or images are recorded or otherwise stored" for brevity.

Defined term: "Person" § 1-101

7-309. PENALTY.

(A) FIRST VIOLATION.

FOR A FIRST VIOLATION, A PERSON WHO VIOLATES THIS PART IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $2,500 OR BOTH FOR EACH INDIVIDUAL ACT IN VIOLATION OF THIS PART.

(B) SUBSEQUENT VIOLATION.

FOR EACH SUBSEQUENT VIOLATION, A PERSON WHO VIOLATES THIS PART IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH FOR EACH INDIVIDUAL ACT IN VIOLATION OF THIS PART.

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

In this section, the references to being "guilty of a misdemeanor" are 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. 483, 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 (1968).

The references to "each individual act in violation of this part" are substituted for the former references to "[e]ach and every individual violation" for clarity.

In subsection (b) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a" subsequent offense for clarity and consistency within this article.

Defined term: "Person" § 1-101

7-310. FORFEITURE AND DESTRUCTION.

A RECORDED ARTICLE PRODUCED IN VIOLATION OF THIS PART AND ALL EQUIPMENT USED TO PRODUCE THE RECORDED ARTICLE ARE SUBJECT TO FORFEITURE AND DESTRUCTION BY THE APPROPRIATE LAW ENFORCEMENT UNIT.

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

The former reference to "components" is deleted in light of the comprehensive reference to "all equipment".

The reference to a law enforcement "unit" is substituted for the former reference to a law enforcement "agency" for consistency within this article and with other revised articles of the Code. *See* General Revisor's Note to article.

7-311. RESERVED.

7-312. RESERVED.

PART III. TELECOMMUNICATION SERVICE PROVIDERS.

7-313. DEFINITIONS.

(A) IN GENERAL.

IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 194A(a)(1).

The reference to this "part" is substituted for the former reference to this "section" to reflect the reorganization of material derived from the former

"Fraud - Telecommunication Service Providers" subheading of Article 27.

No other changes are made.

(B) MANUFACTURE.

(1) "MANUFACTURE" MEANS:

(I) WITH RESPECT TO AN UNLAWFUL ACCESS DEVICE:

1. TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL ACCESS DEVICE; OR

2. TO MODIFY, ALTER, PROGRAM, OR REPROGRAM TECHNOLOGY, SOFTWARE, OR A DEVICE TO DEFEAT OR CIRCUMVENT TECHNOLOGY, SOFTWARE, OR A DEVICE THAT IS USED BY THE PROVIDER, OWNER, OR LICENSEE OF A TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO SERVICE, PROGRAM, OR TRANSMISSION, TO PROTECT THE TELECOMMUNICATION, DATA, AUDIO, OR VIDEO SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED RECEIPT, ACQUISITION, ACCESS, DESCRIPTION, DISCLOSURE, COMMUNICATION, TRANSMISSION, OR RETRANSMISSION; AND

(II) WITH RESPECT TO AN UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE:

1. TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE; OR

2. TO MODIFY, ALTER, PROGRAM, OR REPROGRAM A TELECOMMUNICATION DEVICE OR ACCESS CODE TO BE CAPABLE OF ACQUIRING, DISRUPTING, RECEIVING, TRANSMITTING, DECRYPTING, OR FACILITATING THE ACQUISITION, DISRUPTION, RECEIPT, TRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE PROVIDER.

(2) "MANUFACTURE" INCLUDES KNOWINGLY TO ASSIST ANOTHER IN PERFORMING AN ACTIVITY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 194A(a)(3) and (4).

In the introductory language of paragraphs (1) and (2) of this subsection, the former alternate defined term "assemble" is deleted as included in the defined term "manufacture" for clarity.

In paragraph (1)(i)2 of this subsection, the reference to "technology, software, or a device" is substituted for the former reference to "instrument, device, machine, equipment, technology, or software" for consistency and clarity. The terms "instrument", "machine", and "equipment" are deleted as included in the term "device".

Also in paragraph (1)(i)2 of this subsection, the phrase "to defeat or circumvent" is substituted for the former phrase "so that it is capable of defeating or circumventing" for brevity and style.

Also in paragraph (1)(i)2 of this subsection, the first reference to "service, program, or transmission" is substituted for the former reference to "program or transmission" for consistency within this part.

The only other changes are in style.

(C) TELECOMMUNICATION DEVICE OR ACCESS CODE.

"TELECOMMUNICATION DEVICE OR ACCESS CODE" MEANS:

(1) AN INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE THAT IS CAPABLE OF TRANSMITTING, ACQUIRING, DECRYPTING, OR RECEIVING TELEPHONIC, ELECTRONIC, DATA, INTERNET ACCESS, AUDIO, VIDEO, MICROWAVE OR RADIO COMMUNICATIONS, TRANSMISSIONS, SIGNALS, OR SERVICES PROVIDED BY OR THROUGH A CABLE TELEVISION, FIBER OPTIC, TELEPHONE, SATELLITE, MICROWAVE, DATA TRANSMISSION, RADIO, INTERNET-BASED, OR WIRELESS DISTRIBUTION NETWORK, SYSTEM, OR FACILITY;

(2) A PART, ACCESSORY, OR COMPONENT OF AN ITEM LISTED IN ITEM (1) OF THIS SUBSECTION, INCLUDING A COMPUTER CIRCUIT, SECURITY MODULE, SMART CARD, SOFTWARE, COMPUTER CHIP, ELECTRONIC MECHANISM, OR OTHER PART, COMPONENT, OR ACCESSORY OF ANY TELECOMMUNICATION DEVICE THAT IS CAPABLE OF FACILITATING THE TRANSMISSION, DECRYPTION, ACQUISITION, OR RECEPTION OF ANY TYPE OF COMMUNICATION, TRANSMISSION, SIGNAL, OR SERVICE LISTED IN ITEM (1) OF THIS SUBSECTION; OR

(3) AN ELECTRONIC SERIAL NUMBER, MOBILE IDENTIFICATION NUMBER, SERVICE ACCESS CARD, ACCOUNT NUMBER, OR PERSONAL IDENTIFICATION NUMBER USED TO ACQUIRE, RECEIVE, USE, OR TRANSMIT A TELECOMMUNICATION SERVICE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 194A(a)(5).

In item (1) of this subsection, the former phrase "including the receipt, acquisition, transmission, or decryption of those communications, transmissions, signals, or services" is deleted as unnecessary.

Also in item (1) of this subsection, the first former reference to "any" transmissions is deleted as unnecessary.

In item (2) of this subsection, the reference to "any type of communication, transmission, signal, or service listed in item (1) of this subsection" is substituted for the former reference to "any of those communications, transmissions, signals, or services" for clarity.

The only other changes are in style.

(D) TELECOMMUNICATION SERVICE.

"TELECOMMUNICATION SERVICE" MEANS A SERVICE PROVIDED FOR A FEE OR OTHER COMPENSATION:

(1) TO FACILITATE THE ORIGINATION, TRANSMISSION, EMISSION, OR RECEPTION OF SIGNS, SIGNALS, DATA, WRITINGS, IMAGES, OR SOUNDS OR INTELLIGENCE OF ANY NATURE BY A TELEPHONE, CELLULAR TELEPHONE, WIRE, WIRELESS, RADIO, ELECTROMAGNETIC, PHOTOELECTRONIC, OR PHOTO-OPTICAL SYSTEM; OR

(2) BY A RADIO, TELEPHONE, FIBER OPTIC, CABLE TELEVISION, SATELLITE, MICROWAVE, DATA TRANSMISSION, WIRELESS, OR INTERNET-BASED DISTRIBUTION SYSTEM, NETWORK, OR FACILITY, INCLUDING ELECTRONIC, DATA, VIDEO, AUDIO, INTERNET ACCESS, TELEPHONIC, MICROWAVE AND RADIO COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND SERVICES AND THOSE COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND SERVICES PROVIDED DIRECTLY OR INDIRECTLY, BY OR THROUGH A SYSTEM, NETWORK, FACILITY, OR TECHNOLOGY LISTED IN THIS SUBSECTION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 194A(a)(6).

In the introductory language to this subsection, the reference to a "fee" is substituted for the former reference to a "charge" for clarity.

Also in the introductory language to this subsection, the reference to "other" compensation is added for clarity.

In item (1) of this subsection, the reference to signs, signals, data, writings, images "or" sounds or intelligence is substituted for the former incorrect reference to signs, signals, data, writings, images, "and" sounds or intelligence for clarity.

(E) TELECOMMUNICATIONS SERVICE PROVIDER.

(1) "TELECOMMUNICATION SERVICE PROVIDER" MEANS A PERSON THAT:

(I) OWNS OR OPERATES A FIBER OPTIC, CABLE TELEVISION, SATELLITE, INTERNET-BASED, TELEPHONE, WIRELESS, MICROWAVE, DATA TRANSMISSION, OR RADIO DISTRIBUTION SYSTEM, NETWORK, OR FACILITY; OR

(II) PROVIDES A TELECOMMUNICATION SERVICE DIRECTLY OR INDIRECTLY USING ANY OF THE SYSTEMS, NETWORKS, OR FACILITIES LISTED IN ITEM (I) OF THIS PARAGRAPH.

(2) "TELECOMMUNICATION SERVICE PROVIDER" INCLUDES A PERSON THAT, FOR A FEE, SUPPLIES THE FACILITY, CELL SITE, MOBILE TELEPHONE SWITCHING OFFICE, OR OTHER EQUIPMENT OR TELECOMMUNICATION SERVICE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 194A(a)(7).

In paragraph (1)(ii) of this subsection, the term "listed" is substituted for the former term "described" for consistency.

In paragraph (2) of this subsection, the reference to a "person" is substituted for the former reference to "cellular, paging, or other wireless communications company or other person" for brevity and style.

Defined term: "Person" § 1-101

(F) UNLAWFUL ACCESS DEVICE.

"UNLAWFUL ACCESS DEVICE" MEANS AN INSTRUMENT, DEVICE, ACCESS CODE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE THAT IS PRIMARILY DESIGNED, ASSEMBLED, MANUFACTURED, SOLD, DISTRIBUTED, POSSESSED, USED, OFFERED, PROMOTED, OR ADVERTISED TO DEFEAT OR CIRCUMVENT TECHNOLOGY, SOFTWARE, OR A DEVICE, OR A COMPONENT OR PART OF ANY TECHNOLOGY, SOFTWARE, OR A DEVICE USED BY THE PROVIDER, OWNER, OR LICENSEE OF A TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO PROGRAM OR TRANSMISSION, TO PROTECT THAT TELECOMMUNICATION, DATA, AUDIO, OR VIDEO SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED RECEIPT, ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION, TRANSMISSION, OR RETRANSMISSION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 194A(a)(8).

The phrase "to defeat or circumvent" is substituted for the former phrase "for the purpose of defeating or circumventing" for brevity.

The reference to "technology, software, or a device" is substituted for the former reference to "them" for clarity.

(G) UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE.

(1) "UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE" MEANS A TELECOMMUNICATION DEVICE OR ACCESS CODE THAT HAS BEEN ALTERED, DESIGNED, MODIFIED, PROGRAMMED, OR REPROGRAMMED, ALONE OR IN CONJUNCTION WITH ANOTHER TELECOMMUNICATION DEVICE OR ACCESS CODE, TO FACILITATE THE DISRUPTION, ACQUISITION, RECEIPT, TRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE PROVIDER.

(2) "UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE" INCLUDES A DEVICE, TECHNOLOGY, PRODUCT, SERVICE, EQUIPMENT, ACCESS CODE, COMPUTER SOFTWARE, COMPONENT, OR PART THAT IS PRIMARILY DISTRIBUTED, SOLD, DESIGNED, ASSEMBLED, MANUFACTURED, MODIFIED, PROGRAMMED,

REPROGRAMMED, OR USED TO PROVIDE THE UNAUTHORIZED ACCESS TO OR RECEIPT, TRANSMISSION, DISRUPTION, DECRYPTION, OR ACQUISITION OF A TELECOMMUNICATION SERVICE PROVIDED BY A TELECOMMUNICATION SERVICE PROVIDER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 194A(a)(9).

In paragraph (1) of this subsection, the phrase "to facilitate" is substituted for the former phrase "so as to be capable of facilitating" for brevity.

In paragraph (2) of this subsection, the reference to "access to or receipt, transmission, disruption, decryption, or acquisition of" is substituted for the former reference to "receipt of, transmission of, disruption of, decryption of, access to, or acquisition of" for clarity.

7-314. SCOPE OF PART.

THIS PART DOES NOT APPLY TO:

(1) A LAW ENFORCEMENT OFFICER WHO POSSESSES OR USES A TELECOMMUNICATION DEVICE OR ACCESS CODE IN THE COURSE OF AN OFFICIAL LAW ENFORCEMENT INVESTIGATION;

(2) A TELECOMMUNICATION SERVICE PROVIDER WHILE LAWFULLY ACTING IN THAT CAPACITY; OR

(3) A PERSON WHO IS EXPRESSLY AUTHORIZED BY A LAW ENFORCEMENT UNIT OR OTHER LAWFUL AUTHORITY TO:

(I) MANUFACTURE TELECOMMUNICATION DEVICES OR ACCESS CODES FOR DISTRIBUTION OR SALE TO A LAW ENFORCEMENT UNIT OR TELECOMMUNICATION SERVICE PROVIDER; OR

(II) DISTRIBUTE OR SELL TELECOMMUNICATION DEVICES OR ACCESS CODES TO LAW ENFORCEMENT UNITS OR TELECOMMUNICATION SERVICE PROVIDERS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 194A(b).

Defined terms: "Manufacture" § 7-313

"Person" § 1-101

"Telecommunication device or access code" § 7-313

"Telecommunication service provider" § 7-313

7-315. PROHIBITED.

A PERSON MAY NOT KNOWINGLY:

(1) POSSESS, USE, MANUFACTURE, DISTRIBUTE, TRANSFER, SELL, OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION, AN UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE:

(I) TO COMMIT A THEFT OF TELECOMMUNICATION SERVICE; OR

(II) TO RECEIVE, DISRUPT, TRANSMIT, DECRYPT, ACQUIRE, OR FACILITATE THE RECEIPT, DISRUPTION, TRANSMISSION, DECRYPTION, OR ACQUISITION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE PROVIDER;

(2) POSSESS, USE, MANUFACTURE, DISTRIBUTE, TRANSFER, SELL, OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION AN UNLAWFUL ACCESS DEVICE; OR

(3) POSSESS, USE, PREPARE, DISTRIBUTE, SELL, GIVE, TRANSFER, OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION EQUIPMENT, HARDWARE, CABLES, TOOLS, DATA, COMPUTER SOFTWARE, OR OTHER COMPONENTS, KNOWING THAT THE PURCHASER OR A THIRD PERSON INTENDS TO USE THEM TO MANUFACTURE AN UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE FOR A PURPOSE PROHIBITED BY THIS PART.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 194A(c).

In items (2) and (3) of this section, the former alternate defined term "assemble" is deleted as included in the defined term "manufacture" for clarity.

Defined terms: "Manufacture" § 7-313

"Person" § 1-101

"Telecommunication device or access code" § 7-313

"Telecommunication service" § 7-313

"Telecommunication service provider" § 7-313

"Unlawful access device" § 7-313

"Unlawful telecommunication device or access code" § 7-313

7-316. PENALTIES.

(A) VIOLATION INVOLVING MORE THAN 100 UNLAWFUL TELECOMMUNICATION DEVICES OR ACCESS CODES OR UNLAWFUL ACCESS DEVICES.

A PERSON WHO VIOLATES § 7-315 OF THIS PART INVOLVING MORE THAN 100 UNLAWFUL TELECOMMUNICATION DEVICES OR ACCESS CODES OR UNLAWFUL ACCESS DEVICES IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO

IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

(B) VIOLATION INVOLVING 100 OR FEWER UNLAWFUL TELECOMMUNICATION DEVICES OR ACCESS CODES OR UNLAWFUL ACCESS DEVICES.

A PERSON WHO VIOLATES § 7-315 OF THIS PART INVOLVING 100 OR FEWER UNLAWFUL TELECOMMUNICATION DEVICES OR ACCESS CODES OR UNLAWFUL ACCESS DEVICES IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $2,500 OR BOTH.

(C) RESTITUTION.

IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, THE COURT MAY REQUIRE A PERSON CONVICTED OF VIOLATING THIS PART TO MAKE RESTITUTION IN ACCORDANCE WITH THE CRIMINAL PROCEDURE ARTICLE.

(D) FORFEITURE.

IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, THE COURT MAY DIRECT THAT A PERSON CONVICTED OF A VIOLATION OF THIS PART FORFEIT TO THE STATE ANY UNLAWFUL TELECOMMUNICATION DEVICES OR ACCESS CODES OR UNLAWFUL ACCESS DEVICES IN THE PERSON'S POSSESSION OR CONTROL THAT WERE INVOLVED IN THE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 194A(d).

In subsection (b) of this section, the reference to "telecommunication devices or access codes", a defined term, is substituted for the former reference to "telecommunication access devices" for clarity and consistency.

Subsection (d) of this section is redrafted for consistency and style.

Defined terms: "Person" § 1-101

"Unlawful access device" § 7-313

"Unlawful telecommunication device or access code" § 7-313

7-317. LOCATION OF VIOLATION.

(A) IN GENERAL.

A VIOLATION OF § 7-315 OF THIS PART MAY BE CONSIDERED TO HAVE BEEN COMMITTED AT EITHER:

(1) THE PLACE WHERE THE DEFENDANT MANUFACTURED THE UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE OR UNLAWFUL ACCESS DEVICE; OR

(2) ANY PLACE WHERE THE UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE OR UNLAWFUL ACCESS DEVICE WAS SOLD OR DELIVERED TO A PURCHASER OR RECIPIENT.

(B) PROHIBITED DEFENSE.

IT IS NOT A DEFENSE TO A VIOLATION OF THIS PART THAT SOME OF THE ACTS CONSTITUTING THE VIOLATION OCCURRED OUT OF THE STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 194A(e).

In subsection (a) of this section, the reference to a "violation of § 7-315 of this part" is substituted for the former reference to a "crime under this part" for consistency.

In subsection (a)(1) of this section, the former alternate defined term "assemble" is deleted as included in the defined term "manufacture" for clarity.

Also in subsection (a)(1) of this section, the former reference to "assist[ing] others in doing so" is deleted as included in the definition of "manufacture". *See* § 7-313 of this part.

Defined terms: "Manufacture" § 7-313

"Unlawful access device" § 7-313

"Unlawful telecommunication device or access code" § 7-313

7-318. CIVIL LIABILITY.

(A) IN GENERAL.

A PERSON WHO HAS SUFFERED A SPECIFIC AND DIRECT INJURY TO A RIGHT PROTECTED BY THIS PART BECAUSE OF A VIOLATION OF § 7-315 OF THIS PART MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION.

(B) REMEDIES AVAILABLE.

THE COURT:

(1) MAY IMPOSE PRELIMINARY AND FINAL INJUNCTIONS TO PREVENT OR RESTRAIN A VIOLATION OF § 7-315 OF THIS PART;

(2) AT ANY TIME WHILE AN ACTION IS PENDING, MAY ORDER THE IMPOUNDING OF ANY UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE OR UNLAWFUL ACCESS DEVICE THAT IS IN THE CUSTODY OR CONTROL OF THE VIOLATOR AND THAT THE COURT HAS REASONABLE CAUSE TO BELIEVE WAS INVOLVED IN THE ALLEGED VIOLATION OF § 7-315 OF THIS PART;

(3) MAY AWARD DAMAGES SUBJECT TO SUBSECTION (D) OF THIS SECTION; OR

(4) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A VIOLATION OF § 7-315 OF THIS PART, MAY ORDER THE REMEDIAL MODIFICATION OR DESTRUCTION OF ANY UNLAWFUL TELECOMMUNICATION DEVICE OR ACCESS CODE OR UNLAWFUL ACCESS DEVICE INVOLVED IN THE VIOLATION THAT IS IN THE CUSTODY OR CONTROL OF THE VIOLATOR OR THAT HAS BEEN IMPOUNDED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(C) DISTRICT COURT JURISDICTION NOT ENLARGED.

THIS SECTION DOES NOT ALLOW THE DISTRICT COURT TO GRANT RELIEF UNDER SUBSECTION (B)(1) OF THIS SECTION.

(D) COMPUTATION OF DAMAGES.

(1) DAMAGES AWARDED BY A COURT UNDER THIS SECTION MAY BE COMPUTED AS ACTUAL DAMAGES SUFFERED BY THE COMPLAINING PARTY AS A RESULT OF THE VIOLATION OF § 7-315 OF THIS PART AND ANY PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION AND ARE NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES.

(2) IN DETERMINING THE PROFITS OF THE VIOLATOR UNDER PARAGRAPH (1) OF THIS SUBSECTION:

(I) THE COMPLAINING PARTY MUST PROVE ONLY THE VIOLATOR'S GROSS REVENUE; AND

(II) THE VIOLATOR MUST PROVE THE DEDUCTIBLE EXPENSES AND ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN THE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 194A(a)(2) and (f).

In subsection (b)(2) of this section, the former phrase "on terms the court considers to be reasonable" is deleted as implicit in the normal prerogatives of a court.

Defined terms: "Person" § 1-101

"Unlawful access device" § 7-313

"Unlawful telecommunication device or access code" § 7-313

TITLE 8. FRAUD AND RELATED CRIMES.

SUBTITLE 1. BAD CHECKS.

8-101. 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 the introductory language of former Art. 27, § 140.

(B) CHECK.

"CHECK" MEANS A NEGOTIABLE INSTRUMENT THAT IS NOT POSTDATED AT THE TIME IT IS ISSUED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(a).

The former reference to "any check, draft, or other" negotiable instrument is deleted as included in the reference to "a negotiable instrument".

The former reference to a negotiable instrument "of any kind" is deleted as surplusage.

(C) DRAWER.

"DRAWER" MEANS A PERSON WHOSE NAME APPEARS ON A CHECK AS THE PRIMARY OBLIGOR, WHETHER THE ACTUAL SIGNATURE ON THE CHECK IS THAT OF THE PERSON OR OF ANOTHER PURPORTEDLY AUTHORIZED TO DRAW THE CHECK ON THE PERSON'S BEHALF.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(b).

The reference to the signature "on the check" is added for clarity.

The reference to the signature being that "of the person" is substituted for the former reference to that "of himself" for clarity.

The former reference to the drawer "of a check" is deleted as surplusage.

Defined term: "Person" § 1-101

(D) FUNDS.

"FUNDS" MEANS MONEY OR CREDIT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(c).

(E) ISSUE.

"ISSUE", WITH RESPECT TO A CHECK, MEANS THE ACT OF A DRAWER OR REPRESENTATIVE DRAWER WHO:

(1) DELIVERS THE CHECK OR CAUSES IT TO BE DELIVERED TO A PERSON WHO ACQUIRES A RIGHT AGAINST THE DRAWER WITH RESPECT TO THE CHECK AS A RESULT OF THE DELIVERY; OR

(2) DRAWS THE CHECK WITH THE INTENT THAT IT BE DELIVERED TO A PERSON WHO ON DELIVERY WOULD ACQUIRE A RIGHT ASSIGNABLE WITH RESPECT TO THE CHECK DRAWER AND THE CHECK IS DELIVERED TO THAT PERSON.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(j).

This subsection is restated in standard language used to define a term.

Throughout this title the references to "issu[ing]" a check are substituted for the former references to "uttering" a check, draft, or other negotiable instrument for consistency with the Commercial Law Article and with modern commercial practice. *See, e.g.*, CL § 3-105.

The reference to issuing "with respect to" a check is added to clarify the application of the defined term.

The reference to acquiring a right "as a result of the delivery" is substituted for the former reference to acquiring a right "thereby" for clarity.

The reference to the intent that "[the check] be delivered to a person who on delivery would acquire a right assignable with respect to the check drawer" is substituted for the former reference to intent that it be "so" delivered for clarity.

Defined term: "Person" § 1-101

(F) OBTAIN.

"OBTAIN" HAS THE MEANING STATED IN § 7-101 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(e).

(G) PASS.

"PASS", WITH RESPECT TO A CHECK, MEANS DELIVERING THE CHECK BY A PAYEE, HOLDER, OR BEARER OF THE CHECK, IF:

(1) THE CHECK WAS OR PURPORTS TO HAVE BEEN DRAWN AND ISSUED BY A PERSON OTHER THAN THE PERSON DELIVERING THE CHECK; AND

(2) THE DELIVERY WAS MADE TO A THIRD PERSON WHO ACQUIRES A RIGHT WITH RESPECT TO THE CHECK AS A RESULT OF THE DELIVERY OR FOR A PURPOSE OTHER THAN COLLECTION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(f).

This subsection is restated in standard language used to define a term.

The reference to passing "with respect to" a check is added to clarify the application of the defined term.

The reference to "a person other than the person delivering the check" is substituted for the former reference to "another" for clarity.

The reference to delivery made to a third person who acquires a right "or" for a purpose other than collection is added for clarity.

Defined term: "Person" § 1-101

(H) PROPERTY.

"PROPERTY" HAS THE MEANING STATED IN § 7-101 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(g).

(I) REPRESENTATIVE DRAWER.

"REPRESENTATIVE DRAWER" MEANS A PERSON WHO SIGNS A CHECK AS DRAWER IN A REPRESENTATIVE CAPACITY OR AS AGENT OF THE DRAWER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(h).

The defined term "drawer" is substituted for the former reference to "the person whose name appears thereon as principal drawer or obligor" since by definition "a person whose name appears on a check as the primary obligor" is the "drawer".

Defined term: "Person" § 1-101

(J) SERVICE.

"SERVICE" INCLUDES:

(1) LABOR OR PROFESSIONAL SERVICE;

(2) TELECOMMUNICATION, PUBLIC UTILITY, TOLL FACILITY, OR TRANSPORTATION SERVICES; AND

(3) LODGING, ENTERTAINMENT, OR RESTAURANT SERVICE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(i).

The former words "but is not limited to" are deleted as surplusage in light of Art. 1, § 30.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the definition of "service" in this subsection, though similar to that stated in § 7-101 of this article, does not explicitly include "the use of computers, data processing, or other equipment" found in § 7-101 of this article. Because other definitions in this section cross-reference parallel definitions in § 7-101 of this article, the General Assembly may wish to conform this definition to the term "service" as defined in § 7-101 of this article for consistency in the treatment of theft and fraud crimes.

(K) VALUE.

"VALUE" HAS THE MEANING STATED IN § 7-103 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 140(k).

8-102. RULES OF CONSTRUCTION.

(A) INSUFFICIENT FUNDS.

FOR PURPOSES OF THIS SUBTITLE, A DRAWER HAS INSUFFICIENT FUNDS WITH A DRAWEE TO COVER A CHECK WHEN THE DRAWER HAS WITH THE DRAWEE:

(1) NO ACCOUNT;

(2) ONLY A CLOSED ACCOUNT;

(3) NO FUNDS; OR

(4) FUNDS IN AN AMOUNT THAT IS LESS THAN THE AMOUNT NEEDED TO COVER THE CHECK.

(B) SAME -- NO ACCOUNT.

A CHECK DISHONORED FOR "NO ACCOUNT" HAS BEEN DISHONORED FOR "INSUFFICIENT FUNDS".

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 140(d).

In subsection (a) of this section, the introductory phrase "[f]or purposes of this subtitle" is added to clarify the scope of the subsection.

Also in subsection (a) of this section, the reference in the introductory language to "the drawer" is substituted for the former reference to the masculine pronoun "he" for clarity and gender neutrality.

Also in subsection (a) of this section, the former word "whatever" is deleted as surplusage.

Also in subsection (a) of this section, the references to funds and accounts "with the drawee" are added for clarity.

In subsection (b) of this section, the former word "also" is deleted as surplusage.

Defined terms: "Check" § 8-101

"Drawer" § 8-101

"Funds" § 8-101

8-103. OBTAINING PROPERTY OR SERVICES BY BAD CHECK.

(A) PROHIBITED -- ISSUING CHECK WITH KNOWLEDGE OF INSUFFICIENT FUNDS.

A PERSON MAY NOT OBTAIN PROPERTY OR SERVICES BY ISSUING A CHECK IF:

(1) THE PERSON KNOWS THAT THERE ARE INSUFFICIENT FUNDS WITH THE DRAWEE TO COVER THE CHECK AND OTHER OUTSTANDING CHECKS;

(2) THE PERSON INTENDS OR BELIEVES WHEN ISSUING THE CHECK THAT PAYMENT WILL BE REFUSED BY THE DRAWEE ON PRESENTMENT; AND

(3) PAYMENT OF THE CHECK IS REFUSED BY THE DRAWEE ON PRESENTMENT.

(B) SAME -- ISSUING CHECK WITH INTENT TO STOP PAYMENT.

A PERSON MAY NOT OBTAIN PROPERTY OR SERVICES BY ISSUING A CHECK IF:

(1) WHEN ISSUING THE CHECK, THE PERSON KNOWS THAT THE PERSON OR, IN THE CASE OF A REPRESENTATIVE DRAWER, THE PERSON'S PRINCIPAL INTENDS, WITHOUT THE CONSENT OF THE PAYEE, TO STOP OR COUNTERMAND THE PAYMENT OF THE CHECK, OR OTHERWISE TO CAUSE THE DRAWEE TO DISREGARD, DISHONOR, OR REFUSE TO RECOGNIZE THE CHECK; AND

(2) PAYMENT IS REFUSED BY THE DRAWEE ON PRESENTMENT.

(C) SAME -- ISSUING CHECK WITH INTENT THAT PAYMENT BE REFUSED -- CHECK PASSED TO THIRD PARTY.

A PERSON MAY NOT ISSUE A CHECK IF:

(1) THE CHECK IS IN PAYMENT FOR SERVICES PROVIDED OR TO BE PROVIDED BY:

(I) AN EMPLOYEE OF THE DRAWER OR REPRESENTATIVE DRAWER; OR

(II) AN INDEPENDENT CONTRACTOR HIRED BY THE DRAWER OR REPRESENTATIVE DRAWER;

(2) THE DRAWER OR REPRESENTATIVE DRAWER:

(I) INTENDS OR BELIEVES WHEN ISSUING THE CHECK THAT PAYMENT WILL BE REFUSED BY THE DRAWEE ON PRESENTMENT; OR

(II) KNOWS THAT THE DRAWER OR, IN THE CASE OF A REPRESENTATIVE DRAWER, THE PRINCIPAL OF THE REPRESENTATIVE DRAWER HAS INSUFFICIENT FUNDS WITH THE DRAWEE TO COVER THE CHECK AND OTHER OUTSTANDING CHECKS;

(3) THE EMPLOYEE OF THE DRAWER OR REPRESENTATIVE DRAWER OR AN INDEPENDENT CONTRACTOR HIRED BY THE DRAWER OR REPRESENTATIVE DRAWER PASSES THE CHECK TO A THIRD PERSON; AND

(4) PAYMENT IS REFUSED BY THE DRAWEE ON PRESENTMENT.

(D) SAME -- PASSING CHECK WITH KNOWLEDGE THAT DRAWER HAS INSUFFICIENT FUNDS.

A PERSON MAY NOT OBTAIN PROPERTY OR SERVICES BY PASSING A CHECK IF:

(1) THE PERSON KNOWS THAT THE DRAWER OF THE CHECK HAS INSUFFICIENT FUNDS WITH THE DRAWEE TO COVER THE CHECK AND OTHER OUTSTANDING CHECKS;

(2) THE PERSON INTENDS OR BELIEVES WHEN PASSING THE CHECK THAT PAYMENT WILL BE REFUSED BY THE DRAWEE ON PRESENTMENT; AND

(3) PAYMENT OF THE CHECK IS REFUSED BY THE DRAWEE ON PRESENTMENT.

(E) SAME -- PASSING CHECK WITH KNOWLEDGE OF STOPPED PAYMENT OR DISHONOR.

A PERSON MAY NOT OBTAIN PROPERTY OR SERVICES BY PASSING A CHECK IF:

(1) THE PERSON KNOWS THAT:

(I) PAYMENT OF THE CHECK HAS BEEN STOPPED OR COUNTERMANDED; OR

(II) THE DRAWEE OF THE CHECK WILL DISREGARD, DISHONOR, OR REFUSE TO RECOGNIZE THE CHECK; AND

(2) PAYMENT IS REFUSED BY THE DRAWEE ON PRESENTMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 141.

This section is restated in standard language used to describe a prohibited act.

In this section and throughout this subtitle, the word "when" is substituted for the former phrase "at the time of" for brevity.

Also in this section and throughout this subtitle, the references to "presentment" of a check are substituted for the former references to "presentation" of a check for consistency with provisions of the Uniform Commercial Code relating to checks and other negotiable instruments. *See, e.g.*, CL Title 3, Subtitle 5.

In subsections (a), (b), and (c) of this section, the former references to acting "[a]s a drawer or representative drawer" are deleted as surplusage in light of the definition of "issue".

In subsection (a)(1) of this section, the reference to knowing that "there are" insufficient funds is substituted for the former reference to knowing that "he or his principal, as the case may be, has" insufficient funds for clarity and brevity.

In subsection (b)(1) of this section, the reference to "the person or, in the case of a representative drawer, the person's principal" is substituted for the former reference to "he or his principal, as the case may be" for clarity and gender neutrality.

In subsection (c)(2)(i) of this section, the reference to "issuing the check" is substituted for the former reference to "utterance" for clarity.

In subsection (c)(2)(ii) of this section, the phrase "in the case of a representative drawer" is added and the former reference to the principal "of the drawer" is deleted to clarify that, with respect to a check, there is a "principal" only when the check is drawn by a "representative drawer".

In subsection (d)(1) of this section, the reference to the drawer "of the check" is substituted for the former reference to the drawer "thereof" for clarity.

Defined terms: "Check" § 8-101

"Drawer" § 8-101

"Funds" § 8-101

"Issue" § 8-101

"Obtain" § 8-101

"Pass" § 8-101

"Person" § 1-101

"Property" § 8-101

"Representative drawer" § 8-101

"Service" § 8-101

8-104. SAME -- PRESUMPTIONS.

(A) PRESUMPTION OF KNOWLEDGE OF INSUFFICIENT FUNDS.

THE DRAWER OR REPRESENTATIVE DRAWER IS PRESUMED TO KNOW THAT THERE ARE INSUFFICIENT FUNDS WHENEVER THE DRAWER OF A CHECK HAS INSUFFICIENT FUNDS WITH THE DRAWEE TO COVER THE CHECK AND OTHER OUTSTANDING CHECKS WHEN ISSUING THE CHECK.

(B) PRESUMPTION OF INTENT THAT CHECK BE DISHONORED.

THE DRAWER OR REPRESENTATIVE DRAWER OF A DISHONORED CHECK IS PRESUMED TO HAVE INTENDED OR BELIEVED THAT THE CHECK WOULD BE DISHONORED ON PRESENTMENT IF:

(1) THE DRAWER HAD NO ACCOUNT WITH THE DRAWEE WHEN ISSUING THE CHECK; OR

(2) (I) WHEN ISSUING THE CHECK, THE DRAWER HAD INSUFFICIENT FUNDS WITH THE DRAWEE TO COVER THE CHECK AND OTHER OUTSTANDING CHECKS;

(II) THE CHECK WAS PRESENTED TO THE DRAWEE FOR PAYMENT NOT MORE THAN 30 DAYS AFTER THE DATE OF ISSUING THE CHECK; AND

(III) THE DRAWER HAD INSUFFICIENT FUNDS WITH THE DRAWEE AT THE TIME OF PRESENTMENT.

(C) EVIDENCE OF DISHONOR, LACK OF ACCOUNT, AND INSUFFICIENT FUNDS.

A NOTICE OF PROTEST OF A CHECK, OR A CERTIFICATE UNDER OATH OF AN AUTHORIZED REPRESENTATIVE OF THE DRAWEE DECLARING THE DISHONOR OF A CHECK, THE DRAWER'S LACK OF AN ACCOUNT, OR THAT THE DRAWER HAD INSUFFICIENT FUNDS INTRODUCED IN EVIDENCE IS PRESUMPTIVE EVIDENCE, THAT:

(1) THE CHECK WAS DISHONORED BY THE DRAWEE; AND

(2) THE DRAWER HAD:

(I) NO ACCOUNT WITH THE DRAWEE WHEN THE CHECK WAS ISSUED; OR

(II) INSUFFICIENT FUNDS WITH THE DRAWEE AT THE TIME OF PRESENTMENT AND ISSUING OF THE CHECK.

(D) EFFECT OF INTENT TO STOP PAYMENT AS EVIDENCE.

THE FACT THAT A DRAWER OR REPRESENTATIVE DRAWER, WITHOUT THE CONSENT OF THE PAYEE, STOPPED OR COUNTERMANDED THE PAYMENT OF THE CHECK, OR OTHERWISE CAUSED THE DRAWEE TO DISREGARD, DISHONOR, OR

REFUSE TO RECOGNIZE THE CHECK WITHOUT RETURNING OR TENDERING THE RETURN OF THE PROPERTY OBTAINED, IS PRESUMPTIVE EVIDENCE THAT THE DRAWER OR REPRESENTATIVE DRAWER HAD THE INTENT WHEN ISSUING THE CHECK TO STOP OR COUNTERMAND PAYMENT OR OTHERWISE CAUSE THE DRAWEE TO DISREGARD, DISHONOR, OR REFUSE TO RECOGNIZE THE CHECK.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 142.

In subsections (a), (b), and (c) of this section, the references to "issuing" a check are substituted for the former references to "utterance" for clarity.

In subsections (a) and (b) of this section, the former references to a "subscribing" drawer are deleted as surplusage. Similarly, the former phrases "as the case may be" are deleted.

In subsections (a) and (c) of this section, the references to "insufficient funds" are substituted for the former references to "insufficiency" for clarity and consistency of terminology within this subtitle.

In subsection (b) of this section, the former reference to "an ultimately" dishonored check is deleted as surplusage.

In subsection (c) of this section, the former reference to material "properly" introduced in evidence is deleted as surplusage.

In subsection (d) of this section, the reference to issuing "the check" is added for clarity and consistency throughout this subtitle.

Defined terms: "Check" § 8-101

"Drawer" § 8-101

"Funds" § 8-101

"Issue" § 8-101

"Representative drawer" § 8-101

8-105. SAME -- LIMITATION ON PROSECUTION.

(A) IN GENERAL -- PROSECUTION AS THEFT.

A PERSON WHO OBTAINS PROPERTY OR SERVICES BY ISSUING OR PASSING A CHECK IN VIOLATION OF § 8-103 OF THIS SUBTITLE MAY NOT BE PROSECUTED UNDER THIS ARTICLE, IF:

(1) OTHER THAN FALSELY REPRESENTING THAT THERE ARE SUFFICIENT FUNDS WITH THE DRAWEE TO COVER THE CHECK, THE ISSUING OR PASSING OF THE CHECK IS NOT ACCOMPANIED BY A FALSE REPRESENTATION; AND

(2) THE PERSON WHO OBTAINS THE PROPERTY OR SERVICES MAKES THE CHECK GOOD WITHIN 10 DAYS AFTER THE DRAWEE DISHONORS THE CHECK.

(B) DELAY OF PROSECUTION.

(1) A PROSECUTION MAY NOT BE COMMENCED AGAINST A PERSON DESCRIBED IN SUBSECTION (A) OF THIS SECTION EARLIER THAN 10 DAYS AFTER THE DRAWEE DISHONORS THE CHECK.

(2) A PERSON WHO OBTAINS PROPERTY OR SERVICES BY ISSUING A CHECK IN VIOLATION OF § 8-103 OF THIS SUBTITLE MAY BE PROSECUTED IMMEDIATELY UNDER THIS ARTICLE, IF THE PERSON ISSUING THE CHECK:

(I) IS THE DRAWER; AND

(II) DID NOT HAVE AN ACCOUNT WITH THE DRAWEE WHEN THE CHECK WAS ISSUED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 144.

In this section, the references to issuing or passing a check "in violation of § 8-103 of this subtitle" are added for clarity.

Also in this section, the references to "this article" are substituted for the former references to "the subheading `theft' of this article, or ... any other section of this article" for clarity and brevity.

In subsection (b)(1) of this section, the reference to a period of 10 days "after the drawee dishonors the check" is substituted for the former reference to "that period" for clarity.

Also in subsection (b)(1) of this section, the former reference to commencing prosecution "by warrant, information, indictment, or other charging document" is deleted as surplusage.

Defined terms: "Check" § 8-101

"Drawer" § 8-101

"Funds" § 8-101

"Issue" § 8-101

"Obtain" § 8-101

"Pass" § 8-101

"Person" § 1-101

"Property" § 8-101

"Service" § 8-101

8-106. PENALTIES.

(A) OBTAINING PROPERTY OR SERVICES WITH VALUE OF $500 OR MORE -- ONE CHECK.

A PERSON WHO OBTAINS PROPERTY OR SERVICES WITH A VALUE OF $500 OR MORE BY ISSUING OR PASSING A CHECK IN VIOLATION OF § 8-103 OF THIS SUBTITLE

IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(B) SAME -- MORE THAN ONE CHECK.

A PERSON WHO OBTAINS PROPERTY OR SERVICES BY ISSUING OR PASSING MORE THAN ONE CHECK IN VIOLATION OF § 8-103 OF THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH IF:

(1) EACH CHECK THAT IS ISSUED IS FOR LESS THAN $500 AND IS ISSUED TO THE SAME PERSON WITHIN A 30-DAY PERIOD; AND

(2) THE CUMULATIVE VALUE OF THE PROPERTY OR SERVICES IS $500 OR MORE.

(C) OBTAINING PROPERTY OR SERVICES -- VALUE LESS THAN $500.

A PERSON WHO OBTAINS PROPERTY OR SERVICES WITH A VALUE OF LESS THAN $500 BY ISSUING OR PASSING A CHECK IN VIOLATION OF § 8-103 OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $100 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 143(a) through (c).

In this section, references to issuing or passing a check "in violation of § 8-103 of this subtitle" are added for clarity.

Also in this section, the former references to "the discretion of the court" are deleted as implicit in the establishment of maximum penalties.

Defined terms: "Check" § 8-101

"Issue" § 8-101

"Obtain" § 8-101

"Pass" § 8-101

"Person" § 1-101

"Property" § 8-101

"Service" § 8-101

"Value" § 8-101

8-107. SAME -- RESTORATION OF PROPERTY; RESTITUTION; COLLECTION FEE.

IN ADDITION TO THE PENALTIES PROVIDED IN § 8-106 OF THIS SUBTITLE, IF A PERSON OBTAINS PROPERTY OR SERVICES BY ISSUING OR PASSING A CHECK IN VIOLATION OF § 8-103 OF THIS SUBTITLE, ON CONVICTION, THE COURT:

(1) IF THE PROPERTY HAS BEEN RECOVERED OR IS IN THE DEFENDANT'S POSSESSION OR CONTROL, MAY ORDER RESTORATION OF THE PROPERTY TO ANY PERSON WITH A PROPERTY INTEREST IN IT;

(2) TO THE EXTENT THAT THE PROPERTY IS NOT RESTORED OR COMPENSATION HAS NOT BEEN PROVIDED FOR THE SERVICES, MAY ORDER RESTITUTION OF THE VALUE OF THE PROPERTY OR SERVICES OBTAINED TO BE PAID TO:

(I) ANY PERSON HAVING A PROPERTY INTEREST IN THE PROPERTY; OR

(II) THE PERSON WHO PROVIDED THE SERVICES; AND

(3) MAY ORDER THE DEFENDANT TO PAY A COLLECTION FEE OF UP TO $35, FOR EACH CHECK, TO:

(I) ANY PERSON WITH A PROPERTY INTEREST IN THE PROPERTY; OR

(II) THE PERSON WHO PROVIDED THE SERVICES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 143(d).

In this section, the reference to issuing or passing a check "in violation of § 8-103 of this subtitle" is added for clarity.

Also in this section, the former references to property or services "which has been the object of the offense" are deleted as surplusage.

Also in this section, the former reference to property recovered "from the defendant or another" is deleted as surplusage.

Defined terms: "Check" § 8-101

"Issue" § 8-101

"Obtain" § 8-101

"Pass" § 8-101

"Person" § 1-101

"Property" § 8-101

"Service" § 8-101

"Value" § 8-101

SUBTITLE 2. CREDIT CARD CRIMES.

PART I - GENERAL PROVISIONS.

8-201. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is standard language substituted for the introductory language of former Art. 27, § 145(a).

The reference to "this subtitle" is substituted for the former reference to this "section", although this subtitle is derived, in part, from material outside former Art. 27, § 145. The only uses of the terms defined in this section in material that is not derived from former § 145 are either easily distinguishable from the defined term, as in the use of "telephone credit card" in § 8-210 derived from former Art. 27, § 557A, or are consistent with the definitions in this section, as in "credit card" and "issuer" in Part II of this subtitle, derived from former CL §§ 14-1401 through 14-1405. No substantive change is intended.

(B) CARDHOLDER.

"CARDHOLDER" MEANS THE PERSON NAMED ON THE FACE OF A CREDIT CARD TO WHOM OR FOR WHOSE BENEFIT THE CREDIT CARD IS ISSUED BY AN ISSUER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 145(a)(1).

The former reference to an "organization" is deleted in light of the defined term "person".

Defined term: "Person" § 1-101

(C) CREDIT CARD.

(1) "CREDIT CARD" MEANS AN INSTRUMENT OR DEVICE ISSUED BY AN ISSUER FOR THE USE OF A CARDHOLDER IN OBTAINING MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE ON CREDIT.

(2) "CREDIT CARD" INCLUDES:

(I) A DEBIT CARD, ACCESS CARD, OR OTHER DEVICE FOR USE BY A CARDHOLDER TO EFFECT A TRANSFER OF FUNDS THROUGH AN ELECTRONIC TERMINAL, TELEPHONE, OR COMPUTER;

(II) A MAGNETIC TAPE THAT ORDERS OR AUTHORIZES A FINANCIAL INSTITUTION TO DEBIT OR CREDIT AN ACCOUNT; AND

(III) A CODE, ACCOUNT NUMBER, OR OTHER MEANS OF ACCOUNT ACCESS THAT IS NOT ENCODED OR TRUNCATED AND CAN BE USED TO:

1. OBTAIN MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE; OR

2. INITIATE A TRANSFER OF FUNDS.

(3) "CREDIT CARD" DOES NOT INCLUDE A CHECK, DRAFT, OR SIMILAR PAPER INSTRUMENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 145(a)(2) and (5).

In paragraph (2)(i) of this subsection, the reference to a device "for use by" a cardholder is substituted for the former reference to a device "used by" a cardholder for accuracy. The Criminal Law Article Review Committee calls this substitution to the attention of the General Assembly.

Also in paragraph (2)(i) of this subsection, the former reference to "instructing" a financial institution is deleted as included in the reference to "order[ing]".

The former term "payment device number" which was defined in former Art. 27, § 145(a)(5) is revised as part of the defined term "credit card", derived from former § 145(a)(2), because it was used once in former Art. 27, § 145 and only in the latter definition. The term "payment device number" in former Art. 27, § 145(a)(5) excluded an "encoded or truncated number", while the same term in former CL § 14-1401 - now in Part II of this subtitle - did not exclude them. Except as otherwise specifically provided, in Part II of this subtitle the explicit references to a "credit card number or payment device number" included these encoded or truncated numbers.

(D) ISSUER.

"ISSUER" MEANS A BUSINESS ORGANIZATION OR FINANCIAL INSTITUTION THAT ISSUES A CREDIT CARD OR THE AUTHORIZED AGENT OF THE BUSINESS ORGANIZATION OR FINANCIAL INSTITUTION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 145(a)(3).

The second reference to "the business organization or financial institution" is substituted for the former reference to "its" for clarity.

The former word "duly" is deleted as implicit in the reference to an "authorized" agent.

REVISOR'S NOTE TO SECTION

Former Art. 27, § 145(a)(4) which defined "[r]eceives or receiving" to mean "acquiring possession or control of a credit card" is deleted as unnecessary in light of the commonly understood meaning of the terms and since the substantive provisions of this subtitle are explicit with respect to receiving "a credit card". *See, e.g.*, § 8-204(a)(1)(ii), (b), and (d) of this subtitle.

8-202. RULES OF CONSTRUCTION.

(A) COURSE OF CONDUCT.

IF A PERSON VIOLATES §§ 8-203 THROUGH 8-209 OF THIS SUBTITLE AS PART OF ONE SCHEME OR A CONTINUING COURSE OF CONDUCT, FROM THE SAME OR SEVERAL SOURCES:

(1) THE CONDUCT MAY BE CONSIDERED AS ONE VIOLATION; AND

(2) THE VALUE OF MONEY, GOODS, SERVICES, OR THINGS OF VALUE MAY BE AGGREGATED IN DETERMINING IF THE CRIME IS A FELONY OR A MISDEMEANOR.

(B) APPLICABILITY.

SECTIONS 8-203 THROUGH 8-209 OF THIS SUBTITLE MAY NOT BE CONSTRUED TO PRECLUDE THE APPLICABILITY OF ANY OTHER PROVISION OF THE CRIMINAL LAW OF THIS STATE THAT APPLIES OR MAY APPLY TO ANY TRANSACTION THAT VIOLATES §§ 8-203 THROUGH 8-209 OF THIS SUBTITLE, UNLESS THAT PROVISION IS INCONSISTENT WITH §§ 8-203 THROUGH 8-209 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 145(i) and (j).

Throughout this section, the references to "[§§] 8-203 through 8-209 of this subtitle" are substituted for the former references to "this section" to reflect the reorganization of substantive material derived from former Art. 27, § 145 in those provisions.

Former Art. 27, § 145(k), which provided for the severability of provisions of former Art. 27, § 145, is deleted in light of Art. 1, § 23, which provides that all legislation enacted after July 1, 1979 is presumed to be severable absent specific language to the contrary, and in light of the standard rule of judicial construction favoring severability even in the absence of a severability clause in the statute. *See, e.g., Turner v. State*, 299 Md. 565 (1984): "Perhaps the most important of these principles [of statutory construction] is the presumption, even in the absence of an express clause or declaration, that a legislative body generally intends its enactments to be severed if possible. Moreover, when the dominant purpose of an enactment may largely be carried out, notwithstanding the statute's partial invalidity, courts will generally hold the valid portions severable and enforce them." 299 Md. 565, 576. The Criminal Law Article Review Committee calls this deletion to the attention of the General Assembly.

Defined term: "Person" § 1-101

8-203. FRAUD IN PROCURING ISSUANCE OF CREDIT CARD.

(A) PROHIBITED.

A PERSON MAY NOT MAKE OR CAUSE TO BE MADE, DIRECTLY OR INDIRECTLY, A FALSE STATEMENT IN WRITING ABOUT THE IDENTITY OF THE PERSON OR OF ANOTHER TO PROCURE THE ISSUANCE OF A CREDIT CARD:

(1) KNOWING THE STATEMENT TO BE FALSE; AND

(2) WITH THE INTENT THAT THE STATEMENT BE RELIED ON.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 145(b) and (h)(1).

In the introductory language of this section, the former reference to a "firm or corporation" is deleted in light of the defined term "person".

Defined terms: "Credit card" § 8-201

"Person" § 1-101

8-204. CREDIT CARD THEFT.

(A) TAKING CREDIT CARD FROM ANOTHER; RECEIVING CREDIT CARD TAKEN FROM ANOTHER WITH INTENT TO SELL.

(1) A PERSON MAY NOT:

(I) TAKE A CREDIT CARD FROM ANOTHER, OR FROM THE POSSESSION, CUSTODY, OR CONTROL OF ANOTHER WITHOUT THE CONSENT OF THE CARDHOLDER; OR

(II) WITH KNOWLEDGE THAT A CREDIT CARD HAS BEEN TAKEN UNDER THE CIRCUMSTANCES DESCRIBED IN ITEM (I) OF THIS PARAGRAPH, RECEIVE THE CREDIT CARD WITH THE INTENT TO USE IT OR SELL OR TRANSFER IT TO ANOTHER WHO IS NOT THE ISSUER OR THE CARDHOLDER.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF CREDIT CARD THEFT.

(B) RECEIVING CREDIT CARD KNOWN TO HAVE BEEN LOST OR MISDELIVERED.

(1) A PERSON MAY NOT RECEIVE A CREDIT CARD THAT THE PERSON KNOWS WAS LOST, MISLAID, OR DELIVERED UNDER A MISTAKE AS TO THE IDENTITY OR ADDRESS OF THE CARDHOLDER AND RETAIN POSSESSION OF THE CREDIT CARD WITH THE INTENT TO USE, SELL, OR TRANSFER IT TO ANOTHER WHO IS NOT THE ISSUER OR THE CARDHOLDER.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF CREDIT CARD THEFT.

(C) BUYING AND SELLING OF CREDIT CARDS.

A PERSON MAY NOT:

(1) SELL A CREDIT CARD UNLESS THE PERSON IS THE ISSUER; OR

(2) BUY A CREDIT CARD FROM A PERSON OTHER THAN THE ISSUER.

(D) RECEIVING CREDIT CARD WITH KNOWLEDGE OF CREDIT CARD THEFT OR OTHER VIOLATIONS.

A PERSON OTHER THAN THE ISSUER MAY NOT RECEIVE A CREDIT CARD THAT THE PERSON KNOWS WAS TAKEN OR RETAINED UNDER CIRCUMSTANCES THAT CONSTITUTE:

(1) CREDIT CARD THEFT;

(2) A VIOLATION OF § 8-203 OF THIS SUBTITLE; OR

(3) A VIOLATION OF SUBSECTION (C) OF THIS SECTION.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 145(c)(1), (2), (3), and (4) and (h)(1).

In subsection (a) of this section, the reference to a credit card "taken under the circumstances described in item (i) of this paragraph" is substituted for the former reference to "so taken" for clarity.

Defined terms: "Cardholder" § 8-201

"Credit card" § 8-201

"Issuer" § 8-201

"Person" § 1-101

8-205. CREDIT CARD COUNTERFEITING.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "FALSELY EMBOSS" MEANS TO COMPLETE A CREDIT CARD WITHOUT THE AUTHORIZATION OF THE ISSUER NAMED ON THE CREDIT CARD BY ADDING ANY OF THE MATTER, OTHER THAN THE SIGNATURE OF THE CARDHOLDER, THAT THE ISSUER REQUIRES TO APPEAR ON A CREDIT CARD BEFORE IT CAN BE USED BY A CARDHOLDER.

(3) "FALSELY MAKE" MEANS:

(I) TO MAKE OR DRAW, WHOLLY OR PARTLY, A DEVICE OR INSTRUMENT THAT PURPORTS TO BE A CREDIT CARD BUT THAT IS NOT A CREDIT CARD BECAUSE AN ISSUER DID NOT AUTHORIZE THE MAKING OR DRAWING; OR

(II) TO ALTER A CREDIT CARD THAT WAS VALIDLY ISSUED.

(B) CREDIT CARD FRAUD -- FALSELY MAKING OR EMBOSSING CREDIT CARD; TRANSFERRING OR POSSESSING CREDIT CARD WITH KNOWLEDGE OF FALSITY.

A PERSON MAY NOT, WITH THE INTENT TO DEFRAUD ANOTHER:

(1) FALSELY MAKE A PURPORTED CREDIT CARD;

(2) FALSELY EMBOSS A CREDIT CARD; OR

(3) TRANSFER OR POSSESS:

(I) A FALSELY MADE INSTRUMENT OR DEVICE THAT PURPORTS TO BE A CREDIT CARD, WITH KNOWLEDGE THAT THE INSTRUMENT OR DEVICE WAS FALSELY MADE; OR

(II) A FALSELY EMBOSSED CREDIT CARD WITH KNOWLEDGE THAT THE CREDIT CARD WAS FALSELY MADE OR FALSELY EMBOSSED.

(C) SAME -- SIGNATURE BY OTHER THAN CARDHOLDER.

A PERSON OTHER THAN THE CARDHOLDER OR ONE AUTHORIZED BY THE CARDHOLDER MAY NOT SIGN A CREDIT CARD WITH THE INTENT TO DEFRAUD ANOTHER.

(D) VIOLATION OF SECTION -- CREDIT CARD COUNTERFEITING.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF CREDIT CARD COUNTERFEITING AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 145(c)(5) and (6) and (h)(2).

Subsection (a) of this section is revised in standard language used to define terms.

In subsection (a)(3) of this section, the reference to the credit card "of the issuer" is substituted for the former reference to "such" credit card for clarity.

In subsection (b) of this section, the former reference to "a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other" person is deleted as included in the comprehensive reference to a "person". Similarly, in subsection (c) of this section, the former reference to "the issuer, or a person or organization

providing money, goods, services or anything else of value, or any other" person is deleted as included in the comprehensive reference to a "person". *See* § 1-101 of this article.

In subsection (b)(3) of this section, the reference to "transfer[ring]" a false credit card is substituted for the former reference to "utter[ing]" a false credit card for clarity.

In subsection (d) of this section, the reference to credit card "counterfeiting" is substituted for the former reference to credit card "forgery" for consistency within this article.

Defined terms: "Cardholder" § 8-201

"Counterfeit" § 1-101

"Credit card" § 8-201

"Issuer" § 8-201

"Person" § 1-101

8-206. OBTAINING PROPERTY BY COUNTERFEITING, THEFT, OR MISREPRESENTATION.

(A) PROHIBITED -- USE OF STOLEN OR COUNTERFEIT CARD.

A PERSON MAY NOT FOR THE PURPOSE OF OBTAINING MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE, AND WITH THE INTENT TO DEFRAUD ANOTHER, USE:

(1) A CREDIT CARD OBTAINED OR RETAINED IN VIOLATION OF § 8-204 OR § 8-205 OF THIS SUBTITLE; OR

(2) A CREDIT CARD THAT THE PERSON KNOWS IS COUNTERFEIT.

(B) SAME -- FALSE REPRESENTATION.

A PERSON MAY NOT, WITH THE INTENT TO DEFRAUD ANOTHER, OBTAIN MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE BY REPRESENTING:

(1) WITHOUT THE CONSENT OF THE CARDHOLDER, THAT THE PERSON IS THE HOLDER OF A SPECIFIED CREDIT CARD; OR

(2) THAT THE PERSON IS THE HOLDER OF A CREDIT CARD WHEN THE CREDIT CARD HAD NOT BEEN ISSUED.

(C) PENALTIES.

(1) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER THINGS OF VALUE OBTAINED IN VIOLATION OF THIS SECTION EXCEEDS $500, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(2) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER THINGS OF VALUE OBTAINED IN VIOLATION OF THIS SECTION DOES NOT EXCEED $500, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 145(d) and (h).

In the introductory language of subsections (a) and (b) of this section, the former reference to "the issuer, a person or organization providing money, goods, services or anything else of value, or any other" person is deleted as included in the comprehensive reference to a "person". *See* § 1-101 of this article.

In subsection (a)(2) of this section, the reference to a "counterfeit" credit card is substituted for the former reference to a "forged" credit card for consistency within this article.

In subsection (b) of this section, the references to a "credit card" are substituted for the former references to a "card" for consistency throughout this subtitle.

Defined terms: "Cardholder" § 8-201

"Counterfeit" § 1-101

"Credit card" § 8-201

"Person" § 1-101

8-207. FRAUD -- HONORING STOLEN OR COUNTERFEIT CREDIT CARD; FALSE REPRESENTATION TO ISSUER.

(A) PROHIBITED.

IF A PERSON IS AUTHORIZED BY AN ISSUER TO FURNISH MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE ON PRESENTATION OF A CREDIT CARD BY THE CARDHOLDER, THE PERSON OR AN AGENT OR EMPLOYEE OF THE PERSON MAY NOT, WITH THE INTENT TO DEFRAUD THE ISSUER OR CARDHOLDER:

(1) FURNISH MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE ON PRESENTATION OF:

(I) A CREDIT CARD OBTAINED OR RETAINED IN VIOLATION OF § 8-204 OR § 8-205 OF THIS SUBTITLE; OR

(II) A CREDIT CARD THAT THE PERSON KNOWS IS COUNTERFEIT; OR

(2) FAIL TO FURNISH MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE THAT THE PERSON REPRESENTS IN WRITING TO THE ISSUER THAT THE PERSON HAS FURNISHED.

(B) PENALTIES.

(1) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER THINGS OF VALUE FURNISHED OR NOT FURNISHED IN VIOLATION OF THIS SECTION EXCEEDS $500, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(2) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER THINGS OF VALUE FURNISHED OR NOT FURNISHED IN VIOLATION OF THIS SECTION DOES NOT EXCEED $500, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 145(e) and (h).

In subsection (a)(1)(ii) of this section, the reference to a "counterfeit" credit card is substituted for the former reference to a "forged" credit card for consistency within this article.

Defined terms: "Cardholder" § 8-201

"Counterfeit" § 1-101

"Credit card" § 8-201

"Issuer" § 8-201

"Person" § 1-101

8-208. COMPLETING CREDIT CARD WITHOUT CONSENT; POSSESSING CONTRIVANCE TO REPRODUCE CREDIT CARD WITHOUT CONSENT.

(A) "INCOMPLETE CREDIT CARD" DEFINED.

IN THIS SECTION, "INCOMPLETE CREDIT CARD" MEANS A CREDIT CARD THAT LACKS ANY STAMPED, EMBOSSED, IMPRINTED, OR WRITTEN MATTER, OTHER THAN THE SIGNATURE OF THE CARDHOLDER, THAT AN ISSUER REQUIRES TO APPEAR ON A CREDIT CARD BEFORE A CARDHOLDER CAN USE THE CREDIT CARD.

(B) PROHIBITED.

(1) WITHOUT THE CONSENT OF THE ISSUER, A PERSON OTHER THAN THE CARDHOLDER MAY NOT POSSESS AN INCOMPLETE CREDIT CARD WITH THE INTENT TO COMPLETE IT.

(2) A PERSON MAY NOT POSSESS, WITH KNOWLEDGE OF ITS CHARACTER, MACHINERY, PLATES, OR ANY OTHER CONTRIVANCE DESIGNED TO REPRODUCE AN INSTRUMENT PURPORTING TO BE A CREDIT CARD OF AN ISSUER THAT HAS NOT CONSENTED TO THE PREPARATION OF THE CREDIT CARD.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 145(f) and (h)(2).

Subsection (a) of this section is revised in standard language used to define a term.

In subsection (a) of this section, the reference to the "signature" of the cardholder is substituted for the former reference to the "name" of the cardholder for clarity in light of the definition of "cardholder".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the prohibition against possessing machinery, plates, or any other contrivance to make a credit card without consent of an issuer in subsection (b)(2) of this subtitle appears to preclude a person from entering into or engaging in the legitimate business of manufacturing credit card making equipment without the prior approval of a credit card issuer.

Defined terms: "Cardholder" § 8-201

"Credit card" § 8-201

"Issuer" § 8-201

"Person" § 1-101

8-209. RECEIVING PROPERTY BY STOLEN, COUNTERFEIT, OR MISREPRESENTED CREDIT CARD.

(A) PROHIBITED.

A PERSON MAY NOT RECEIVE MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE IF THE PERSON KNOWS OR BELIEVES THAT THE MONEY, GOODS, SERVICES, OR OTHER THING OF VALUE WAS OBTAINED IN VIOLATION OF § 8-206 OF THIS SUBTITLE.

(B) PENALTIES.

(1) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER THINGS OF VALUE OBTAINED IN VIOLATION OF THIS SECTION EXCEEDS $500, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(2) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER THINGS OF VALUE OBTAINED IN VIOLATION OF THIS SECTION DOES NOT EXCEED $500, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 145(g) and (h).

Defined term: "Person" § 1-101

8-210. PUBLISHING NUMBER OR CODE OF TELEPHONE CREDIT CARD.

(A) "PUBLISH" DEFINED.

IN THIS SECTION, "PUBLISH" MEANS TO COMMUNICATE INFORMATION TO ONE OR MORE PERSONS:

(1) ORALLY:

(I) IN PERSON; OR

(II) BY TELEPHONE, RADIO, OR TELEVISION; OR

(2) IN A WRITING OF ANY KIND.

(B) PROHIBITED.

A PERSON MAY NOT PUBLISH OR CAUSE TO BE PUBLISHED THE NUMBER OR CODE OF AN EXISTING, CANCELED, REVOKED, EXPIRED, OR NONEXISTENT TELEPHONE CREDIT CARD, OR THE NUMBERING OR CODING SYSTEM THAT IS USED IN ISSUING TELEPHONE CREDIT CARDS, WITH THE INTENT THAT THE NUMBER, CODE, OR SYSTEM BE USED OR WITH KNOWLEDGE THAT IT MAY BE USED FRAUDULENTLY TO AVOID PAYING A LAWFUL TOLL CHARGE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 12 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 557A.

In subsection (a) of this section, the former reference to a writing "including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book" is deleted as included in the reference to "a writing of any kind".

In subsection (b) of this section, the reference to "number, code, or system" is substituted for the former reference to "it" for clarity.

In subsection (c) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined term: "Person" § 1-101

8-211. RESERVED.

8-212. RESERVED.

PART II. CREDIT CARD NUMBER PROTECTION.

8-213. DEFINITIONS.

(A) IN GENERAL.

IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was CL § 14-1401(a).

The only changes are in style.

(B) AUTHORIZED USE, DISCLOSURE, OR RECEIPT.

"AUTHORIZED USE, DISCLOSURE, OR RECEIPT" MEANS ANY USE, DISCLOSURE, OR RECEIPT NECESSARY TO ACCOMPLISH THE SPECIFIC PURPOSE FOR WHICH THE PERSON ISSUED A CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER, OR GRANTED TO ANOTHER THE RIGHT TO USE, DISCLOSE, OR RECEIVE THE CREDIT CARD NUMBER OR OTHER PAYMENT DEVICE NUMBER.

REVISOR'S NOTE: This subsection formerly was CL § 14-1401(b).

The conjunction "or" is added between the term "payment device number" and the phrase "granted to another" for clarity.

No other changes are made.

Defined terms: "Credit card" § 8-201

"Person" § 1-101

(C) HOLDER.

"HOLDER" MEANS A PERSON WHO:

(1) HAS BEEN ISSUED A CREDIT CARD NUMBER OR OTHER PAYMENT DEVICE NUMBER; OR

(2) IS AUTHORIZED BY THE PERSON WHO HAS BEEN ISSUED A CREDIT CARD NUMBER OR OTHER PAYMENT DEVICE NUMBER TO USE, DISCLOSE, OR RECEIVE THAT CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER.

REVISOR'S NOTE: This subsection formerly was CL § 14-1401(d).

The only changes are in style.

Defined terms: "Credit card" § 8-201

"Person" § 1-101

(D) HOLDER'S SIGNATURE.

(1) "HOLDER'S SIGNATURE" MEANS THE SIGNATURE OF A HOLDER IN CONNECTION WITH A CREDIT APPLICATION OR CREDIT CARD TRANSACTION.

(2) "HOLDER'S SIGNATURE" INCLUDES AN ELECTRONICALLY RECORDED SIGNATURE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former CL § 14-1401(e).

Defined term: "Credit card" § 8-201

(E) PAYMENT DEVICE NUMBER.

"PAYMENT DEVICE NUMBER" MEANS A CODE, ACCOUNT NUMBER, OR OTHER MEANS OF ACCOUNT ACCESS, OTHER THAN A CHECK, DRAFT, OR SIMILAR PAPER INSTRUMENT, THAT CAN BE USED TO OBTAIN MONEY, GOODS, SERVICES, OR ANYTHING OF VALUE, OR FOR PURPOSES OF INITIATING A TRANSFER OF FUNDS.

REVISOR'S NOTE: This subsection formerly was the first sentence of CL § 14-1401(c).

The only changes are in style.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the definition of "payment device number" in this subsection differs from the definition of the same term in former Art. 27, § 145(a)(5), in that the latter definition excluded an "encoded or truncated credit card number or payment device number". The distinction is that this part, derived from former CL §§ 14-1401 through 14-1405, prohibits certain disclosures and activities relating to information about credit card and similar accounts, whereas §§ 8-203 through 8-209 of this subtitle, derived from former Art. 27, § 145, prohibit certain uses of credit cards and similar account access devices. Former § 145(a)(5) is incorporated into the term "credit card" defined in § 8-201 of this subtitle. *See* Revisor's Note to § 8-201(c) of this subtitle.

(F) PERSON.

(1) "PERSON" HAS THE MEANING STATED IN § 1-101 OF THIS ARTICLE.

(2) "PERSON" INCLUDES A BUSINESS TRUST, ESTATE, TRUST, AND TWO OR MORE PERSONS HAVING A JOINT OR COMMON INTEREST.

REVISOR'S NOTE: Paragraph (1) of this subsection is new language substituted for the former reference to an "individual, corporation, ... partnership, association, ... or any other legal or commercial entity" in former CL § 14-1401(f) for clarity.

Paragraph (2) of this subsection is revised to incorporate the remainder of former CL § 14-1401(f) to the extent not covered by the term "person" defined in § 1-101 of this article.

Defined term: "Person" § 1-101

8-214. PROHIBITED -- UNAUTHORIZED USE OR DISCLOSURE.

(A) IN GENERAL; EXCEPTIONS.

A PERSON MAY NOT USE OR DISCLOSE ANY CREDIT CARD NUMBER OR OTHER PAYMENT DEVICE NUMBER OR HOLDER'S SIGNATURE UNLESS:

(1) THE PERSON IS THE HOLDER OF THE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER;

(2) THE DISCLOSURE IS MADE TO THE HOLDER OR ISSUER OF THE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER;

(3) THE USE OR DISCLOSURE IS:

(I) REQUIRED UNDER FEDERAL OR STATE LAW;

(II) AT THE DIRECTION OF A GOVERNMENTAL UNIT IN ACCORDANCE WITH LAW; OR

(III) IN RESPONSE TO THE ORDER OF A COURT HAVING JURISDICTION TO ISSUE THE ORDER;

(4) THE DISCLOSURE IS IN CONNECTION WITH AN AUTHORIZATION, PROCESSING, BILLING, COLLECTION, CHARGEBACK, INSURANCE COLLECTION, FRAUD PREVENTION, OR CREDIT CARD OR PAYMENT DEVICE RECOVERY THAT RELATES TO THE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER, AN ACCOUNT ACCESSED BY THE CREDIT CARD NUMBER OR PAYMENT ACCOUNT NUMBER, A DEBT FOR WHICH THE HOLDER OR A PERSON AUTHORIZED BY THE HOLDER GAVE THE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER FOR PURPOSES OF IDENTIFICATION, OR A DEBT OR OBLIGATION ARISING, ALONE OR IN CONJUNCTION WITH ANOTHER MEANS OF PAYMENT, FROM THE USE OF THE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER;

(5) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE DISCLOSURE IS REASONABLY NECESSARY IN CONNECTION WITH:

(I) THE SALE OR PLEDGE, OR NEGOTIATION OF THE SALE OR PLEDGE, OF ANY PORTION OF A BUSINESS OR THE ASSETS OF A BUSINESS;

(II) THE MANAGEMENT, OPERATION, OR OTHER ACTIVITIES INVOLVING THE INTERNAL FUNCTIONING OF THE PERSON MAKING THE DISCLOSURE; OR

(III) THE MANAGEMENT, OPERATION, OR OTHER ACTIVITIES INVOLVING DISCLOSURES BETWEEN A CORPORATION AND ITS SUBSIDIARIES OR CONTROLLED AFFILIATES OR BETWEEN THE SUBSIDIARIES OR THE CONTROLLED AFFILIATES;

(6) THE DISCLOSURE IS MADE TO A CONSUMER REPORTING AGENCY, AS DEFINED IN § 14-1201 OF THE COMMERCIAL LAW ARTICLE;

(7) SUBJECT TO SUBSECTION (D) OF THIS SECTION, WHETHER OR NOT THE PERSON IS A CONSUMER REPORTING AGENCY AND WHETHER OR NOT THE DISCLOSURE IS A CONSUMER REPORT, THE DISCLOSURE IS MADE UNDER A CIRCUMSTANCE SPECIFIED IN THE CREDIT REPORTING PROVISIONS OF § 14-1202(3)(I), (II), (III), OR (IV) OF THE COMMERCIAL LAW ARTICLE; OR

(8) THE DISCLOSURE IS ALLOWED UNDER § 1-303 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(B) DISCLOSURE FOR MARKETING AGAINST HOLDER'S DIRECTION.

A DISCLOSURE FOR MARKETING PURPOSES MAY NOT BE MADE IF THE HOLDER OF AN ACTIVE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER HAS PROHIBITED THE ISSUER IN WRITING AT THE ISSUER'S ADDRESS FROM USING THE CARD OR NUMBER FOR MARKETING PURPOSES.

(C) NOTIFICATION OF NONDISCLOSURE OPTION REQUIRED.

(1) NOTWITHSTANDING SUBSECTION (A)(5)(III) OF THIS SECTION, A DISCLOSURE FOR MARKETING PURPOSES MAY NOT BE MADE IF THE HOLDER OF AN ACTIVE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER, OTHER THAN AN ENCODED CREDIT CARD NUMBER OR ENCODED PAYMENT DEVICE NUMBER, HAS NOTIFIED THE ISSUER IN WRITING AT AN ADDRESS SPECIFIED BY THE ISSUER, THAT DISCLOSURE FOR MARKETING PURPOSES IS NOT ALLOWED.

(2) THE ISSUER SHALL NOTIFY EACH HOLDER OF AN ACTIVE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER OF THE NONDISCLOSURE OPTION AND THE SPECIFIED ADDRESS ON A PERIODIC BASIS AT THE ISSUER'S DISCRETION AT LEAST ONCE EACH YEAR.

(3) THE ISSUER SHALL COMPLY WITH THE HOLDER'S ELECTION WITHIN 45 DAYS AFTER RECEIVING THE HOLDER'S RESPONSE.

(4) THE ELECTION SHALL REMAIN IN EFFECT UNTIL THE HOLDER RESCINDS THE ELECTION OR UNTIL THERE HAVE BEEN NO DEBITS OR CREDITS TO THE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER FOR A 12-MONTH PERIOD.

(D) DISCLOSURE RELATING TO CREDIT REPORTING -- REQUIREMENTS.

NOTWITHSTANDING SUBSECTION (A)(7) OF THIS SECTION, AND EXCEPT AS PROVIDED IN § 14-1202(3)(I) OF THE COMMERCIAL LAW ARTICLE, A PERSON MAY NOT

FURNISH A REPORT CONTAINING A CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER BEFORE RECEIVING AN INDIVIDUAL WRITTEN, ELECTRONIC, OR OTHER TANGIBLE RECORD OF A CERTIFICATION FROM THE REQUESTOR:

(1) CONTAINING THE REASON THAT THE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER IS REQUIRED; AND

(2) STATING THAT THE CREDIT CARD NUMBER OR PAYMENT DEVICE NUMBER:

(I) CANNOT BE OBTAINED UNDER A CIRCUMSTANCE SPECIFIED UNDER THIS PART OR TITLE 14 OF THE COMMERCIAL LAW ARTICLE; OR

(II) IS NEEDED FOR SECURITY, OR LOSS OR FRAUD PREVENTION PURPOSES.

REVISOR'S NOTE: This section is new language derived without substantive change from former CL § 14-1402 and the second sentence of § 14-1401(c).

In subsection (a)(3)(i) of this section, the reference to a disclosure "required by" federal or State law is substituted for the former reference to a disclosure "pursuant to obligation under" federal or State law for brevity.

In subsection (c)(2) and (4) of this section, the references to a "credit card number or payment device number" are substituted for the former references to an "account" for consistency within this part.

In subsection (d)(2)(i) of this section, the reference to "this part or Title 14 of the Commercial Law Article" is substituted for the former erroneous reference to this "title" for accuracy.

For provisions on disclosures relating to consumer credit reporting agencies, *see* Title 14, Subtitle 12 of the Commercial Law Article.

Defined terms: "Credit card" § 8-201

"Holder" § 8-213

"Holder's signature" § 8-213

"Payment device number" § 8-213

"Person" §§ 1-101, 8-213

8-215. SAME -- POSSESSION WITH UNLAWFUL INTENT.

WITH UNLAWFUL OR FRAUDULENT INTENT, A PERSON MAY NOT POSSESS:

(1) A CREDIT CARD NUMBER OR OTHER PAYMENT DEVICE NUMBER BELONGING TO ANOTHER; OR

(2) ANY HOLDER'S SIGNATURE.

REVISOR'S NOTE: This section formerly was CL § 14-1403.

The only changes are in style.

Defined terms: "Credit card" § 8-201

"Holder's signature" § 8-213

"Payment device number" § 8-213

"Person" §§ 1-101, 8-213

8-216. PENALTY.

A PERSON WHO VIOLATES THIS PART IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section formerly was CL § 14-1404.

The reference to this "part" is substituted for the former erroneous reference to this "title" for accuracy.

The only other changes are in style.

Defined term: "Person" §§ 1-101, 8-213

8-217. CIVIL PENALTY; INJUNCTION.

(A) CIVIL PENALTY.

(1) THE ATTORNEY GENERAL MAY INSTITUTE A CIVIL ACTION AGAINST A PERSON WHO VIOLATES THIS PART TO RECOVER FOR THE STATE A CIVIL PENALTY NOT EXCEEDING $1,000 FOR EACH VIOLATION.

(2) FOR THE PURPOSES OF THIS SUBSECTION, EACH PROHIBITED DISCLOSURE OR USE OF A CREDIT CARD NUMBER, PAYMENT DEVICE NUMBER, OR HOLDER'S SIGNATURE IS AN INDEPENDENT VIOLATION.

(B) INJUNCTION.

THE ATTORNEY GENERAL MAY SEEK AN INJUNCTION IN A CIVIL ACTION TO PROHIBIT A PERSON WHO HAS ENGAGED OR IS ENGAGED IN A VIOLATION OF THIS PART FROM ENGAGING IN THE VIOLATION.

REVISOR'S NOTE: This section formerly was CL § 14-1405.

In subsection (a)(1) of this section, the reference to a "civil" penalty is added for clarity.

In subsection (a)(2) of this section, the former word "other" which modified "payment device number" is deleted as surplusage.

The only other changes are in style.

Defined terms: "Credit card" § 8-201

"Holder's signature" § 8-213

"Payment device number" § 8-213

"Person" §§ 1-101, 8-213

SUBTITLE 3. IDENTITY FRAUD.

8-301. IDENTITY FRAUD.

(A) "PERSONAL IDENTIFYING INFORMATION" DEFINED.

IN THIS SECTION, "PERSONAL IDENTIFYING INFORMATION" MEANS A NAME, ADDRESS, TELEPHONE NUMBER, DRIVER'S LICENSE NUMBER, SOCIAL SECURITY NUMBER, PLACE OF EMPLOYMENT, EMPLOYEE IDENTIFICATION NUMBER, MOTHER'S MAIDEN NAME, BANK OR OTHER FINANCIAL INSTITUTION ACCOUNT NUMBER, DATE OF BIRTH, PERSONAL IDENTIFICATION NUMBER, OR CREDIT CARD NUMBER.

(B) PROHIBITED -- OBTAINING PERSONAL IDENTIFYING INFORMATION WITHOUT CONSENT.

A PERSON MAY NOT KNOWINGLY, WILLFULLY, AND WITH FRAUDULENT INTENT OBTAIN OR HELP ANOTHER TO OBTAIN ANY PERSONAL IDENTIFYING INFORMATION OF AN INDIVIDUAL, WITHOUT THE CONSENT OF THE INDIVIDUAL, IN ORDER TO USE, SELL, OR TRANSFER THE INFORMATION TO GET A BENEFIT, CREDIT, GOOD, SERVICE, OR OTHER THING OF VALUE IN THE NAME OF THE INDIVIDUAL.

(C) SAME -- ASSUMING IDENTITY OF ANOTHER.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY ASSUME THE IDENTITY OF ANOTHER:

(1) TO AVOID PROSECUTION FOR A CRIME; OR

(2) WITH FRAUDULENT INTENT TO:

(I) GET A BENEFIT, CREDIT, GOOD, SERVICE, OR OTHER THING OF VALUE; OR

(II) AVOID THE PAYMENT OF DEBT OR OTHER LEGAL OBLIGATION.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(E) STATUTE OF LIMITATIONS AND IN BANC REVIEW.

A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.

(F) RESTITUTION AND COSTS.

IN ADDITION TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE, A COURT MAY ORDER A PERSON WHO PLEADS GUILTY OR NOLO CONTENDERE OR WHO IS FOUND GUILTY UNDER THIS SECTION TO MAKE RESTITUTION TO THE VICTIM FOR REASONABLE COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, INCURRED:

(1) FOR CLEARING THE VICTIM'S CREDIT HISTORY OR CREDIT RATING; AND

(2) IN CONNECTION WITH A CIVIL OR ADMINISTRATIVE PROCEEDING TO SATISFY A DEBT, LIEN, JUDGMENT, OR OTHER OBLIGATION OF THE VICTIM THAT AROSE BECAUSE OF THE VIOLATION.

(G) SEPARATE SENTENCE.

A SENTENCE UNDER THIS SECTION MAY BE IMPOSED SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT OR ACTS ESTABLISHING THE VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 231.

In subsection (a) of this section, the use of the word "means" in the definition of "personal identifying information" limits that information to the material listed. The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in order to address other forms of personal identifying information that may become common as technology changes, it may be advisable to change "means" to "includes", thus allowing other such information to be covered by this section without requiring further legislation.

In subsections (b) and (c)(2)(i) of this section, the references to a "thing" of value are substituted for the former references to an "item" of value for consistency within this article.

In subsection (e) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

8-302. BLANK OR INCORRECT IDENTIFICATION CARD.

(A) "OFFER FOR SALE" DEFINED.

IN THIS SECTION, "OFFER FOR SALE" INCLUDES TO INDUCE, SOLICIT, ATTEMPT, OR ADVERTISE IN A MANNER INTENDED TO ENCOURAGE A PERSON TO PURCHASE AN IDENTIFICATION CARD.

(B) PROHIBITED.

SUBJECT TO SUBSECTION (C) OF THIS SECTION, A PERSON MAY NOT SELL, ISSUE, OFFER FOR SALE, OR OFFER TO ISSUE AN IDENTIFICATION CARD OR DOCUMENT THAT CONTAINS:

(1) A BLANK SPACE FOR A PERSON'S AGE OR DATE OF BIRTH; OR

(2) A PERSON'S INCORRECT AGE OR DATE OF BIRTH.

(C) EXCEPTION.

THIS SECTION DOES NOT PROHIBIT A MANUFACTURER OF IDENTIFICATION CARDS OR DOCUMENTS FROM SELLING OR ISSUING IDENTIFICATION CARDS OR DOCUMENTS THAT CONTAIN A BLANK SPACE FOR A PERSON'S AGE OR DATE OF BIRTH TO:

(1) EMPLOYERS, FOR USE AS EMPLOYEE IDENTIFICATION CARDS OR DOCUMENTS;

(2) HOSPITALS, FOR USE AS PATIENT IDENTIFICATION CARDS; OR

(3) GOVERNMENTAL UNITS.

(D) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $2,000 OR BOTH.

(2) EACH IDENTIFICATION CARD OR DOCUMENT SOLD OR ISSUED AND EACH OFFER IN VIOLATION OF THIS SECTION IS A CRIME THAT MAY BE SEPARATELY PROSECUTED.

(E) INJUNCTIVE RELIEF.

THE ATTORNEY GENERAL, OR THE STATE'S ATTORNEY FOR A COUNTY WHERE A VIOLATION OF THIS SECTION OCCURS, MAY SEEK AN INJUNCTION TO STOP A SALE, ISSUE, OR OFFER THAT VIOLATES THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 233E.

In subsection (a) of this section, the reference to advertising "in a manner" intended to encourage purchasing is added for clarity in light of the restatement of the definition of "offer for sale" as a verb phrase.

Also in subsection (a) of this section, the former reference to "printed or media" advertising is deleted as surplusage.

Also in subsection (a) of this section, the Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that an "attempt" that is intended to encourage the purchase of a blank identification card appears to be redundant of "solicit[ing]" the same, and is in the nature of an attempt to attempt a sale.

In subsection (e) of this section, the former reference to seeking injunction "by application to a court of competent jurisdiction" is deleted as implicit.

Also in subsection (e) of this section, the reference to "an injunction to stop" is substituted for the former reference to "petition to enjoin" for consistency within this article.

Also in subsection (e) of this section, the former reference to the "City of Baltimore" is deleted as included in the defined term "county".

Defined terms: "County" § 1-101

"Person" § 1-101

SUBTITLE 4. OTHER COMMERCIAL FRAUD.

8-401. FRAUDULENT CONVERSION OF PARTNERSHIP ASSETS.

(A) PROHIBITED.

A PARTNER MAY NOT WITH FRAUDULENT INTENT:

(1) CONVERT OR APPROPRIATE TO THE PARTNER'S OWN USE PARTNERSHIP MONEY OR PROPERTY;

(2) MAKE, OR CAUSE TO BE MADE, A FALSE ENTRY IN PARTNERSHIP RECORDS OF A PARTNERSHIP TRANSACTION; OR

(3) FAIL TO MAKE OR CAUSE TO BE MADE AN ENTRY IN PARTNERSHIP RECORDS TO SHOW THE TRUE STATE OF A TRANSACTION:

(I) RELATING TO PARTNERSHIP BUSINESS; OR

(II) INVOLVING THE USE OF PARTNERSHIP MONEY OR PROPERTY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 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, § 173.

In subsection (a)(1) of this section, the former references to "securities" and "assets" are deleted as included in the comprehensive reference to "property".

In subsection (a)(2) and (3) of this section, the former references to "books" are deleted as redundant in light of the references to "records".

In subsection (a)(3)(ii) of this section, the former redundant reference to "disposition" is deleted as implicit in the reference to "use".

In subsection (b) of this section, the former reference to the "house of correction" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction, and then are placed into a particular facility. *See* CS § 9-103.

Also in subsection (b) of this section, the former reference to the court's "discretion" to determine the penalty is deleted as implicit in the establishment of maximum penalties.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

8-402. FRAUDULENT MISREPRESENTATION BY CORPORATE OFFICER OR AGENT.

(A) PROHIBITED.

WITH INTENT TO DEFRAUD, AN OFFICER OR AGENT OF A CORPORATION MAY NOT SIGN, OR IN ANY MANNER ASSENT TO, A STATEMENT TO OR A PUBLICATION FOR THE PUBLIC OR THE SHAREHOLDERS THAT CONTAINS FALSE REPRESENTATIONS OF THE CORPORATION'S ASSETS, LIABILITIES, OR AFFAIRS, TO:

(1) ENHANCE OR DEPRESS THE MARKET VALUE OF THE CORPORATION'S SHARES OR OBLIGATIONS; OR

(2) COMMIT FRAUD IN ANOTHER MANNER.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT LESS THAN 6 MONTHS AND NOT

EXCEEDING 3 YEARS OR A FINE NOT LESS THAN $1,000 AND NOT EXCEEDING $10,000 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, § 174.

In the introductory language of subsection (a) of this section, the former reference to acting "with a view ... to" specified ends is deleted for brevity.

In subsection (a)(2) of this section, the reference to "committing fraud in another manner" is substituted for the former reference to "in any other manner to accomplish any fraud thereby" for clarity.

In subsection (b) of this section, the former phrase "by indictment in any court of law" is deleted as surplusage.

Also in subsection (b) of this section, the former reference to imprisonment "in jail" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Also in subsection (b) of this section, the former reference to "the discretion of the court" to determine the penalty is deleted as implicit in the establishment of maximum penalties.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in ... [the] penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

8-403. REMOVAL OF PERSONAL PROPERTY.

(A) PROHIBITED.

A DEBTOR WHO POSSESSES PERSONAL PROPERTY THAT IS SUBJECT TO A SECURITY INTEREST MAY NOT SECRETE, HYPOTHECATE, DESTROY, OR SELL THE PROPERTY OR REMOVE THE PROPERTY FROM THE COUNTY WHERE IT WAS LOCATED WHEN THE SECURITY INTEREST ATTACHED:

(1) WITHOUT THE WRITTEN CONSENT OF THE SECURED PARTY OR THE SECURED PARTY'S ASSIGNEE; AND

(2) WITH THE INTENT TO DEFRAUD THE SECURED PARTY.

(B) SAME -- BY EXECUTION DEBTOR.

(1) A DEBTOR WHO POSSESSES PERSONAL PROPERTY THAT IS UNDER LEVY PURSUANT TO A WRIT OF EXECUTION MAY NOT REMOVE, SECRETE, HYPOTHECATE, DESTROY, OR SELL THE PROPERTY OR REMOVE THE PROPERTY FROM THE COUNTY WHERE IT WAS LOCATED WHEN THE LEVY WAS MADE:

(I) WITHOUT THE PRIOR WRITTEN CONSENT OF THE JUDGMENT CREDITOR, THE JUDGMENT CREDITOR'S LAWFULLY AUTHORIZED AGENT, OR THE JUDGMENT CREDITOR'S ASSIGNEE; AND

(II) WITH INTENT TO DEFRAUD THE JUDGMENT CREDITOR OR THE JUDGMENT CREDITOR'S ASSIGNEE, AND DEFEAT THE LIEN OF THE JUDGMENT CREDITOR OR THE JUDGMENT CREDITOR'S ASSIGNEE UNDER THE LEVY.

(2) THIS SUBSECTION DOES NOT RELIEVE THE SHERIFF OR OTHER OFFICER MAKING THE LEVY FROM RESPONSIBILITY TO THE JUDGMENT CREDITOR FOR SAFEKEEPING PERSONAL PROPERTY TAKEN INTO POSSESSION BY THE SHERIFF OR OTHER OFFICER MAKING THE LEVY.

(C) SAME -- BY SELLER.

A SELLER OF PERSONAL PROPERTY WHO POSSESSES THE PERSONAL PROPERTY UNDER A RECORDED BILL OF SALE MAY NOT REMOVE, SECRETE, HYPOTHECATE, DESTROY, OR SELL THE PROPERTY OR REMOVE THE PROPERTY FROM THE COUNTY WHERE IT WAS LOCATED WHEN SOLD:

(1) WITHOUT PRIOR WRITTEN CONSENT IN THE CONTRACT OF THE BUYER OR THE BUYER'S ASSIGNEE; AND

(2) WITH INTENT TO DEFRAUD THE BUYER.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 214.

Throughout this section, the references to the person "who possesses" property are substituted for the former archaic references to being "in possession of" the property for clarity.

Also throughout this section, the former references to "in the case of [personal property or the holder of personal property]" are deleted as surplusage.

Also throughout this section, the former references to the "city" where

secured property was located when sold are deleted as surplusage.

Also throughout this section, the references to "prior written" consent are substituted for the former archaic references to consent "first had and obtained in writing" for clarity and consistency.

In subsection (a) of this section, the reference to a "debtor who possesses personal property that is subject to a security interest" is substituted for the former references to a "mortgagor of personal property in possession of the same" and a "purchaser of personal property under a recorded conditional, written contract, in possession of said property" for clarity and for consistency with current terminology. Similarly, the reference to the property when "the security interest attached" is substituted for the former references to the property when "so mortgaged" and "purchased" for clarity and consistency. Similarly, the references to the "secured party" and the "secured party's assignee" are substituted for the former references to the "mortgagee", "his assigns", and "vendor" for clarity and consistency. No substantive change is intended.

Also in subsection (a) of this section, the reference to intent "to defraud the secured party" is substituted for the former archaic reference to acting "with intent as aforesaid" for clarity.

In subsection (b) of this section, the reference to a "debtor who possesses personal property that is under levy pursuant to a writ of execution" is substituted for the former reference to a "execution debtor in possession of personal property levied on and taken in execution" for clarity and for consistency with current terminology. Similarly, the reference to the property when "the levy was made" is substituted for the former references to the property when "levied on and taken in execution as aforesaid" for clarity and consistency. Similarly, the references to the "judgment creditor", the "judgment creditor's assignee", and the "judgment creditor's lawfully authorized agent" are substituted for the former references to the "execution creditor" and "his assigns or lawfully authorized agents" for clarity and consistency. No substantive change is intended.

Also in subsection (b) of this section, the reference to the intent "to defraud the judgment creditor or the judgment creditor's assignee" is substituted for the former archaic reference to acting "with intent as aforesaid" for clarity.

In subsection (c) of this section, the reference to the intent "to defraud the buyer" is substituted for the former archaic reference to acting "with intent as aforesaid" for clarity.

In subsection (d) of this section, the former reference to "indictment" is deleted as surplusage.

Also in subsection (d) of this section, the former reference to the "city or county jail" is deleted for consistency within this article. Currently,

inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Also in subsection (d) of this section, the former reference to "the discretion of the court to set a penalty" is deleted as implicit in the establishment of maximum penalties.

Defined terms: "County" § 1-101

"Person" § 1-101

8-404. PYRAMID PROMOTIONAL SCHEMES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMPENSATION" INCLUDES PAYMENT BASED ON A SALE OR DISTRIBUTION MADE TO A PERSON WHO:

(I) IS A PARTICIPANT IN A PLAN OR OPERATION; OR

(II) ON MAKING A PAYMENT, IS ENTITLED TO BECOME A PARTICIPANT.

(3) "CONSIDERATION" DOES NOT INCLUDE:

(I) PAYMENT FOR PURCHASE OF GOODS OR SERVICES FURNISHED AT COST FOR USE IN MAKING SALES TO PERSONS WHO ARE NOT PARTICIPANTS IN THE SCHEME AND WHO ARE NOT PURCHASING IN ORDER TO PARTICIPATE IN THE SCHEME;

(II) TIME OR EFFORT SPENT IN PURSUIT OF SALES OR RECRUITING ACTIVITIES; OR

(III) THE RIGHT TO RECEIVE A DISCOUNT OR REBATE BASED ON THE PURCHASE OR ACQUISITION OF GOODS OR SERVICES BY A BONA FIDE COOPERATIVE BUYING GROUP OR ASSOCIATION.

(4) "PROMOTE" MEANS TO INDUCE ONE OR MORE PERSONS TO BECOME A PARTICIPANT.

(5) "PYRAMID PROMOTIONAL SCHEME" MEANS A PLAN OR OPERATION BY WHICH A PARTICIPANT GIVES CONSIDERATION FOR THE OPPORTUNITY TO RECEIVE COMPENSATION TO BE DERIVED PRIMARILY FROM ANY PERSON'S INTRODUCTION OF OTHERS INTO PARTICIPATION IN THE PLAN OR OPERATION RATHER THAN FROM THE SALE OF GOODS, SERVICES, OR OTHER INTANGIBLE PROPERTY BY THE PARTICIPANT OR OTHERS INTRODUCED INTO THE PLAN OR OPERATION.

(B) PROHIBITED.

A PERSON MAY NOT ESTABLISH, OPERATE, ADVERTISE, OR PROMOTE A PYRAMID PROMOTIONAL SCHEME.

(C) PROHIBITED DEFENSES.

IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT:

(1) THE PLAN OR OPERATION LIMITS THE NUMBER OF PERSONS WHO MAY PARTICIPATE OR LIMITS THE ELIGIBILITY OF PARTICIPANTS; OR

(2) ON PAYMENT OF ANYTHING OF VALUE BY A PARTICIPANT, THE PARTICIPANT OBTAINS ANY OTHER PROPERTY IN ADDITION TO THE RIGHT TO RECEIVE COMPENSATION.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 233D.

Defined term: "Person" § 1-101

8-405. WRONGFUL DISPOSAL OF VESSEL CARGO.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES ONLY TO A PERSON EMPLOYED IN ANY CAPACITY IN THE MANAGEMENT OR NAVIGATION OF A VESSEL ON A RIVER, CANAL, BAY, OR OTHER WATERS EXCLUSIVELY WITHIN THE STATE WHETHER OR NOT THE PERSON IS A CO-OWNER OF OR HAS AN INTEREST IN ANY OF THE CARGO OF THE VESSEL.

(B) PROHIBITED -- DISPOSAL WITHOUT CONSENT OF OWNER.

A PERSON MAY NOT SELL, GIVE AWAY, PLEDGE, OR IN ANY MANNER DISPOSE OF THE CARGO OF A VESSEL OR AN ARTICLE OR COMMODITY ON THE VESSEL:

(1) WITHOUT THE CONSENT OF THE OWNER; AND

(2) WITH THE INTENT TO DEFRAUD THE OWNER.

(C) SAME -- DISPOSAL WITH CONSENT OF OWNER -- PROCEEDS.

A PERSON WHO SELLS THE CARGO OF A VESSEL OR AN ARTICLE OR COMMODITY ON THE VESSEL WITH THE CONSENT OF THE OWNER MAY NOT NEGLECT OR REFUSE TO PAY TO THE OWNER THE CONSIDERATION RECEIVED BY THE PERSON WITH THE INTENT TO DEFRAUD THE OWNER.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT LESS THAN 6 MONTHS AND NOT EXCEEDING 1 YEAR OR A FINE NOT LESS THAN $500 AND NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 135.

In subsection (b) of this section, the former reference to "vessels" is deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (d) of this section, the former reference to conviction "thereof in any court of this State having criminal jurisdiction" is deleted as surplusage.

Also in subsection (d) of this section, the former reference to imprisonment "in the jail of the county or city in which such conviction is had" is deleted for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS 9-103.

Also in subsection (d) of this section, the former reference to the court's "discretion" to determine the penalty is deleted as implicit in the establishment of maximum penalties.

Defined term: "Person" § 1-101

8-406. MISUSE OF DOCUMENTS OF TITLE.

(A) PROHIBITED.

A PERSON, ON THE PERSON'S OWN BEHALF OR ON BEHALF OF ANOTHER, WHO RECEIVES, ACCEPTS, OR TAKES IN TRUST FROM ANOTHER A WAREHOUSE OR ELEVATOR RECEIPT, BILL OF LADING, OR DOCUMENT GIVING, OR PURPORTING TO GIVE, TITLE TO, OR THE RIGHT TO POSSESSION OF, GOODS, WARES, MERCHANDISE, OR OTHER PERSONAL PROPERTY, SUBJECT TO A WRITTEN CONTRACT EXPRESSING THE TERMS AND CONDITIONS OF THE TRUST, MAY NOT FAIL TO FULFILL IN GOOD FAITH THE TERMS AND CONDITIONS OF THE TRUST.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT LESS THAN 1 YEAR AND NOT EXCEEDING 10 YEARS OR A FINE NOT LESS THAN $500 AND 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, § 163.

In subsection (a) of this section, the former references to a "firm, copartnership or corporation" are deleted as included in the defined term "person". *See* § 1-101 of this article.

Also in subsection (a) of this section, the former reference to acting "under ... contract" is deleted as implicit in the reference to acting "subject to a ... contract".

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

Also in subsection (a) of this section, the former reference to "neglect[ing] or refus[ing]" is deleted in light of the reference to "fail[ing]".

Also in subsection (a) of this section, the former reference to "perform[ing]" a contract is deleted as included in the reference to "fulfill[ing]" a contract.

In subsection (b) of this section, the phrase "guilty of a misdemeanor" is added to state expressly that which was only implied in the former law. The failure to comply with the terms of a trust is a statutory offense. Because neither the common law nor the statute establishes that the failure to comply with the terms of a trust is a felony, it is considered to be a misdemeanor. *See State v. Canova*, 278 Md. 483, 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 (1968).

Also in subsection (b) of this section, the former reference to "the discretion of the court" to set a penalty is deleted as implicit in the establishment of maximum penalties.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

8-407. FRAUDULENT CONVERSION OF LEASED OR RENTED GOOD.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A WRITTEN LEASE NOTWITHSTANDING THAT THE LEASE CONTAINS AN OPTION TO PURCHASE THE GOOD OR THING OF VALUE IF THE LEASE:

(1) DOES NOT EXCEED A PERIOD OF 6 MONTHS; AND

(2) IS NOT FOR NOMINAL CONSIDERATION.

(B) PROHIBITED.

A PERSON MAY NOT FRAUDULENTLY CONVERT TO THE PERSON'S OWN USE A GOOD OR THING OF VALUE RECEIVED UNDER A WRITTEN CONTRACT OR WRITTEN LEASE ENTERED INTO FOR THE PURPOSE OF RENTING OR LEASING THINGS FOR VALUABLE CONSIDERATION.

(C) PRIMA FACIE EVIDENCE.

THE FAILURE TO RETURN THE GOOD OR THING OF VALUE TO THE POSSESSION OF, OR ACCOUNT FOR THE GOOD OR THING OF VALUE WITH, THE PERSON WHO DELIVERED THE GOOD OR THING OF VALUE AT THE TIME OR IN THE MANNER DESCRIBED IN THE WRITTEN CONTRACT OR WRITTEN LEASE IS PRIMA FACIE EVIDENCE OF INTENT TO FRAUDULENTLY CONVERT THE GOOD OR THING OF VALUE.

(D) LIMITATION ON PROSECUTION.

(1) A PERSON MAY NOT BE PROSECUTED UNDER THIS SECTION IF THE PERSON:

(I) IS A BONA FIDE RESIDENT OF THE STATE; AND

(II) WITHIN 10 DAYS AFTER A WRITTEN DEMAND FOR THE RETURN OF THE GOOD OR THING OF VALUE IS MAILED BY CERTIFIED UNITED STATES MAIL, RETURN RECEIPT REQUESTED, TO THE PERSON WHO RECEIVED THE GOOD OR THING OF VALUE AT THE LAST ADDRESS KNOWN TO THE PERSON WHO DELIVERED THE GOOD OR THING OF VALUE, RETURNS THE GOOD OR THING OF VALUE TO THE POSSESSION OF, OR ACCOUNTS FOR THE GOOD OR THING OF VALUE WITH, THE PERSON WHO DELIVERED THE GOOD OR THING OF VALUE.

(2) A PROSECUTION OF A BONA FIDE RESIDENT OF THE STATE MAY NOT BE STARTED UNTIL 10 DAYS AFTER A WRITTEN DEMAND DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS MAILED.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 60 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(F) RESTITUTION.

A PERSON WHO VIOLATES THIS SECTION SHALL RESTORE THE GOOD OR THING OF VALUE CONVERTED TO THE PERSON'S OWN USE OR PAY THE FULL VALUE TO THE OWNER OR THE PERSON WHO DELIVERED THE GOOD OR THING OF VALUE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 207.

Throughout this section, the references to a "good" or a "thing" of value are substituted for the former references to "goods" or "things" of value in light of Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (c) of this section, the language "[s]ubject to subsection (d) of this section," is added to explicitly reference the defense to prosecution contained in subsection (d) of this section.

In subsection (d)(1) of this section, the reference to the person "who received the good or thing of value" is substituted for the former reference to the person "who was so entrusted" for consistency with subsection (a) of this section.

Also in subsection (d)(1) of this section, the former reference to "registered" mail is deleted as included in the reference to "certified" mail. *See* Art. 1, § 20.

In subsection (d)(2) of this section, the reference to "a bona fide resident of the State" is added for consistency with subsection (d)(1) of this section and to state explicitly that the prohibition against a prosecution not being started until 10 days after a written demand letter is mailed applies only to a prosecution of a resident of the State.

Also in subsection (d)(2) of this section, the former reference to prosecution "either by presentment, indictment, or otherwise" is deleted as surplusage.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the Attorney General has found the limitation on prosecution of a bona fide Maryland resident stated in subsection (d) of this section to be unconstitutional as violating both Equal Protection and the Commerce Clause of the U.S. Constitution. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 10-14 (October 17, 2000). It is possible to address these concerns by extending the waiting period for prosecution of a Maryland resident to all persons. It is also possible to remedy the constitutional defect by eliminating the waiting period entirely, relying instead on prosecutorial discretion in deciding whether to bring a particular case to court. Each of these options involves a substantive change. Accordingly, the General Assembly may wish to address these concerns in substantive legislation.

For failure to return a rental vehicle, *see* § 7-205 of this article.

Defined term: "Person" § 1-101

8-408. UNLAWFUL SUBLEASING OF MOTOR VEHICLES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DIRECT LOAN AGREEMENT" MEANS AN AGREEMENT BETWEEN A LENDER AND A BORROWER UNDER WHICH THE LENDER ADVANCES FUNDS UNDER A LOAN SECURED BY THE MOTOR VEHICLE PURCHASED BY THE BORROWER.

(3) (I) "INSTALLMENT SALE AGREEMENT" MEANS A CONTRACT FOR THE SALE OR LEASE OF A MOTOR VEHICLE, NEGOTIATED OR ENTERED INTO IN THE STATE, UNDER WHICH:

1. PART OR ALL OF THE PRICE IS PAYABLE IN ONE OR MORE PAYMENTS AFTER THE CONTRACT IS MADE; AND

2. THE SELLER TAKES COLLATERAL SECURITY OR KEEPS A SECURITY INTEREST IN THE MOTOR VEHICLE SOLD.

(II) "INSTALLMENT SALE AGREEMENT" INCLUDES:

1. A PROSPECTIVE INSTALLMENT SALE AGREEMENT;

2. A PURCHASE MONEY SECURITY AGREEMENT;

3. A CONTRACT FOR THE BAILMENT OR LEASING OF A MOTOR VEHICLE UNDER WHICH THE BAILEE OR LESSEE CONTRACTS TO PAY AS COMPENSATION A SUM THAT IS SUBSTANTIALLY EQUAL TO OR IS MORE THAN THE VALUE OF THE MOTOR VEHICLE; AND

4. A RENEWAL, EXTENSION, OR REFUND AGREEMENT.

(4) "LEASE CONTRACT" MEANS A CONTRACT FOR OR IN CONTEMPLATION OF A LEASE FOR THE USE OF A MOTOR VEHICLE, AND THE PURCHASE OF SERVICES INCIDENTAL TO THE LEASE, FOR A TERM OF MORE THAN 4 MONTHS.

(5) "LESSOR" MEANS A PERSON WHO LEASES A MOTOR VEHICLE TO ANOTHER UNDER A LEASE CONTRACT.

(6) "MOTOR VEHICLE" MEANS A VEHICLE FOR WHICH AN OWNER IS REQUIRED TO OBTAIN A CERTIFICATE OF TITLE UNDER TITLE 13 OF THE TRANSPORTATION ARTICLE.

(7) "MOTOR VEHICLE AGREEMENT" MEANS A LEASE CONTRACT, DIRECT LOAN AGREEMENT, INSTALLMENT SALE AGREEMENT, OR SECURITY AGREEMENT.

(8) "SECURED PARTY" MEANS A PERSON WHO HAS A SECURITY INTEREST IN A VEHICLE.

(9) "SECURITY AGREEMENT" MEANS A WRITTEN AGREEMENT THAT RESERVES OR CREATES A SECURITY INTEREST.

(10) (I) "SECURITY INTEREST" MEANS AN INTEREST IN A VEHICLE THAT IS RESERVED OR CREATED BY AGREEMENT AND THAT SECURES PAYMENT OR PERFORMANCE OF AN OBLIGATION.

(II) "SECURITY INTEREST" INCLUDES THE INTEREST OF A LESSOR UNDER A LEASE INTENDED AS SECURITY.

(11) (I) "SELLER" MEANS A PERSON WHO SELLS OR LEASES OR AGREES TO SELL OR LEASE A MOTOR VEHICLE UNDER AN INSTALLMENT SALE AGREEMENT.

(II) "SELLER" INCLUDES A PRESENT HOLDER OF AN INSTALLMENT SALE AGREEMENT.

(B) PROHIBITED.

A PERSON MAY NOT ENGAGE IN AN ACT OF UNLAWFUL SUBLEASING OF A MOTOR VEHICLE IN WHICH:

(1) THE MOTOR VEHICLE IS SUBJECT TO A MOTOR VEHICLE AGREEMENT THE TERMS OF WHICH PROHIBIT THE TRANSFER OR ASSIGNMENT OF A RIGHT OR INTEREST IN THE MOTOR VEHICLE OR UNDER THE MOTOR VEHICLE AGREEMENT WITHOUT CONSENT OF THE LESSOR OR SECURED PARTY;

(2) THE PERSON IS NOT A PARTY TO THE MOTOR VEHICLE AGREEMENT;

(3) THE PERSON:

(I) TRANSFERS OR ASSIGNS, OR PURPORTS TO TRANSFER OR ASSIGN, A RIGHT OR INTEREST IN THE MOTOR VEHICLE OR UNDER A MOTOR VEHICLE AGREEMENT TO A PERSON WHO IS NOT A PARTY TO THE MOTOR VEHICLE AGREEMENT; OR

(II) ASSISTS, CAUSES, NEGOTIATES, ATTEMPTS TO NEGOTIATE, OR ARRANGES AN ACTUAL OR PURPORTED TRANSFER OF A RIGHT OR INTEREST IN THE MOTOR VEHICLE OR UNDER A MOTOR VEHICLE AGREEMENT FROM A PERSON, OTHER THAN THE LESSOR OR SECURED PARTY, WHO IS A PARTY TO THE MOTOR VEHICLE AGREEMENT;

(4) NEITHER THE PERSON NOR THE PARTY TO THE MOTOR VEHICLE AGREEMENT OBTAINS WRITTEN CONSENT TO THE TRANSFER OR ASSIGNMENT FROM THE LESSOR OR SECURED PARTY BEFORE CONDUCTING THE ACTS DESCRIBED IN ITEM (3) OF THIS SUBSECTION; AND

(5) THE PERSON RECEIVES OR INTENDS TO RECEIVE A COMMISSION, COMPENSATION, OR OTHER CONSIDERATION FOR ENGAGING IN THE ACTS DESCRIBED IN ITEM (3) OF THIS SUBSECTION.

(C) DEFENSE.

(1) IT IS NOT AN ACT OF UNLAWFUL SUBLEASING OF A MOTOR VEHICLE UNDER THIS SECTION IF THE ACTS UNDER SUBSECTION (B)(3) OF THIS SECTION ARE ENGAGED IN BY A PERSON WHO IS:

(I) A PARTY TO THE MOTOR VEHICLE AGREEMENT; OR

(II) A DEALER OR VEHICLE SALESMAN LICENSED UNDER TITLE 15 OF THE TRANSPORTATION ARTICLE AND ENGAGED IN VEHICLE SALES WHO ASSISTS, CAUSES, OR ARRANGES A TRANSFER OR ASSIGNMENT UNDER THE TERMS OF AN AGREEMENT FOR THE PURCHASE OR LEASE OF ANOTHER MOTOR VEHICLE.

(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT AFFECT THE ENFORCEABILITY OF A PROVISION OF A MOTOR VEHICLE AGREEMENT BY A PARTY TO THE AGREEMENT.

(3) A PARTY TO A MOTOR VEHICLE AGREEMENT MAY NOT BE PROSECUTED UNDER THIS SECTION AS AN ACCESSORY TO THE ACT OF UNLAWFUL SUBLEASING OF THE MOTOR VEHICLE THAT IS SUBJECT TO THE MOTOR VEHICLE AGREEMENT.

(D) 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.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 208(b) through (e) and (a)(1) and (3) through (12).

In subsection (a)(8) of this section, the former reference to a security interest "in the person's favor" is deleted as surplusage.

In subsection (c)(1) of this section, the defined term "person" is substituted for the former words "an individual" for consistency with subsection (b) of this section.

In subsection (c)(1)(ii) of this section, the former reference to a "bona fide" agreement is deleted as surplusage.

Former Art. 27, § 208(a)(2), which defined "buyer", is deleted because the term is not used in this section.

Defined term: "Person" § 1-101

SUBTITLE 5. PUBLIC FRAUD.

PART I. PUBLIC ASSISTANCE FRAUD.

8-501. "FRAUD" DEFINED.

IN THIS PART, "FRAUD" INCLUDES:

(1) THE WILLFUL MAKING OF A FALSE STATEMENT OR A FALSE REPRESENTATION;

(2) THE WILLFUL FAILURE TO DISCLOSE A MATERIAL CHANGE IN HOUSEHOLD OR FINANCIAL CONDITION; OR

(3) THE IMPERSONATION OF ANOTHER.

REVISOR'S NOTE: This section is new language derived without substantive change from the second sentence of former Art. 27, § 230A(b)(1).

The reference to this "part" is substituted for the former reference to this "section", although this part is derived, in part, from material outside former Art. 27, § 230A. Because the term "fraud" defined here is used only in material derived from former Art. 27, § 230A, the substitution results in no substantive change.

Defined term: "Person" § 1-101

8-502. SCOPE OF PART.

THIS PART DOES NOT APPLY TO A VIOLATION OF PART II OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230A(a).

The reference to this "part" is substituted for the former reference to this "section" to reflect the reorganization of material derived from former Art. 27, § 230A, although this part is derived, in part, from material outside former Art. 27, § 230A. Because violations of Part II of this subtitle, which covers Medicaid fraud, are not violations of § 8-505 of this part, which deals with food programs and is the only provision derived from outside former Art. 27, § 230A, no substantive change is intended.

8-503. PUBLIC ASSISTANCE FRAUD.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO MONEY, PROPERTY, FOOD STAMPS, OR OTHER ASSISTANCE THAT IS PROVIDED UNDER A SOCIAL OR NUTRITIONAL PROGRAM BASED ON NEED THAT IS:

(1) FINANCED WHOLLY OR PARTLY BY THE STATE; AND

(2) ADMINISTERED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.

(B) PROHIBITED.

BY FRAUD, A PERSON MAY NOT OBTAIN, ATTEMPT TO OBTAIN, OR HELP ANOTHER PERSON TO OBTAIN OR ATTEMPT TO OBTAIN, MONEY, PROPERTY, FOOD STAMPS, OR OTHER ASSISTANCE TO WHICH THE PERSON IS NOT ENTITLED.

(C) 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 $1,000 OR BOTH.

(D) RESTITUTION.

(1) A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION SHALL MAKE FULL RESTITUTION OF THE MONEY OR THE VALUE OF THE PROPERTY, FOOD STAMPS, OR OTHER ASSISTANCE OBTAINED BY THE PERSON IN VIOLATION OF THIS SECTION.

(2) FULL RESTITUTION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MADE AFTER THE PERSON HAS RECEIVED NOTICE AND HAS BEEN GIVEN THE OPPORTUNITY TO BE HEARD AS TO THE AMOUNT OF PAYMENT AND HOW IT IS TO BE MADE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230A(b)(2) and the first sentence of (1).

In subsection (a) of this section, the former reference to money or assistance "other than Medicaid" is deleted as redundant of the exclusion of Medical Assistance Program matters under § 8-502 of this part.

In subsection (d)(1) of this section, the reference to restitution for the value of the assistance "obtained by the person in violation of this section" is substituted for the former reference to the value of the assistance "unlawfully received" for clarity.

For general provisions governing the imposition and administration of restitution, *see* CP Title 11, Subtitle 6.

Defined terms: "Fraud" § 8-501

"Person" § 1-101

8-504. FRAUDULENT STATEMENT IN APPLICATION.

(A) SIGNATURE REQUIRED ON APPLICATION.

AN APPLICATION FOR MONEY, PROPERTY, FOOD STAMPS, OR OTHER ASSISTANCE, UNDER A NUTRITIONAL PROGRAM BASED ON NEED OR A SOCIAL

PROGRAM FINANCED IN WHOLE OR IN PART BY THE STATE, AND ADMINISTERED BY THE DEPARTMENT OF HUMAN RESOURCES, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OR A LOCAL DEPARTMENT OF SOCIAL SERVICES, WHETHER UNDER THIS OR ANY OTHER ARTICLE OF THE CODE, SHALL BE IN WRITING AND SIGNED BY THE APPLICANT.

(B) PROHIBITED.

A PERSON MAY NOT MAKE A FALSE OR FRAUDULENT STATEMENT WITH THE INTENT TO OBTAIN MONEY, PROPERTY, FOOD STAMPS, OR OTHER ASSISTANCE IN MAKING AND SIGNING THE APPLICATION REQUIRED IN SUBSECTION (A) OF THIS SECTION.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF PERJURY AND ON CONVICTION IS SUBJECT TO THE PENALTIES PROVIDED FOR PERJURY IN § 9-101 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230A(c).

In subsection (c) of this section, the reference to the "misdemeanor" of perjury is added for clarity, and to conform to the usage in Title 9 of this article.

Also in subsection (c) of this section, the reference to the penalties "provided for perjury in § 9-101 of this article" is substituted for the former reference to the penalties "provided by law" for clarity, since perjury is now codified in § 9-101 of this article.

Defined terms: "Fraud" § 8-501

"Person" § 1-101

8-505. PUBLIC ASSISTANCE -- CONVERSION OF DONATED FOOD.

(A) PROHIBITED -- UNAUTHORIZED DISPOSITION.

A PERSON WITH INTENT TO DEFRAUD MAY NOT MAKE AN UNAUTHORIZED DISPOSITION OF FOOD DONATED UNDER A PROGRAM OF THE FEDERAL GOVERNMENT.

(B) SAME -- UNAUTHORIZED CONVERSION.

A PERSON WHO IS NOT AUTHORIZED TO RECEIVE FOOD DONATED UNDER ANY PROGRAM OF THE FEDERAL GOVERNMENT MAY NOT CONVERT THE FOOD TO THE PERSON'S OWN USE OR BENEFIT.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 191A.

In subsections (a) and (b) of this section, the former references to a food "commodity" are deleted as surplusage.

In subsection (c) of this section, the former reference to "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined term: "Person" § 1-101

8-506. RESERVED.

8-507. RESERVED.

PART II. MEDICAID FRAUD.

8-508. DEFINITIONS.

(A) IN GENERAL.

IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 230B(a).

The reference to this "part" is substituted for the former reference to this "subheading" to reflect the reorganization of material derived from former Art. 27, §§ 230B through 230H.

No other changes are made.

(B) FALSE REPRESENTATION.

"FALSE REPRESENTATION" MEANS THE KNOWING AND WILLFUL:

(1) CONCEALING, FALSIFYING, OR OMITTING OF A MATERIAL FACT;

(2) MAKING OF A MATERIALLY FALSE OR FRAUDULENT STATEMENT; OR

(3) USE OF A DOCUMENT THAT CONTAINS A STATEMENT OF MATERIAL FACT THAT THE USER KNOWS TO BE FALSE OR FRAUDULENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 230B(b).

(C) HEALTH CARE SERVICE.

(1) "HEALTH CARE SERVICE" MEANS HEALTH OR MEDICAL CARE PROCEDURES, GOODS, OR SERVICES THAT:

(I) PROVIDE TESTING, DIAGNOSIS, OR TREATMENT OF HUMAN DISEASE OR DYSFUNCTION; OR

(II) DISPENSE DRUGS, MEDICAL DEVICES, MEDICAL APPLIANCES, OR MEDICAL GOODS FOR THE TREATMENT OF HUMAN DISEASE OR DYSFUNCTION.

(2) "HEALTH CARE SERVICE" INCLUDES ANY PROCEDURE, GOODS, OR SERVICE THAT IS A REQUIRED BENEFIT OF A STATE HEALTH PLAN.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 230B(c).

No changes are made.

(D) REPRESENTATION.

"REPRESENTATION" INCLUDES AN ACKNOWLEDGMENT, CERTIFICATION, CLAIM, RATIFICATION, REPORT OF DEMOGRAPHIC STATISTICS, ENCOUNTER DATA, ENROLLMENT CLAIMS, FINANCIAL INFORMATION, HEALTH CARE SERVICES AVAILABLE OR RENDERED, AND QUALIFICATIONS OF A PERSON RENDERING HEALTH CARE OR ANCILLARY SERVICES.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 230B(d).

No changes are made.

Defined term: "Person" § 1-101

(E) SERIOUS INJURY.

"SERIOUS INJURY" MEANS AN INJURY THAT:

(1) CREATES A SUBSTANTIAL RISK OF DEATH;

(2) CAUSES SERIOUS PERMANENT OR SERIOUS PROTRACTED DISFIGUREMENT;

(3) CAUSES SERIOUS PERMANENT OR SERIOUS PROTRACTED LOSS OF THE FUNCTION OF ANY BODY PART, ORGAN, OR MENTAL FACULTY;

(4) CAUSES SERIOUS PERMANENT OR SERIOUS PROTRACTED IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER OR ORGAN; OR

(5) INVOLVES EXTREME PHYSICAL PAIN.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 230B(e).

No changes are made.

(F) STATE HEALTH PLAN.

(1) "STATE HEALTH PLAN" INCLUDES:

(I) THE STATE MEDICAL ASSISTANCE PLAN ESTABLISHED IN ACCORDANCE WITH TITLE XIX OF THE FEDERAL SOCIAL SECURITY ACT OF 1939;

(II) A MEDICAL ASSISTANCE PLAN ESTABLISHED BY THE STATE; OR

(III) A PRIVATE HEALTH INSURANCE CARRIER, HEALTH MAINTENANCE ORGANIZATION, MANAGED CARE ORGANIZATION AS DEFINED IN § 15-101 OF THE HEALTH - GENERAL ARTICLE, HEALTH CARE COOPERATIVE OR ALLIANCE, OR OTHER PERSON THAT PROVIDES OR CONTRACTS TO PROVIDE HEALTH CARE SERVICES THAT ARE WHOLLY OR PARTLY REIMBURSED BY OR ARE A REQUIRED BENEFIT OF A HEALTH PLAN ESTABLISHED IN ACCORDANCE WITH TITLE XIX OF THE FEDERAL SOCIAL SECURITY ACT OF 1939 OR BY THE STATE.

(2) "STATE HEALTH PLAN" INCLUDES A PERSON THAT PROVIDES OR CONTRACTS OR SUBCONTRACTS TO PROVIDE HEALTH CARE SERVICES FOR AN ENTITY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 230B(f).

No changes are made.

Defined term: "Person" § 1-101

8-509. PROHIBITED -- DEFRAUDING STATE HEALTH PLAN.

A PERSON MAY NOT:

(1) KNOWINGLY AND WILLFULLY DEFRAUD OR ATTEMPT TO DEFRAUD A STATE HEALTH PLAN IN CONNECTION WITH THE DELIVERY OF OR PAYMENT FOR A HEALTH CARE SERVICE;

(2) KNOWINGLY AND WILLFULLY OBTAIN OR ATTEMPT TO OBTAIN BY MEANS OF A FALSE REPRESENTATION MONEY, PROPERTY, OR ANY THING OF VALUE IN CONNECTION WITH THE DELIVERY OF OR PAYMENT FOR A HEALTH CARE SERVICE THAT WHOLLY OR PARTLY IS REIMBURSED BY OR IS A REQUIRED BENEFIT OF A STATE HEALTH PLAN;

(3) KNOWINGLY AND WILLFULLY DEFRAUD OR ATTEMPT TO DEFRAUD A STATE HEALTH PLAN OF THE RIGHT TO HONEST SERVICES; OR

(4) WITH THE INTENT TO DEFRAUD MAKE A FALSE REPRESENTATION RELATING TO A HEALTH CARE SERVICE OR A STATE HEALTH PLAN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230C.

Defined terms: "False representation" § 8-508

"Health care service" § 8-508

"Person" § 1-101

"State health plan" § 8-508

8-510. SAME -- CONVERSION.

A PERSON WHO HAS APPLIED FOR OR RECEIVED A BENEFIT OR PAYMENT UNDER A STATE HEALTH PLAN FOR THE USE OF ANOTHER INDIVIDUAL MAY NOT KNOWINGLY AND WILLFULLY CONVERT ALL OR ANY PART OF A STATE HEALTH PLAN BENEFIT OR PAYMENT TO A USE THAT IS NOT FOR THE AUTHORIZED BENEFICIARY.

REVISOR'S NOTE: This section formerly was Art. 27, § 230D(a).

No changes are made.

Defined terms: "Person" § 1-101

"State health plan" § 8-508

8-511. SAME -- BRIBE OR KICKBACK.

A PERSON MAY NOT:

(1) PROVIDE TO ANOTHER INDIVIDUAL ITEMS OR SERVICES FOR WHICH PAYMENT WHOLLY OR PARTLY IS OR MAY BE MADE FROM FEDERAL OR STATE FUNDS UNDER A STATE HEALTH PLAN; AND

(2) SOLICIT, OFFER, MAKE, OR RECEIVE A KICKBACK OR BRIBE IN CONNECTION WITH PROVIDING THOSE ITEMS OR SERVICES OR MAKING OR RECEIVING A BENEFIT OR PAYMENT UNDER A STATE HEALTH PLAN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230D(b).

Defined terms: "Person" § 1-101

"State health plan" § 8-508

8-512. SAME -- REFERRAL REBATE.

A PERSON MAY NOT SOLICIT, OFFER, MAKE, OR RECEIVE A REBATE OF A FEE OR CHARGE FOR REFERRING ANOTHER INDIVIDUAL TO A THIRD PERSON TO PROVIDE ITEMS OR SERVICES FOR WHICH PAYMENT WHOLLY OR PARTLY IS OR MAY BE MADE FROM FEDERAL OR STATE FUNDS UNDER A STATE HEALTH PLAN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230D(c).

Defined terms: "Person" § 1-101
"State health plan" § 8-508

8-513. SAME -- FALSE REPRESENTATION FOR QUALIFICATION.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY MAKE, CAUSE TO BE MADE, INDUCE, OR ATTEMPT TO INDUCE THE MAKING OF A FALSE REPRESENTATION WITH RESPECT TO THE CONDITIONS OR OPERATION OF A FACILITY, INSTITUTION, OR STATE HEALTH PLAN IN ORDER TO HELP THE FACILITY, INSTITUTION, OR STATE HEALTH PLAN QUALIFY TO RECEIVE REIMBURSEMENT UNDER A STATE HEALTH PLAN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230E.

Defined terms: "False representation" § 8-508

"Person" § 1-101

"State health plan" § 8-508

8-514. SAME -- OBTAINING BENEFIT BY FRAUD.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER INDIVIDUAL IN OBTAINING OR ATTEMPTING TO OBTAIN A DRUG PRODUCT OR MEDICAL CARE, THE PAYMENT OF ALL OR A PART OF WHICH IS OR MAY BE MADE FROM FEDERAL OR STATE FUNDS UNDER A STATE HEALTH PLAN, BY:

(1) FRAUD, DECEIT, MISREPRESENTATION, OR CONCEALMENT;

(2) COUNTERFEITING OR ALTERATION OF A MEDICAL ASSISTANCE PRESCRIPTION OR A PHARMACY ASSISTANCE PRESCRIPTION DISTRIBUTED UNDER A STATE HEALTH PLAN;

(3) CONCEALMENT OF A MATERIAL FACT; OR

(4) USING A FALSE NAME OR A FALSE ADDRESS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230F(a).

In item (2) of this section, the defined term "counterfeit[ing]" is substituted for the former reference to "[f]orgery" for consistency within this article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in item (1) of this section, it is unclear whether the word "misrepresentation" differs from the term "false representation" defined in § 8-508 of this subtitle.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

"State health plan" § 8-508

8-515. SAME -- UNAUTHORIZED POSSESSION OF BENEFIT CARD.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY POSSESS A MEDICAL ASSISTANCE CARD OR A PHARMACY ASSISTANCE CARD DISTRIBUTED UNDER A STATE HEALTH PLAN OR THE MEDICAL ASSISTANCE OR PHARMACY ASSISTANCE PROGRAM ESTABLISHED BY TITLE 15 OF THE HEALTH - GENERAL ARTICLE WITHOUT THE AUTHORIZATION OF THE PERSON TO WHOM THE CARD IS ISSUED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230F(b).

Defined terms: "Person" § 1-101

"State health plan" § 8-508

8-516. CRIMINAL PENALTIES.

(A) VIOLATION RESULTING IN DEATH.

IF A VIOLATION OF THIS PART RESULTS IN THE DEATH OF AN INDIVIDUAL, A PERSON WHO VIOLATES A PROVISION OF THIS PART IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING LIFE OR A FINE NOT EXCEEDING $200,000 OR BOTH.

(B) VIOLATION RESULTING IN SERIOUS INJURY.

IF A VIOLATION OF THIS PART RESULTS IN SERIOUS INJURY TO AN INDIVIDUAL, A PERSON WHO VIOLATES A PROVISION OF THIS PART IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $100,000 OR BOTH.

(C) VIOLATION INVOLVING AT LEAST $500.

IF THE VALUE OF THE MONEY, HEALTH CARE SERVICES, OR OTHER GOODS OR SERVICES INVOLVED IS $500 OR MORE IN THE AGGREGATE, A PERSON WHO VIOLATES A PROVISION OF THIS PART IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $100,000 OR BOTH.

(D) OTHER VIOLATIONS.

A PERSON WHO VIOLATES ANY OTHER PROVISION OF THIS PART IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $50,000 OR BOTH.

(E) BUSINESS ENTITY VIOLATION.

(1) IN THIS SUBSECTION, "BUSINESS ENTITY" INCLUDES AN ASSOCIATION, FIRM, INSTITUTION, PARTNERSHIP, AND CORPORATION.

(2) A BUSINESS ENTITY THAT VIOLATES A PROVISION OF THIS PART IS SUBJECT TO A FINE NOT EXCEEDING:

(I) $250,000 FOR EACH FELONY; AND

(II) $100,000 FOR EACH MISDEMEANOR.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230H.

In paragraph (1) of this subsection, the former reference to a "copartnership" is deleted as included in the comprehensive reference to a "partnership".

Defined terms: "Person" § 1-101

"Serious injury" § 8-508

"State health plan" § 8-508

8-517. CIVIL PENALTY.

(A) IN GENERAL.

A HEALTH CARE PROVIDER WHO VIOLATES A PROVISION OF THIS PART IS LIABLE TO THE STATE FOR A CIVIL PENALTY NOT MORE THAN THREE TIMES THE AMOUNT OF THE OVERPAYMENT.

(B) ADDITIONAL TO OTHER PENALTIES.

THE CIVIL PENALTY PROVIDED IN THIS SECTION IS IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW.

(C) RESTITUTION NOT LIMITED.

THIS SECTION MAY NOT BE CONSTRUED TO LIMIT A VICTIM'S RIGHT TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 230G.

In subsection (c) of this section, the reference to "Title 11, Subtitle 6 of the Criminal Procedure Article" is substituted for the former obsolete reference to "§ 807 of this article" for accuracy.

8-518. RESERVED.

8-519. RESERVED.

PART III. OTHER PUBLIC FRAUD.

8-520. FUNDRAISING.

(A) "PUBLIC SAFETY OFFICER" DEFINED.

IN THIS SECTION, "PUBLIC SAFETY OFFICER" MEANS:

(1) A POLICE OFFICER;

(2) A PAID OR VOLUNTEER FIRE FIGHTER;

(3) AN EMERGENCY MEDICAL TECHNICIAN;

(4) A RESCUE SQUAD MEMBER;

(5) THE STATE FIRE MARSHAL; OR

(6) A SWORN OFFICER OF THE STATE FIRE MARSHAL.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT PROHIBIT, LIMIT, OR INTERFERE WITH THE RIGHT OF AN OFF-DUTY PUBLIC SAFETY OFFICER WHO IS NOT IN UNIFORM FROM PARTICIPATING IN A CHARITABLE OR OTHER FUNDRAISING CAMPAIGN.

(C) PROHIBITED.

A PERSON MAY NOT ENCOURAGE, SOLICIT, OR RECEIVE CONTRIBUTIONS OF MONEY OR ANY THING OF VALUE FOR, OR OFFER ANY THING FOR SALE IN, A CHARITABLE OR OTHER FUNDRAISING CAMPAIGN BY REPRESENTING TO THE PUBLIC THAT THE CHARITABLE OR OTHER FUNDRAISING CAMPAIGN IS APPROVED BY:

(1) A POLICE OR FIRE DEPARTMENT IN THE STATE WITHOUT THE PRIOR WRITTEN CONSENT OF THE CHIEF ADMINISTRATIVE OFFICER OF THE POLICE OR FIRE DEPARTMENT OR FROM THE CHIEF ADMINISTRATIVE OFFICER'S DESIGNEE; OR

(2) A PUBLIC SAFETY OFFICER OR MEMBER OF THE FAMILY OF A PUBLIC SAFETY OFFICER WITHOUT THE PRIOR WRITTEN CONSENT OF THE PUBLIC SAFETY OFFICER OR A FAMILY MEMBER OF THE PUBLIC SAFETY OFFICER.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 60 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 233A.

In subsection (c) of this section, the references to a "thing" of value are substituted for the former references to "items" of value, for clarity and consistency within this article.

Also in subsection (c) of this section, the former phrase "or to prospective donors" is deleted as included in the comprehensive reference to the "public".

Also in subsection (c) of this section, the former reference to any police or fire department "of any jurisdiction within this State" is deleted as redundant.

Also in subsection (c) of this section, the former word "donations" is deleted as included in the word "contributions".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a) of this section, the defined term "public safety officer" does not include a sheriff.

Defined term: "Person" § 1-101

8-521. FRAUDULENTLY OBTAINING LEGAL REPRESENTATION FROM PUBLIC DEFENDER'S OFFICE.

(A) PROHIBITED.

A PERSON MAY NOT OBTAIN OR ATTEMPT TO OBTAIN LEGAL REPRESENTATION FROM THE OFFICE OF THE PUBLIC DEFENDER BY WILLFULLY AND KNOWINGLY:

(1) MAKING A FALSE REPRESENTATION OR FALSE STATEMENT;

(2) FAILING TO DISCLOSE THE PERSON'S TRUE FINANCIAL CONDITION; OR

(3) USING ANY OTHER FRAUDULENT MEANS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 214B.

In the introductory language of subsection (a) of this section, the former reference to "falsely" is deleted as implicit in the references to "making a false representation or false statement" and "using any other fraudulent means".

In subsection (a)(3) of this section, the phrase "using any other fraudulent means" is substituted for the former phrase "in any other fraudulent manner" for clarity.

In subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined term: "Person" § 1-101

8-522. USE OF SIMULATED DOCUMENTS TO INDUCE PAYMENT.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A SIMULATED DOCUMENT EVEN IF THE DOCUMENT CONTAINS A STATEMENT THAT IT IS NOT LEGAL PROCESS OR A GOVERNMENT DOCUMENT.

(B) PROHIBITED.

(1) A PERSON MAY NOT USE, SELL, OR SEND OR DELIVER TO ANOTHER, WITH THE INTENT TO INDUCE THE PAYMENT OF A CLAIM, A DOCUMENT THAT:

(I) SIMULATES A SUMMONS, COMPLAINT, OR OTHER COURT PROCESS OF ANY KIND; OR

(II) IMPLIES THAT THE PERSON IS A PART OF OR ASSOCIATED WITH A UNIT OF THE FEDERAL GOVERNMENT OR A UNIT OF A STATE OR MUNICIPAL GOVERNMENT.

(2) WITH INTENT TO INDUCE THE PAYMENT OF A CLAIM, A PERSON MAY NOT USE A SEAL, INSIGNIA, ENVELOPE, OR ANY OTHER FORM THAT SIMULATES THE SEAL, INSIGNIA, ENVELOPE, OR FORM OF ANY GOVERNMENTAL UNIT.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:

(1) $100 FOR THE FIRST VIOLATION; AND

(2) $500 FOR EACH SUBSEQUENT VIOLATION.

(D) EXCEPTION.

THIS SECTION DOES NOT PROHIBIT THE PRINTING, PUBLICATION, OR DISTRIBUTION OF GENUINE COURT OR LEGAL PROCESS FORMS IN BLANK.

(E) PROOF OF SENDING.

PROOF THAT THE DOCUMENT WAS MAILED OR DELIVERED TO ANY PERSON WITH THE INTENT THAT IT BE FORWARDED TO THE INTENDED RECIPIENT IS SUFFICIENT PROOF OF SENDING.

(F) VENUE.

A PERSON WHO HAS BEEN CHARGED WITH A VIOLATION OF THIS SECTION MAY BE PROSECUTED IN THE COUNTY IN WHICH THE SIMULATED DOCUMENT WAS USED, SOLD, SENT, OR DELIVERED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 199.

In subsection (b)(2) of this section, the reference to a "form" is substituted for the former reference to a "format" for accuracy.

In subsection (c) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (c) of this section, the references to a "violation" are substituted for the former references to an "offense" for consistency within this article. *See* General Revisor's Note to article.

In subsection (d) of this section, the reference to forms "in blank" is substituted for the former reference to "blank" forms for clarity.

In subsection (f) of this section, the former reference to "Baltimore City" is deleted as included in the defined term "county". *See* § 1-101 of this article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b)(1)(i) of this section, a person is prohibited from using a document that implies the person is a part of "State" or "municipal" government but not "county" government. The General Assembly may wish to add a reference to "county" government.

Defined terms: "County" § 1-101

"Person" § 1-101

SUBTITLE 6. COUNTERFEITING AND RELATED CRIMES.

8-601. COUNTERFEITING OF PRIVATE INSTRUMENTS AND DOCUMENTS.

(A) PROHIBITED.

A PERSON, WITH INTENT TO DEFRAUD ANOTHER, MAY NOT COUNTERFEIT, CAUSE TO BE COUNTERFEITED, OR WILLINGLY AID OR ASSIST IN COUNTERFEITING ANY:

(1) BOND;

(2) DEED;

(3) DRAFT;

(4) ENDORSEMENT OR ASSIGNMENT OF A BOND, DRAFT, OR PROMISSORY NOTE;

(5) ENTRY IN AN ACCOUNT BOOK OR LEDGER;

(6) POWER OF ATTORNEY;

(7) PROMISSORY NOTE;

(8) RELEASE OR DISCHARGE FOR MONEY OR PROPERTY;

(9) TITLE TO A MOTOR VEHICLE;

(10) WAIVER OR RELEASE OF MECHANICS' LIEN; OR

(11) WILL OR CODICIL.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 44(a).

In subsection (a) of this section, the defined term "counterfeit" is substituted for the former reference to "falsely mak[ing], forg[ing] or counterfeit[ing]" an instrument or document, although the defined term also includes "materially alter[ing]" such a document. Any such "materially altered" instrument or document would constitute a "counterfeit" instrument or document under current law. No substantive change is intended.

Also in subsection (a) of this section, the reference to the intent of a person to defraud "another" is substituted for the former reference to the intent of a person to defraud "any person whomsoever" for consistency within this subtitle.

Also in subsection (a) of this section, the former reference to "procur[ing]" another to commit forgery is deleted as included in the reference to "caus[ing]" another to commit forgery.

In subsection (a)(1) and (4) of this section, the former references to a "writing obligatory" are deleted as included in the references to a "bond".

In subsection (a)(3) and (4) of this section, the references to a "draft" are substituted for the former references to a "bill of exchange", for consistency with usage in the Commercial Law Article. *See* CL § 3-104 and Official Comment to that section.

In subsection (a)(4) and (7) of this section, the former references to a promissory note "for the payment of money or property" are deleted as surplusage.

In subsection (a)(8) of this section, the reference to a "release or discharge" is substituted for the former references to any "acquisition or receipt" for clarity.

In subsection (a)(10) of this section, the former reference to a "document or affidavit" of waiver or release is deleted as surplusage.

In subsection (a)(11) of this section, the former reference to a "testament" is deleted as included in the reference to a "will".

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-602. ISSUING COUNTERFEIT PRIVATE INSTRUMENTS AND DOCUMENTS.

(A) PROHIBITED.

A PERSON, WITH INTENT TO DEFRAUD ANOTHER, MAY NOT ISSUE OR PUBLISH AS TRUE A COUNTERFEIT INSTRUMENT OR DOCUMENT LISTED IN § 8-601 OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 44(b).

In subsection (a) of this section, the defined term "counterfeit" is substituted for the former reference to possessing a "forged, altered, or counterfeited," instrument or document, although the defined term only includes "materially" altered instrument or document. In order to prove fraud under current law, any such alteration must be material. No substantive change is intended.

Also in subsection (a) of this section, the reference to the intent of a person to defraud "another" is substituted for the former reference to the intent of a person to defraud "any person whomsoever" for consistency within this subtitle.

Also in subsection (a) of this section and throughout this subtitle, the reference to "issu[ing]" an instrument or document is substituted for the former reference to "utter[ing]" an instrument or document, for consistency within this article.

Also in subsection (a) of this section and throughout this subtitle, the references to a "counterfeit" item have been substituted for the former references to a "counterfeited" item for consistency within this subtitle.

Also in subsection (a) of this section, the reference to an "instrument or document listed in § 8-601 of this subtitle" is substituted for the former reference to a "deed, title to motor vehicle, will, testament or codicil, power of attorney, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, or endorsement, or assignment of any bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, acquittance or receipt for money or property, or ... any false document of waiver or release of mechanics' lien, or any entries in a book of account or ledger" for brevity and clarity.

In subsection (b) of this section, the reference to a person being "subject to imprisonment" is substituted for the former reference to a person being "sentenced to the penitentiary" for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-603. POSSESSING COUNTERFEIT TITLE TO MOTOR VEHICLE.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY POSSESS, WITH UNLAWFUL INTENT, A COUNTERFEIT TITLE TO A MOTOR VEHICLE.

(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 $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 44(c).

In subsection (a) of this section, the defined term "counterfeit" is substituted for the former reference to possessing a "forged, counterfeited, or altered" title, although use of the defined term also includes a "falsely made" title. Any such "materially altered" title would constitute a "counterfeit" title under current law. In addition, the use of the defined term "counterfeit" only includes a "materially" altered title rather than any altered title. In order to prove fraud under current law, any such alteration to a title must be material. No substantive change is intended.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-604. POSSESSING OR ISSUING COUNTERFEIT UNITED STATES CURRENCY.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY POSSESS, WITH UNLAWFUL INTENT, OR ISSUE COUNTERFEIT UNITED STATES CURRENCY.

(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 $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 44(d).

In subsection (a) of this section, the defined term "counterfeit" is substituted for the former reference to possessing "forged, counterfeit, or altered" currency, although use of the defined term also includes "falsely made" currency. Any such "materially altered" currency would constitute "counterfeit" currency under current law. In addition, the use of the defined term "counterfeit" only includes "materially" altered currency rather than any altered currency. In order to prove fraud under current law, any such alteration to currency must be material. No substantive change is intended.

Also in subsection (a) of this section, the word "issue" is substituted for the former word "utter" for consistency within this article.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-605. COUNTERFEITING OF PUBLIC DOCUMENTS.

(A) PROHIBITED.

(1) A PERSON, WITH INTENT TO DEFRAUD ANOTHER, MAY NOT COUNTERFEIT, OR CAUSE TO BE COUNTERFEITED, OR WILLINGLY AID OR ASSIST IN COUNTERFEITING:

(I) A COMMISSION, PATENT, OR PARDON; OR

(II) A WARRANT, CERTIFICATE, OR OTHER PUBLIC SECURITY FROM WHICH MONEY MAY BE DRAWN FROM THE TREASURY OF THE STATE.

(2) A PERSON, WITH INTENT TO DEFRAUD ANOTHER, MAY NOT PRINT, WRITE, SIGN, OR PASS A COUNTERFEIT WARRANT, CERTIFICATE, OR PUBLIC SECURITY IF THE PERSON KNOWS THAT IT WAS COUNTERFEITED.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 45.

In subsection (a)(1) and (2) of this section, the references to the intent to defraud "another" are substituted for the former references to the intent to defraud "any person" for consistency within this subtitle.

Also in subsection (a)(1) and (2) of this section, the former references to a person "or persons" are deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

Also in subsection (a)(1) and (2) of this section, the defined term "counterfeit" is substituted for the former reference to "falsely mak[ing], forg[ing], or counterfeit[ing]" specified public documents, although use of the defined term also includes "falsely made" documents. Any such "materially altered" document would constitute a "counterfeit" document under current law. No substantive change is intended.

In subsection (a)(2) of this section, the former reference to a person "be[ing] concerned in" printing, writing, signing, or passing a forged public document is deleted as implicit in the reference to a person "print[ing], writ[ing], sign[ing], or pass[ing]" the document.

In subsection (b) of this section, the reference to a person being "subject to imprisonment" is substituted for the former reference to a person being "sentenced to the penitentiary" for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-606. MAKING FALSE ENTRIES IN PUBLIC RECORDS AND RELATED CRIMES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "ACCESS" MEANS TO INSTRUCT, COMMUNICATE WITH, STORE DATA IN, OR RETRIEVE DATA FROM, OR OTHERWISE USE EQUIPMENT INCLUDING COMPUTERS AND OTHER DATA PROCESSING EQUIPMENT OR RESOURCES CONNECTED WITH COMPUTERS OR OTHER DATA PROCESSING EQUIPMENT.

(3) "PUBLIC RECORD" INCLUDES AN OFFICIAL BOOK, PAPER, OR RECORD, KEPT ON A MANUAL OR AUTOMATED BASIS, THAT IS CREATED, RECEIVED, OR USED BY A UNIT OF:

(I) THE STATE;

(II) A POLITICAL SUBDIVISION OF THE STATE; OR

(III) A MULTICOUNTY AGENCY.

(B) PROHIBITED.

A PERSON MAY NOT OR MAY NOT ATTEMPT TO:

(1) WILLFULLY MAKE A FALSE ENTRY IN A PUBLIC RECORD;

(2) EXCEPT UNDER PROPER AUTHORITY, WILLFULLY ALTER, DEFACE, DESTROY, REMOVE, OR CONCEAL A PUBLIC RECORD; OR

(3) EXCEPT UNDER PROPER AUTHORITY, WILLFULLY AND INTENTIONALLY ACCESS A PUBLIC RECORD.

(C) 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 $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 45A.

In subsection (a)(2) of this section, the former reference to equipment including "but not limited to" computers is deleted as unnecessary in light of Art. 1, § 30, which provides that the term "including" is used by way of illustration and not by way of limitation.

In subsection (a)(3) of this section, the reference to a "unit" of the State is substituted for the former references to an "agency" of the State for consistency within this article. *See* General Revisor's Note to article.

Also in subsection (a)(3) of this section, the former reference to a "municipality" is deleted as included in the reference to a "political subdivision".

In subsection (c) of this section, the reference to a person "on conviction" being subject to a certain fine and term of imprisonment is added for consistency throughout this article.

Defined term: "Person" § 1-101

8-607. COUNTERFEITING PUBLIC SEAL.

(A) "PUBLIC SEAL" DEFINED.

IN THIS SECTION, "PUBLIC SEAL" MEANS:

(1) THE GREAT SEAL OF THE STATE;

(2) THE SEAL OF ANY COURT OF THE STATE; OR

(3) ANY OTHER PUBLIC SEAL OF THE STATE.

(B) PROHIBITED.

A PERSON MAY NOT:

(1) COUNTERFEIT AND USE A PUBLIC SEAL;

(2) STEAL A PUBLIC SEAL;

(3) UNLAWFULLY AND FALSELY, OR WITH EVIL INTENT, AFFIX A PUBLIC SEAL TO A DEED, WARRANT, OR WRITING; OR

(4) HAVE AND WILLFULLY CONCEAL A COUNTERFEIT PUBLIC SEAL, IF THE PERSON KNOWS THAT IT WAS COUNTERFEIT.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 10 YEARS.

(D) 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: Subsection (a) of this section is new language added to avoid repetition of the references in former Art. 27, § 46 to "the great seal of the State, ... or the seal of any court, or any other public seal of this State".

Subsections (b), (c), and (d) of this section are new language derived without substantive change from former Art. 27, § 46.

In subsections (a) and (b) of this section, the defined term "counterfeit" is substituted for the former references to "counterfeit[ing]" a public seal and to using, stealing, affixing, and having a "counterfeit" public seal, although use of the defined term also includes "falsely mak[ing], forg[ing], and materially alter[ing]" a public seal. Any such "falsely made", "forged", or "materially altered" public seal would constitute a "counterfeit" public seal

under current law. No substantive change is intended.

In subsection (a)(1) of this section, the former reference to the great seal of the State "for the time being" is deleted as surplusage.

In subsection (a)(2) of this section, the reference to the seal of any court "of the State" is added for clarity.

In subsection (b)(2) of this section, the former reference to "true" seals is deleted as surplusage.

In subsection (b)(3) of this section, the former reference to a person "corruptly" affixing a public seal is deleted in light of the reference to a person "falsely" affixing a public seal.

In subsection (b)(4) of this section, the former reference to having a counterfeit instrument in one's "custody" is deleted as implicit in the reference to "hav[ing] a counterfeit instrument".

In subsection (c) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "to the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-608. COUNTERFEITING STAMP OF COMPTROLLER.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) COUNTERFEIT THE STAMP OF THE COMPTROLLER;

(2) UNLAWFULLY USE OR STEAL THE STAMP OF THE COMPTROLLER;

(3) UNLAWFULLY AND FALSELY, OR WITH EVIL INTENT, AFFIX THE STAMP OF THE COMPTROLLER TO ANY WRITTEN INSTRUMENT; OR

(4) HAVE AND WILLFULLY CONCEAL A COUNTERFEIT STAMP OF THE COMPTROLLER, IF THE PERSON KNOWS THAT IT WAS COUNTERFEIT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 10 YEARS.

(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, § 47.

In subsection (a)(1) and (4) of this section, the defined term "counterfeit" is substituted for the former references to "counterfeit[ing]" the stamp of the Comptroller and to using, stealing, affixing, and having a "counterfeit" stamp, although use of the defined term also includes "falsely mak[ing], forg[ing], and materially alter[ing]" the stamp. Any such "falsely made", "forged", or "materially altered" stamp of the Comptroller would constitute a "counterfeit" stamp under current law. No substantive change is intended.

In subsection (a)(3) of this section, the former reference to a person "corruptly" affixing the stamp of the Comptroller is deleted in light of the reference to a person "falsely" affixing the stamp of the Comptroller.

In subsection (a)(4) of this section, the former reference to a person having a counterfeit instrument in the person's "custody" is deleted as implicit in the reference to a person "hav[ing] the counterfeit instrument in the person's "possess[ion]".

In subsection (b) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-609. COUNTERFEITING OF ORDERS FOR MONEY OR GOODS.

(A) "ORDER FOR MONEY OR GOODS" DEFINED.

IN THIS SECTION, "ORDER FOR MONEY OR GOODS" MEANS ANY WRITING, ORDERING, OR REQUESTING FOR THE PAYMENT OF MONEY OR THE DELIVERY OF GOODS.

(B) PROHIBITED.

A PERSON MAY NOT:

(1) WITH INTENT TO DEFRAUD ANOTHER, CAUSE OR PROCURE TO BE COUNTERFEITED, OR WILLINGLY AID OR ASSIST IN COUNTERFEITING AN ORDER FOR MONEY OR GOODS;

(2) WITH INTENT TO DEFRAUD ANOTHER, ISSUE, PUBLISH, OR PASS A COUNTERFEIT ORDER FOR MONEY OR GOODS, IF THE PERSON KNOWS IT WAS COUNTERFEIT; OR

(3) KNOWINGLY AND FRAUDULENTLY OBTAIN MONEY OR GOODS BY MEANS OF A COUNTERFEIT ORDER FOR MONEY OR GOODS.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 10 YEARS.

REVISOR'S NOTE: Subsection (a) of this section is new language added to avoid repetition of the phrase in former Art. 27, § 48 to "any warrant, letter or paper, writing or order, for payment of money or delivery of goods, or other valuable articles".

Subsections (b) and (c) of this section are new language derived without substantive change from former Art. 27, § 48.

In subsections (a) and (b) of this section, the former references to "other valuable articles" are deleted as implicit in the references to "goods".

In subsection (b) of this section, the defined term "counterfeit" in its various grammatical inflections is substituted for the former references to "falsely mak[ing]", "forg[ing]", and "counterfeit[ing]" for consistency within this article.

In subsection (b)(1) and (2) of this section, the reference to the intent to defraud "another" is substituted for the former reference to the intent to defraud "any person" for consistency within this subtitle.

Also in subsection (b)(1) and (2) of this section, the former phrase "whether the said warrant or order contain a simple request to pay the said money,

or deliver the said goods or other valuable articles or not" is deleted as surplusage.

In subsection (b)(3) of this section, the former reference to a person obtaining an "other thing of value" is deleted as implicit in the reference to a person obtaining "goods".

In subsection (c) of this section, the reference to a person being "subject to imprisonment" is substituted for the former reference to a person being "sentenced to the penitentiary" for consistency within this article. Currently, inmates are sentenced to the custody of a particular unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-610. COUNTERFEITING PRESCRIPTION.

(A) "PRESCRIPTION" DEFINED.

IN THIS SECTION "PRESCRIPTION" INCLUDES AN ORDER, PAPER, AND RECIPE PURPORTED TO HAVE BEEN MADE BY AN AUTHORIZED PROVIDER, AS DEFINED IN § 5-101 OF THIS ARTICLE, FOR A DRUG, MEDICINE, OR ALCOHOLIC BEVERAGE.

(B) PROHIBITED.

A PERSON MAY NOT:

(1) KNOWINGLY COUNTERFEIT, CAUSE OR PROCURE TO BE COUNTERFEITED, OR WILLINGLY AID OR ASSIST IN COUNTERFEITING A PRESCRIPTION;

(2) KNOWINGLY ISSUE, PASS, OR POSSESS A COUNTERFEIT PRESCRIPTION; OR

(3) OBTAIN OR ATTEMPT TO OBTAIN A PRESCRIPTION DRUG BY FRAUD, DECEIT, OR MISREPRESENTATION.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS.

(D) PROHIBITED DEFENSE.

PAYMENT OR AN OFFER OR PROMISE TO PAY FOR A DRUG, MEDICINE, OR ALCOHOLIC BEVERAGE OBTAINED IN VIOLATION OF THIS SECTION IS NOT A DEFENSE TO A VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 55.

In subsections (a) and (d) of this section, respectively, the references to an "alcoholic beverage" are substituted for the former archaic references to "spirituous or fermented liquors", and "spirituous liquor" and "fermented liquor", respectively.

In subsection (a) of this section, the reference to an "authorized provider, as defined in § 5-101 of this article" is substituted for the former references to a "licensed practitioner" for clarity.

Also in subsection (a) of this section, the former references to a "letter writing" are deleted as implicit in the reference to a "paper".

In subsection (b)(1) and (2) of this section, the defined term "counterfeit" is substituted for the former references to "falsely mak[ing], alter[ing], forg[ing] or counterfeit[ing]" a device, although the defined term only includes a "materially" altered device. In order to prove fraud under current law, any such alteration must be material. No substantive change is intended.

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

Also in subsection (c) of this section, the former reference to imprisonment "in the discretion of the court" is deleted as implicit in setting a maximum term.

In subsection (d) of this section, the reference to drugs, medicine, or alcoholic beverages obtained "in violation of this section" is substituted for the former reference to those substances obtained "by means of the falsely made, altered, forged or counterfeited order, paper, letter writing, prescription, recipe or other device purporting to have been made by a duly licensed practitioner" for brevity.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-611. TRADEMARK COUNTERFEITING.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COUNTERFEIT MARK" MEANS:

(I) AN UNAUTHORIZED COPY OF INTELLECTUAL PROPERTY; OR

(II) INTELLECTUAL PROPERTY AFFIXED TO GOODS KNOWINGLY SOLD, OFFERED FOR SALE, MANUFACTURED, OR DISTRIBUTED, TO IDENTIFY SERVICES OFFERED OR RENDERED, WITHOUT THE AUTHORITY OF THE OWNER OF THE INTELLECTUAL PROPERTY.

(3) "INTELLECTUAL PROPERTY" MEANS A TRADEMARK, SERVICE MARK, TRADE NAME, LABEL, TERM, DEVICE, DESIGN, OR WORD ADOPTED OR USED BY A PERSON TO IDENTIFY THE GOODS OR SERVICES OF THE PERSON.

(4) "RETAIL VALUE" MEANS:

(I) A TRADEMARK COUNTERFEITER'S SELLING PRICE FOR THE GOODS OR SERVICES THAT BEAR OR ARE IDENTIFIED BY THE COUNTERFEIT MARK; OR

(II) A TRADEMARK COUNTERFEITER'S SELLING PRICE OF THE FINISHED PRODUCT, IF THE GOODS THAT BEAR A COUNTERFEIT MARK ARE COMPONENTS OF THE FINISHED PRODUCT.

(5) "TRADEMARK COUNTERFEITER" MEANS A PERSON WHO COMMITS THE CRIME OF TRADEMARK COUNTERFEITING PROHIBITED BY THIS SECTION.

(B) PROHIBITED.

A PERSON MAY NOT WILLFULLY MANUFACTURE, PRODUCE, DISPLAY, ADVERTISE, DISTRIBUTE, OFFER FOR SALE, SELL, OR POSSESS WITH THE INTENT TO SELL OR DISTRIBUTE GOODS OR SERVICES THAT THE PERSON KNOWS ARE BEARING OR ARE IDENTIFIED BY A COUNTERFEIT MARK.

(C) PENALTY -- VALUE AT LEAST $1,000.

IF THE AGGREGATE RETAIL VALUE OF THE GOODS OR SERVICES IS $1,000 OR MORE, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF TRADEMARK COUNTERFEITING AND ON CONVICTION:

(1) IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH; AND

(2) SHALL TRANSFER ALL OF THE GOODS TO THE OWNER OF THE INTELLECTUAL PROPERTY.

(D) SAME -- VALUE LESS THAN $1,000.

IF THE AGGREGATE RETAIL VALUE OF THE GOODS OR SERVICES IS LESS THAN $1,000, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF TRADEMARK COUNTERFEITING AND ON CONVICTION:

(1) IS SUBJECT TO:

(I) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH; OR

(II) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING $5,000 OR BOTH; AND

(2) SHALL TRANSFER ALL OF THE GOODS TO THE OWNER OF THE INTELLECTUAL PROPERTY.

(E) COMMENCEMENT OF ACTION OR PROSECUTION.

AN ACTION OR PROSECUTION FOR TRADEMARK COUNTERFEITING IN WHICH THE AGGREGATE RETAIL VALUE OF THE GOODS OR SERVICES IS LESS THAN $1,000 SHALL BE COMMENCED WITHIN 2 YEARS AFTER THE COMMISSION OF THE CRIME.

(F) SEIZURE OF COUNTERFEIT ITEMS.

ANY GOODS BEARING A COUNTERFEIT MARK ARE SUBJECT TO SEIZURE BY A LAW ENFORCEMENT OFFICER TO PRESERVE THE GOODS FOR TRANSFER TO THE OWNER OF THE INTELLECTUAL PROPERTY EITHER:

(1) UNDER AN AGREEMENT WITH THE PERSON ALLEGED TO HAVE COMMITTED THE CRIME; OR

(2) AFTER A CONVICTION UNDER THIS SECTION.

(G) EVIDENCE OF TRADEMARK OR TRADE NAME.

STATE OR FEDERAL REGISTRATION OF INTELLECTUAL PROPERTY IS PRIMA FACIE EVIDENCE THAT THE INTELLECTUAL PROPERTY IS A TRADEMARK OR TRADE NAME.

REVISOR'S NOTE: Subsections (a)(1) through (4) and (b) through (g) of this section are new language derived without substantive change from former Art. 27, § 48A.

Subsection (a)(5) of this section is new language added to state expressly that which formerly only was implied by the use of the term "trademark counterfeiter" in former Art. 27, § 48A(a)(4).

Throughout this section, the references to a "good" or "goods" are substituted for the former references to an "item" or "items" for clarity.

In subsection (d)(1)(i) of this section, the reference to a person being subject to a fine and imprisonment "for a first violation" is added to state that which only was implied in former Art. 27, § 48A(d)(1)(ii).

In subsection (d)(1)(ii) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a second or" subsequent violation for consistency within this article.

The Criminal Law Article Review Committee notes, for the consideration by the General Assembly, that in subsection (d)(1) of this section, the reference to a person being subject to a fine "or imprisonment not

exceeding 18 months or both" for a subsequent violation is added to state that which only was implied in former Art. 27, § 48A(e).

Defined term: "Person" § 1-101

8-612. COUNTERFEITING AND ISSUING OF TOKENS.

(A) "TOKEN" DEFINED.

IN THIS SECTION, "TOKEN" MEANS A TICKET, COUPON, COIN, DISC, SLUG, OR ANY OTHER THING THAT:

(1) IS EVIDENCE OF THE RIGHT OF AN INDIVIDUAL TO ENTER, LEAVE, RIDE ON, OR PASS THROUGH OR OVER ANY THING OR PLACE FOR WHICH A FEE IS CHARGED, INCLUDING A BUILDING, GROUND, PUBLIC CONVEYANCE, VESSEL, OR BRIDGE; AND

(2) IS INTENDED OR DESIGNED TO BE INSERTED INTO A BOX OR MACHINE FOR THE COLLECTION OF FEES OR GIVEN TO A COLLECTOR.

(B) PROHIBITED.

(1) A PERSON MAY NOT COUNTERFEIT OR ISSUE, OR CAUSE TO BE COUNTERFEITED OR ISSUED, OR AID OR ASSIST IN COUNTERFEITING OR ISSUING A TOKEN WITHOUT THE PERMISSION OF THE PERSON WHO LAWFULLY ISSUES, SELLS, OR GIVES AWAY THE TOKEN.

(2) A PERSON MAY NOT ISSUE OR PASS A TOKEN IF THE PERSON KNOWS THAT IT WAS:

(I) COUNTERFEITED; OR

(II) ISSUED WITHOUT THE PERMISSION OF THE PERSON WHO LAWFULLY ISSUES, SELLS, OR GIVES AWAY THE TOKEN.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR.

REVISOR'S NOTE: Subsection (a) of this section is new language added to avoid repetition throughout this section of the former references in Art. 27, § 56 to tickets, coupons, tokens, coins, discs, or slugs.

Subsections (b) and (c) of this section are new language derived without substantive change from former Art. 27, § 56.

In subsections (a) and (b) of this section, the word "issue" is substituted for the former references to "utter[ing]" for consistency within this article.

In subsection (a) of this section, the former reference to a "fare" is deleted

as included in the comprehensive reference to a "fee".

In subsection (a)(1) of this section, the reference to an "individual" is substituted for the former reference to a "person" because only an individual and not the other kinds of entities included in the definition of "person" can enter, leave, ride upon, or pass through or over places and things.

Also in subsection (a)(1) of this section, the former reference to a person "or persons" is deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (a)(2) of this section, the reference to a token intended to be "given to" a collector is substituted for the former reference to a token intended to be "taken up by" a collector for clarity.

Also in subsection (a)(2) of this section, the former reference to a token that is "used" to be inserted into a box is deleted in light of the reference to a token that is "intended or designed" to be inserted into a box.

In subsection (b) of this section, the references to "permission" are substituted for the former reference to "authority" for clarity.

Also in subsection (b) of this section, the references to a person who "lawfully" issues, sells, or gives away the token is added for clarity.

Also in subsection (b) of this section, the former references to the authority of a person "or corporation" are deleted in light of § 1-101 of this article, which provides that "person" includes a corporation.

Also in subsection (b) of this section, the defined term "counterfeit" in various grammatical inflections is substituted for the former references to "mak[ing]", "forg[ing]", or "counterfeit[ing]" for consistency within this article.

In subsection (b)(1) of this section, the former reference to "procur[ing]" another to commit counterfeiting is deleted as included in the reference to "caus[ing]" another to commit counterfeiting.

In subsection (b)(2) of this section, the former reference to a token "so issued, sold or given away by any person or corporation" is deleted as implicit in prohibiting certain acts "without the permission of the person that issues, sells, or gives away the token".

In subsection (c) of this section, the reference to a person being "subject to imprisonment" is substituted for the former reference to a person being "sentenced to the jail or house of correction" for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Also in subsection (c) of this section, the former reference to a person being subject to imprisonment on conviction "in any court of this State" is deleted as implicit.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

8-613. UNLAWFUL OPERATION OF VENDING MACHINES AND RELATED MANUFACTURE OF SLUGS.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "SERVICE" INCLUDES THE USE OF TELEPHONE OR TELEGRAPH FACILITIES, GAS, ELECTRICITY, OR A MUSICAL INSTRUMENT, PHONOGRAPH, OR OTHER PROPERTY.

(3) "VENDING MACHINE" INCLUDES A SLOT MACHINE, PAY TELEPHONE, OR OTHER RECEPTACLE DESIGNED TO RECEIVE UNITED STATES CURRENCY IN CONNECTION WITH THE SALE OR USE OF PROPERTY OR OF A SERVICE.

(B) PROHIBITED.

A PERSON MAY NOT:

(1) OPERATE, CAUSE TO BE OPERATED, OR ATTEMPT TO OPERATE OR CAUSE TO BE OPERATED A VENDING MACHINE BY A MEANS NOT LAWFULLY AUTHORIZED BY THE OWNER, LESSEE, OR LICENSEE OF THE VENDING MACHINE, INCLUDING BY MEANS OF A SLUG OR BY COUNTERFEIT, MUTILATED, SWEATED, OR FOREIGN CURRENCY;

(2) TAKE, OBTAIN, OR RECEIVE FROM OR IN CONNECTION WITH A VENDING MACHINE ANY PROPERTY OR SERVICE, WITHOUT DEPOSITING INTO THE VENDING MACHINE UNITED STATES CURRENCY IN THE AMOUNT REQUIRED BY THE OWNER, LESSEE, OR LICENSEE OF THE VENDING MACHINE; OR

(3) MANUFACTURE FOR SALE, SELL, OR GIVE AWAY A SLUG OR DEVICE THAT IS INTENDED TO BE DEPOSITED IN A VENDING MACHINE IF THE PERSON:

(I) INTENDS TO DEFRAUD THE OWNER, LESSEE, LICENSEE, OR OTHER PERSON ENTITLED TO THE CONTENTS OF THE VENDING MACHINE; OR

(II) KNOWS THAT THE SLUG OR DEVICE IS INTENDED FOR UNLAWFUL USE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: Subsection (a)(1) of this section is new language added as standard language introducing a definition provision.

Subsection (a)(2) of this section is new language added to reflect that references in former Art. 27, § 57 to "goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service, or of any musical instrument, phonograph or other property" are meant to provide an illustration of the types of services specified by this section. This section makes the definitions in subsection (a)(2) of this section applicable to provisions to which those definitions formerly did not apply. However, the definitions generally are nonsubstantive and are intended solely to allow concise and standardized references. Therefore, no substantive change is intended.

Subsection (a)(3) of this section is new language added to avoid repetition of the longer reference in former Art. 27, § 57 to "an[y] automatic vending machine, slot machine, coin box telephone or other receptacle, designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service", and in former Art. 27, § 58 to "any automatic vending machine, slot machine, coin box telephone or other receptacle, depository or contrivance designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service".

Subsections (b) and (c) of this section are new language derived without substantive change from former Art. 27, §§ 57 and 58.

In subsections (a)(3) and (b)(1) of this section, the references to "currency" are substituted for the former references to "coin[s]" of the United States to encompass vending machines that are operated by paper money.

In subsection (a) of this section, the reference in former Art. 27, § 58 to a "depository or contrivance" designed to receive coins is deleted as implicit in the reference to a "receptacle" designed to receive currency.

In subsection (b)(1) of this section, the former reference to an "automatic" vending machine is deleted as implicit in the reference to "machine".

Also in subsection (b)(1) of this section, the former reference to a person operating a vending machine by any means, "method, [or] trick" is deleted as implicit in the reference to a person operating a vending machine by "a means not lawfully authorized by the owner, lessee, or licensee".

In subsection (b)(2) of this section, the former reference to "wares, merchandise, ... or article of value" is deleted as implicit in the reference to "property".

Also in subsection (b)(2) of this section, the former archaic reference to a person "surrendering" currency to a vending machine is deleted as implicit in the reference to "depositing" currency into the vending machine.

In subsection (b)(3) of this section, the former reference to a slug, device, "or substance whatsoever" is deleted as implicit in the reference to any "device".

Also in subsection (b)(3) of this section, the former reference to a device that is "calculated" to be deposited into a vending machine is deleted as implicit in the reference to a device that is "intended" to be deposited into a vending machine.

Also in subsection (b)(3) of this section, the former reference to a slug or device that is intended to be "placed" in a vending machine is deleted as implicit in the reference to a slug or device that is intended to be "deposited" in a vending machine.

In subsection (b)(3)(i) of this section, the former reference to a person's intent to "cheat" the owner of a vending machine is deleted as implicit in the reference to a person's intent to "defraud" the owner.

In subsection (c) of this section, the former reference to a person being convicted "before any court of competent jurisdiction" is deleted as implicit since only a court with criminal jurisdiction would be competent to convict a person.

Also in subsection (c) of this section, the former reference to a sentence being "in the discretion of the court" is deleted as implicit in the reference to a person being "subject to" a fine and imprisonment.

Defined terms: "Counterfeit" § 1-101

"Person" § 1-101

GENERAL REVISOR'S NOTE TO SUBTITLE

Former Art. 27, § 53, which prohibited forgery of stock certificates issued by the State of Maryland, is repealed as obsolete. The certificates, originally issued to finance the Maryland penitentiary under legislation enacted in 1821 and 1834, are no longer outstanding. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, p. 17 (October 17, 2000).

Former Art. 27, § 54, which prohibited forgery or counterfeiting of cannery tokens used in agricultural and fisheries packing industries, is repealed as obsolete. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, p. 17 (October 17, 2000).

SUBTITLE 7. CRIMES AGAINST ESTATES.

8-701. EMBEZZLING, ALTERING WILL OR RECORD.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY OR CORRUPTLY EMBEZZLE, STEAL, DESTROY, WITHDRAW, IMPAIR, OR ALTER A WILL, CODICIL, DEED, LAND PATENT OR ASSIGNMENT OF A LAND PATENT, OR A WRIT OF ADMINISTRATION, RETURN, RECORD, OR PART OF ANY OF THOSE DOCUMENTS IF AS A RESULT OF THAT ACT THE ESTATE OR RIGHT OF ANY PERSON MAY BE DEFEATED, INJURED, OR ALTERED.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 3 YEARS AND NOT EXCEEDING 7 YEARS.

(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, § 126.

In subsection (a) of this section, the reference to a writ "of administration" is added for clarity.

Also in subsection (a) of this section, the reference to a "part of any of those documents" is substituted for the former reference to a "parcel of the same" for clarity and accuracy.

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

Also in subsection (a) of this section, the former reference to conviction of a person violating this section "within this State" is deleted as surplusage.

Also in subsection (a) of this section, the former reference to an estate or right of a person being "in any way" altered is deleted as surplusage.

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 by the reference to a "convict[ion]". 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. 483, 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 (1968).

In subsection (c) of this section, the reference to a violation being "subject

to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "to the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

8-702. DESTROYING WILL.

(A) PROHIBITED.

UNLESS THE MAKER OF A WILL GIVES INSTRUCTION TO THE PERSON KEEPING THE WILL FOR SAFE CUSTODY, A PERSON WHO RECEIVES A WILL FOR SAFE CUSTODY MAY NOT:

(1) DESTROY THE WILL; OR

(2) AFTER THE PERSON LEARNS OF THE DEATH OF THE MAKER, WILLFULLY HIDE THE WILL FOR A PERIOD OF 6 MONTHS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 18 MONTHS AND NOT EXCEEDING 15 YEARS.

(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, § 127.

In subsection (a) of this section, the former reference to a "codicil" is deleted as included in the reference to a "will". *See* ET § 1-101.

In the introductory language of subsection (a) of this section, the reference to the "maker of a will" is substituted for the former reference to the "party making it" for clarity. Similarly, in subsection (a)(2) of this section, the reference to the "maker" is substituted for the former reference to the "party" for consistency within this subsection.

In subsection (a)(2) of this section, the phrase "after the person learns of the death of the maker" is substituted for the former phrase "after the death of the party shall be known to him" for clarity.

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 by the reference to a "conviction". 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. 483, 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 (1968).

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "to the penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

SUBTITLE 8. MISCELLANEOUS FRAUD.

8-801. LIVESTOCK BREED CERTIFICATE NOT PROVIDED.

(A) PROHIBITED.

A PERSON MAY NOT FAIL TO FURNISH TO THE PURCHASER OF PUREBRED LIVESTOCK A PAPER OR CERTIFICATE SHOWING THAT THE LIVESTOCK IS PUREBRED STOCK WITHIN 90 DAYS AFTER THE SALE AND DELIVERY OF THE LIVESTOCK IF:

(1) THE PAPER OR CERTIFICATE IS A CONDITION OF SALE; AND

(2) PAYMENT HAS BEEN MADE FOR THE LIVESTOCK.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT LESS THAN $5 AND NOT EXCEEDING $50 FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 211.

In subsection (a) of this section, the reference to "purebred" livestock is added for clarity.

Also in subsection (a) of this section, the reference to "livestock" is substituted for the former reference to a "cow, bull, calf, sheep, hog or other livestock" for brevity.

Also in subsection (a) of this section, the reference to "the livestock" is substituted for the former reference to "such animal" for consistency within this section.

Also in subsection (a) of this section, the former reference to "refusal" is deleted as implicit in the reference to "fail[ure]".

Defined term: "Person" § 1-101

8-802. METHYL ALCOHOL IN MEDICATION.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DRUG" MEANS A DRUG, MEDICINE, OR A MEDICINAL OR CHEMICAL PREPARATION FOR INTERNAL HUMAN CONSUMPTION.

(3) "PREPARE" MEANS TO MAKE, MIX, MANUFACTURE, OR COMPOUND.

(B) PROHIBITED.

A PERSON WHO IS ENGAGED IN THE BUSINESS OF PREPARING OR DISPENSING A DRUG FOR INTERNAL HUMAN CONSUMPTION MAY NOT PREPARE, DISPENSE, SELL, OR DELIVER THE DRUG TO A PERSON DIRECTLY OR THROUGH AN AGENT OR EMPLOYEE IF:

(1) ETHYL ALCOHOL IS USUALLY USED TO PREPARE THE DRUG; AND

(2) THE PREPARER, OR THE PREPARER'S AGENT OR EMPLOYEE, IN ANY MANNER USES OR SUBSTITUTES METHYL ALCOHOL FOR ETHYL ALCOHOL, OR PUTS METHYL ALCOHOL INTO THE DRUG.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 3 MONTHS AND NOT EXCEEDING 1 YEAR OR A FINE OF NOT LESS THAN $100 AND NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: Subsection (a) of this section is new language added to avoid repetition of the phrases "drug, medicine, or a medicinal or chemical preparation" and "make, mix, manufacture, or compound".

Subsections (b) and (c) of this section are new language derived without substantive change from former Art. 27, § 230.

In subsection (b) of this section, the reference to "in any manner" is substituted for the former reference to "in part or in whole" for consistency within this section.

Also in subsection (b) of this section, the former redundant references to "grain" and "wood" alcohol are deleted as implicit in the references to "ethyl" and "methyl" alcohol, respectively.

In subsection (b)(2) of this section, the references to the "preparer" of a drug are substituted for the former references to the "person ... who ... make[s], mix[es], manufacture[s], [or] compound[s]" a drug for clarity.

In subsection (c) of this section, the former reference to "in the discretion of the court" is deleted as implicit in the establishment of maximum and minimum penalties.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section does not prohibit the use of the poison methyl alcohol in a drug unless ethyl alcohol is usually used to prepare the drug.

Defined term: "Person" § 1-101

8-803. UNAUTHORIZED CARRIER TRANSFER TICKET.

(A) PROHIBITED.

(1) A PERSON MAY NOT INTENTIONALLY ISSUE, SELL, OR GIVE TO AN UNAUTHORIZED PERSON A TICKET OR INSTRUMENT FOR THE TRANSFER FROM A CONVEYANCE ON ONE PASSENGER LINE OR ROUTE TO A CONVEYANCE ON ANOTHER LINE OR ROUTE OF THE SAME OR A DIFFERENT CARRIER.

(2) UNLESS AUTHORIZED TO DO SO, A PERSON MAY NOT INTENTIONALLY RECEIVE A TICKET OR INSTRUMENT FOR THE TRANSFER FROM A CONVEYANCE ON ONE PASSENGER LINE OR ROUTE TO A CONVEYANCE ON ANOTHER LINE OR ROUTE OF THE SAME OR A DIFFERENT CARRIER.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR THE FIRST VIOLATION, A FINE NOT LESS THAN $10 AND NOT EXCEEDING $100; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT LESS THAN $100 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 200.

In subsection (b) of this section, the references to a "violation" are substituted for the former references to an "offense" for consistency within this article. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b)(2) of this section, no maximum fine is provided.

Defined term: "Person" § 1-101

TITLE 9. CRIMES AGAINST PUBLIC ADMINISTRATION.

SUBTITLE 1. PERJURY.

9-101. PERJURY.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND FALSELY MAKE AN OATH OR AFFIRMATION:

(1) IF THE FALSE SWEARING IS PERJURY AT COMMON LAW;

(2) IN AN AFFIDAVIT REQUIRED BY LAW;

(3) IN AN AFFIDAVIT MADE TO INDUCE A COURT OR OFFICER TO PASS AN ACCOUNT OR CLAIM;

(4) IN AN AFFIDAVIT REQUIRED AS PART OF A REPORT AND RETURN MADE TO THE GENERAL ASSEMBLY OR AN OFFICER OF THE GOVERNMENT; OR

(5) IN AN AFFIDAVIT OR AFFIRMATION MADE UNDER THE MARYLAND RULES.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF PERJURY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

(C) CONTRADICTORY STATEMENTS.

IF A PERSON MAKES AN OATH OR AFFIRMATION TO TWO CONTRADICTORY STATEMENTS, EACH OF WHICH, IF FALSE, IS PROHIBITED BY SUBSECTION (A) OF THIS SECTION, IT IS SUFFICIENT FOR PURPOSES OF INDICTMENT TO ALLEGE, AND FOR CONVICTION TO PROVE, THAT ONE OF THE STATEMENTS IS WILLFULLY FALSE WITHOUT SPECIFYING WHICH ONE.

(D) 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, §§ 435, 437, and, as it related to the penalty for perjury, § 439.

In subsection (b) of this section, the phrase "is subject to imprisonment" is substituted for the former mandatory phrase "shall be sentenced" more accurately to reflect the discretionary minimum range for imprisonment for a violation.

Also in subsection (b) of this section, the reference to a person who violates this section being guilty "of the misdemeanor" of perjury is added to state expressly that which was only implied in the former law. At common law, perjury was a misdemeanor, although it was an "infamous crime" involving moral turpitude, a *crimen falsi*, which disqualified a convicted person from testifying in court. *Garitee v. Bond*, 102 Md. 379, 384 (1905); *Hourie v. State*, 53 Md. App. 62 (1982); *see, also*, *Murray v. State*, 27 Md. App. 404, 408 (1975) (dicta). Also, in this State, any crime that was not considered a felony at common law and has not been declared a felony by statute is considered a misdemeanor. *See State v. Canova*, 278 Md. 483, 490 (1976); *Bowser v. State*, 136 Md. 342, 354 (1920); *Dutton v. State*, 123 Md. 373, 378 (1914); and *Williams v. State*, 4 Md. App. 342, 347 (1968).

Subsection (c) of this section, derived from former Art. 27, § 437, is revised as a rule for resolving contradictory statements for purposes of indictment and conviction, for clarity.

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the ... penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a)(4) of this section, it is not clear whether the reference to an affidavit made to an officer of the "government" refers only to the Maryland State government, or also to an officer of the federal government, a local government, a bi-county or multi-county unit, or even to an officer of the government of another state taking an affidavit in Maryland. The General Assembly may wish to address the scope of governments and their officers covered by this provision.

Defined term: "Person" § 1-101

9-102. SUBORNATION OF PERJURY.

(A) PROHIBITED.

A PERSON MAY NOT PROCURE ANOTHER TO COMMIT PERJURY AS PROHIBITED BY § 9-101 OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF SUBORNATION OF PERJURY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

(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, § 438 and, as it related to the penalty for subornation of perjury, § 439.

In subsection (b) of this section, the phrase "is subject to imprisonment" is substituted for the former mandatory phrase "shall be sentenced" more accurately to reflect the discretionary minimum range for imprisonment for a violation.

Also in subsection (b) of this section, the reference to a person who violates this section being guilty "of the misdemeanor" of subornation of perjury is added to state expressly that which was only implied in the former law. At common law, subornation of perjury was treated in the same manner as perjury, a misdemeanor. *See McGarvey v. McGarvey*, 286 Md. 19, 28 (1979); *see also*, *Garitee v. Bond*, 102 Md. 379, 384 (1905); *Hourie v. State*, 53 Md. App. 62 (1982); *Murray v. State*, 27 Md. App. 404, 408 (1975) (dicta). Also, in this State, any crime that was not considered a felony at common law and has not been declared a felony by statute is considered a misdemeanor. *See State v. Canova*, 278 Md. 483, 490 (1976); *Bowser v. State*, 136 Md. 342, 354 (1920); *Dutton v. State*, 123 Md. 373, 378 (1914); and *Williams v. State*, 4 Md. App. 342, 347 (1968).

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the ... penitentiary" for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

9-103. CHARGING DOCUMENT.

AN INDICTMENT, INFORMATION, OR WARRANT FOR PERJURY IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE) IN (COUNTY), ON EXAMINATION AS A WITNESS, DULY SWORN TO TESTIFY IN (PROCEEDING) BY (COURT OR OTHER PERSON ADMINISTERING OATH) WITH AUTHORITY TO ADMINISTER THE OATH, UNLAWFULLY AND FALSELY SWORE (FACTS), THE MATTERS SO SWORN WERE MATERIAL, AND THE TESTIMONY OF (NAME OF DEFENDANT) WAS WILLFULLY AND CORRUPTLY FALSE, IN VIOLATION OF (SECTION VIOLATED) 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, § 436.

In this section, the phrase "is sufficient if it substantially states" is substituted for the former phrase "shall be sufficient to use a formula substantially to the following effect" for clarity.

Also in this section, the phrase "in violation of (section violated)" is substituted for the former phrase "contrary to the form of the Act of Assembly in such case made and provided" for clarity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the charging document in this section may not be sufficient to charge perjury by contradictory statements under § 9-101(c) of this subtitle. That provision requires merely that for charging and for conviction, there be two contradictory statements made under oath or affirmation, without specifying which one is false.

Defined terms: "County" § 1-101

"Person" § 1-101

SUBTITLE 2. BRIBERY.

9-201. BRIBERY OF PUBLIC EMPLOYEE.

(A) "PUBLIC EMPLOYEE" DEFINED.

IN THIS SECTION, "PUBLIC EMPLOYEE":

(1) MEANS AN OFFICER OR EMPLOYEE OF:

(I) THE STATE; OR

(II) A COUNTY, MUNICIPAL CORPORATION, BICOUNTY OR MULTICOUNTY AGENCY, OR OTHER POLITICAL SUBDIVISION OF THE STATE; AND

(2) INCLUDES:

(I) AN EXECUTIVE OFFICER OF THE STATE;

(II) A JUDGE OF THE STATE;

(III) A JUDICIAL OFFICER OF THE STATE;

(IV) A MEMBER OR OFFICER OF THE GENERAL ASSEMBLY;

(V) A MEMBER OF THE POLICE FORCE OF BALTIMORE CITY OR THE DEPARTMENT OF STATE POLICE; AND

(VI) A MEMBER, OFFICER, OR EXECUTIVE OFFICER OF A MUNICIPAL CORPORATION.

(B) PROHIBITED -- BRIBING PUBLIC EMPLOYEE.

A PERSON MAY NOT BRIBE OR ATTEMPT TO BRIBE A PUBLIC EMPLOYEE TO INFLUENCE THE PUBLIC EMPLOYEE IN THE PERFORMANCE OF AN OFFICIAL DUTY OF THE PUBLIC EMPLOYEE.

(C) SAME -- PUBLIC EMPLOYEE DEMANDING OR RECEIVING BRIBE.

A PUBLIC EMPLOYEE MAY NOT DEMAND OR RECEIVE A BRIBE, FEE, REWARD, OR TESTIMONIAL TO:

(1) INFLUENCE THE PERFORMANCE OF THE OFFICIAL DUTIES OF THE PUBLIC EMPLOYEE; OR

(2) NEGLECT OR FAIL TO PERFORM THE OFFICIAL DUTIES OF THE PUBLIC EMPLOYEE.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF BRIBERY AND ON CONVICTION:

(1) IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 12 YEARS OR A FINE NOT LESS THAN $100 AND NOT EXCEEDING $5,000 OR BOTH;

(2) MAY NOT VOTE; AND

(3) MAY NOT HOLD AN OFFICE OF TRUST OR PROFIT IN THE STATE.

(E) STATUTE OF LIMITATIONS AND IN BANC REVIEW.

A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.

(F) COMPETENCY AND IMMUNITY OF WITNESS IN PROSECUTION.

(1) A PERSON WHO VIOLATES THIS SECTION:

(I) IS A COMPETENT WITNESS; AND

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, MAY BE COMPELLED TO TESTIFY AGAINST ANY PERSON WHO MAY HAVE VIOLATED THIS SECTION.

(2) A PERSON COMPELLED TO TESTIFY FOR THE STATE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS IMMUNE FROM PROSECUTION FOR A CRIME ABOUT WHICH THE PERSON WAS COMPELLED TO TESTIFY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 22.

Subsection (a) of this section is revised as a definition to avoid repetition of phrases, such as "executive officer of the State of Maryland", "any judge", "or other judicial officer of this State", and "any member or officer of the General Assembly of Maryland". The former specific references to "Governor" and "mayor" are deleted as included within the illustrative

examples of "public officer or employee" in subsection (a)(2) of this section.

In subsection (d) of this section, the former reference to a sentence being "in the discretion of the court" is deleted as implicit in the reference to a person being "subject to" a fine and imprisonment.

Also in subsection (d) of this section, the former reference to being "disfranchised and disqualified from holding any" office of trust or profit in the State is revised as "(2) may not vote; and (3) may not hold an" office of trust or profit in the State for clarity. *See* Md. Constitution, Art. I, § 6 and Art. III, § 50.

In subsection (e) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary of this State" for clarity and consistency within this article. *See* General Revisor's Note to article.

In subsection (f)(2) of this section, the phrase "immune from prosecution for a crime about which the person was compelled to testify" is substituted for the former phrase "exempt from prosecution, ... for any such crime of which such person so testifying may have been guilty or a participant therein, and about which he was so compelled to testify" for clarity.

Also in subsection (f)(2) of this section, because immunity from prosecution precludes trial and punishment, the former references to "trial" and "punishment" are deleted as unnecessary.

For provisions on testimony from convicted perjurers and from compelled witnesses generally, *see* CJ §§ 9-104 and 9-123, respectively.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (f) of this section, which allows a witness to be compelled to testify and provides transactional immunity for that testimony, raises significant constitutional concerns under the 5th and 14th Amendments to the U.S. Constitution, and their State counterpart, Art. 22 of the Md. Declaration of Rights. *See, e.g., Evans v. State*, 333 Md. 660 (1994), *cert. denied*, 513 U.S. 833 (1994); *In re Criminal Investigation No. 1-162*, 307 Md. 674 (1986). The relevant constitutional provisions generally prohibit self-incrimination. The granting of some form of immunity against prosecution arising from compelled incriminating testimony does not, of itself, cure the constitutional defect. The General Assembly may wish to explore the scope of immunity that may be required to allow compelled testimony in harmony with federal and State constitutional precedent. This provision raises the same concerns as § 9-204(d) of this subtitle, *below*.

As to the authority of the legislature to enact penalties for common-law bribery and attempted bribery, *see* Md. Constitution, Art. I, § 6 and Art. III, § 50.

Defined terms: "County" § 1-101

"Person" § 1-101

9-202. BRIBERY OF JUROR; ACCEPTANCE OF BRIBE BY JUROR.

(A) PROHIBITED -- BRIBING JUROR.

A PERSON MAY NOT BRIBE OR ATTEMPT TO BRIBE A JUROR FOR RENDERING A VERDICT.

(B) SAME -- JUROR ACCEPTING BRIBE.

A JUROR MAY NOT ACCEPT A BRIBE FOR RENDERING A VERDICT.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION:

(1) IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 18 MONTHS AND NOT EXCEEDING 6 YEARS; AND

(2) MAY NOT SERVE ON A JURY IN THE FUTURE.

(D) 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, § 25.

In subsection (a) of this section, the reference to a "person" is substituted for the former obsolete reference to an "embracer" for clarity.

Also in subsection (a) of this section, the reference to "brib[ing] or attempt[ing] to bribe a juror" is substituted for the former reference to "procur[ing] any juror to take gain or profit" for clarity.

In subsection (b) of this section, the reference to "accept[ing] a bribe" is substituted for the former reference to "taking gain or profit" for clarity.

Subsection (c) of this section is revised to clarify that all prescribed penalties are applicable to all persons convicted under this section.

In subsection (c) of this section, the reference to a person being "guilty of a misdemeanor" is added to state expressly that which only was implied by the former reference to being "convicted". In this State, any crime that was not a felony at common law and has not been declared a felony by statute is considered a misdemeanor. *See State v. Canova*, 278 Md. 483, 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 (1968).

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary of this State" for clarity and consistency within this article. *See* General Revisor's Note to article.

For provisions on intimidating or corrupting a juror, *see* § 9-305 of this title.

Defined term: "Person" § 1-101

9-203. BRIBERY OF VOTER.

(A) PROHIBITED.

(1) A PERSON, INCLUDING A CANDIDATE FOR OFFICE, MAY NOT GIVE OR DIRECTLY OR INDIRECTLY PROMISE A GIFT OR REWARD TO SECURE A VOTE OR A BALLOT AT AN ELECTION UNDER THE CONSTITUTION AND LAWS OF THE STATE.

(2) A PERSON MAY NOT KEEP OR ALLOW TO BE KEPT A HOUSE OR OTHER ACCOMMODATION IN THE STATE ON AN ELECTION DAY WHERE, BEFORE THE CLOSE OF THE ELECTION, THE PERSON, AT THE PERSON'S EXPENSE, GRATUITOUSLY PROVIDES ALCOHOLIC BEVERAGES TO VOTERS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH; AND

(2) ANY OTHER PENALTIES APPLICABLE UNDER THE CONSTITUTION.

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

In subsection (a)(1) of this section, the former limitation "at any time before or on the day of any election" is deleted as surplusage.

Also in subsection (a)(1) of this section, the former word "bestow" is deleted as surplusage.

In subsection (a)(2) of this section, the phrase "the State" is substituted for the former phrase "any part of any district" for brevity.

Also in subsection (a)(2) of this section, the word "on" is substituted for the former phrase "at any time during the day" for brevity.

Also in subsection (a)(2) of this section, the phrase "alcoholic beverages" is substituted for the former phrase "intoxicating liquors" for style.

Also in subsection (a)(2) of this section, the former reference to a "tent [or] booth" is deleted as included in the reference to "other accommodation".

In subsection (b) of this section, the former reference to a "candidate so offending" is deleted as included in the reference to a "person".

Also in subsection (b) of this section, the former phrase "in the court of the county or city wherein such offense may be committed" is deleted as surplusage.

Also in subsection (b) of this section, the former references to a sentence being "at the discretion of the court" and "as the court may adjudge" are deleted as implicit in the reference to a person being "subject to" a fine and imprisonment.

Also in subsection (b) of this section, the reference to a person being "guilty of a misdemeanor" is added to state expressly that which only was implied by the reference, in former Art. 27, § 27, to a person being "convicted". In this State, any crime that was not a felony at common law and has not been declared a felony by statute is considered a misdemeanor. *See State v. Canova*, 278 Md. 483, 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 (1968).

For other penalties contained in the Maryland Constitution, including disfranchisement and disqualification from holding office, *see* Md. Constitution, Art. I, § 6 and Art. III, § 50.

Defined term: "Person" § 1-101

9-204. BRIBERY OF PERSON PARTICIPATING IN OR CONNECTED WITH ATHLETIC CONTEST.

(A) PROHIBITED.

A PERSON MAY NOT BRIBE OR ATTEMPT TO BRIBE ANOTHER WHO IS PARTICIPATING IN OR CONNECTED WITH AN ATHLETIC CONTEST HELD IN THE STATE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF BRIBERY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 6 MONTHS AND NOT EXCEEDING 3 YEARS OR A FINE NOT LESS THAN $100 AND 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.

(D) COMPETENCY AND IMMUNITY OF WITNESS IN PROSECUTION.

(1) A PERSON:

(I) MAY NOT REFUSE TO TESTIFY CONCERNING A CONSPIRACY TO VIOLATE THIS SECTION; BUT

(II) MAY BE COMPELLED TO TESTIFY AGAINST ANY PERSON WHO MAY HAVE CONSPIRED TO VIOLATE THIS SECTION.

(2) A PERSON COMPELLED TO TESTIFY UNDER PARAGRAPH (1) OF THIS SUBSECTION IS A COMPETENT WITNESS.

(3) A PERSON COMPELLED TO TESTIFY FOR THE STATE UNDER THIS SECTION IS IMMUNE FROM PROSECUTION FOR A CRIME ABOUT WHICH THE PERSON WAS COMPELLED TO TESTIFY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 23 and 39.

In subsection (b) of this section, the reference to a person being guilty of "the misdemeanor" of bribery is added to state expressly that which only was implied by 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 a misdemeanor. *See State v. Canova*, 278 Md. 483, 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 (1968).

Also in subsection (b) of this section, the former reference to a sentence being "in the discretion of the court" is deleted as implicit in the reference to a person being "subject to" a fine and imprisonment.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary of the State" for clarity and consistency within this article. *See* General Revisor's Note to article.

In subsection (d)(1)(i) of this section, the reference to "violat[ing] of this section" is substituted for the former reference to "commit[ting] any of the offenses set forth in § 23 of this article" to reflect the reorganization of material on athletic contest bribery in this section. Similarly, in subsection (d)(1)(ii) of this section, the reference to "violat[ing] of this section" is substituted for the former reference to "commit[ting] any of the aforesaid offenses" for consistency and clarity.

In subsection (d)(1)(ii) of this section, the former reference to "persons" is

deleted as included in the singular reference to "person". *See* Art. 1, § 8.

In subsection (d)(3) of this section, the reference to testifying "for the State" is added to reflect that only the State may grant immunity from prosecution.

Also in subsection (d)(3) of this section, the phrase "immune from prosecution for a crime about which the person was compelled to testify" is substituted for the former phrase "exempt from prosecution, ... for any and all such crimes and offenses of which such person so testifying may have been guilty or a participant or a conspirator therein and about which he was so compelled to testify" for clarity and brevity.

Also in subsection (d)(3) of this section, the former reference to "trial and punishment" is deleted because immunity from "prosecution" precludes trial and punishment.

For provisions on testimony from compelled witnesses generally, *see* CJ 9-123.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (d) of this section, which allows a witness to be compelled to testify and provides transactional immunity for that testimony, raises significant constitutional concerns under the 5th and 14th Amendments to the U.S. Constitution, and their State counterpart, Art. 22 of the Md. Declaration of Rights. *See, e.g., Evans v. State*, 333 Md. 660 (1994), *cert. denied*, 513 U.S. 833 (1994); *In re Criminal Investigation No. 1-162*, 307 Md. 674 (1986). The relevant constitutional provisions generally prohibit self-incrimination. The granting of some form of immunity against prosecution arising from compelled incriminating testimony does not, of itself, cure the constitutional defect. The General Assembly may wish to explore the scope of immunity that may be required to allow compelled testimony in harmony with federal and State constitutional precedent. This provision raises the same concerns as § 9-201(f) of this subtitle, *above*.

Defined term: "Person" § 1-101

9-205. ACCEPTANCE OF BRIBE BY PERSON PARTICIPATING IN OR CONNECTED WITH ATHLETIC CONTEST.

(A) PROHIBITED.

A PERSON PARTICIPATING IN OR CONNECTED WITH AN ATHLETIC CONTEST MAY NOT ACCEPT A BRIBE TO ALTER THE OUTCOME OF THE ATHLETIC CONTEST.

(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.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 24.

In subsection (a) of this section, the former reference to an "amateur or professional athlete" is deleted as included in the defined term "person".

Defined term: "Person" § 1-101

SUBTITLE 3. INFLUENCING OR INTIMIDATING VICTIMS OR WITNESSES.

9-301. 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, § 760(a).

The reference to this "subtitle" is substituted for the former reference to this "subheading", although this subtitle is derived, in part, from material outside the former "Influencing or Intimidating Victims and Witnesses" subheading of Article 27. The substitution applies the defined term "witness" to § 9-305 of this subtitle, derived from former Art. 27, § 26. Because the term is defined and used only in its ordinary meaning, no substantive change results.

(B) OFFICIAL PROCEEDING.

"OFFICIAL PROCEEDING" INCLUDES A CRIMINAL TRIAL, A HEARING RELATED TO A CRIMINAL TRIAL OR ADJUDICATORY HEARING, A GRAND JURY PROCEEDING, AND ANY OTHER PROCEEDING THAT IS PART OF A CRIMINAL ACTION OR JUVENILE DELINQUENCY CASE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 760(c).

(C) VICTIM.

"VICTIM" MEANS A PERSON AGAINST WHOM A CRIME OR DELINQUENT ACT HAS BEEN COMMITTED OR ATTEMPTED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 760(d).

Defined term: "Person" § 1-101

(D) WITNESS.

"WITNESS" MEANS A PERSON WHO:

(1) HAS KNOWLEDGE OF THE EXISTENCE OF FACTS RELATING TO A CRIME OR DELINQUENT ACT;

(2) MAKES A DECLARATION UNDER OATH THAT IS RECEIVED AS EVIDENCE FOR ANY PURPOSE;

(3) HAS REPORTED A CRIME OR DELINQUENT ACT TO A LAW ENFORCEMENT OFFICER, PROSECUTOR, INTAKE OFFICER, CORRECTIONAL OFFICER, OR JUDICIAL OFFICER; OR

(4) HAS BEEN SERVED WITH A SUBPOENA ISSUED UNDER THE AUTHORITY OF A COURT OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 760(e).

Defined terms: "Person" § 1-101

"State" § 1-101

9-302. INDUCING FALSE TESTIMONY OR AVOIDANCE OF SUBPOENA.

(A) PROHIBITED.

A PERSON MAY NOT HARM ANOTHER, THREATEN TO HARM ANOTHER, OR DAMAGE OR DESTROY PROPERTY WITH THE INTENT TO:

(1) INFLUENCE A VICTIM OR WITNESS TO TESTIFY FALSELY OR WITHHOLD TESTIMONY; OR

(2) INDUCE A VICTIM OR WITNESS:

(I) TO AVOID THE SERVICE OF A SUBPOENA OR SUMMONS TO TESTIFY; OR

(II) TO BE ABSENT FROM AN OFFICIAL PROCEEDING TO WHICH THE VICTIM OR WITNESS HAS BEEN SUBPOENAED OR SUMMONED.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 761.

In subsection (a)(2)(i) and (ii) of this section, the references to "subpoena[ing]" and "subpoenaed" are added for clarity. Under Rule

4-256(a) of the Maryland Rules, a subpoena is issued to require a witness to testify in court.

In the introductory language of subsection (a) of this section, the former reference to "injure [another]" is deleted as redundant in light of the phrase "harm another".

The Criminal Law Article Review Committee notes, for consideration of the General Assembly, that this section does not cover a person who intimidates a potential witness, other than a victim, who has not yet been subpoenaed or been issued a summons.

Defined terms: "Official proceeding" § 9-301

"Person" § 1-101

"Victim" § 9-301

"Witness" § 9-301

9-303. RETALIATION FOR TESTIMONY.

(A) PROHIBITED.

A PERSON MAY NOT INTENTIONALLY HARM ANOTHER OR DAMAGE OR DESTROY PROPERTY WITH THE INTENT OF RETALIATING AGAINST A VICTIM OR WITNESS FOR:

(1) GIVING TESTIMONY IN AN OFFICIAL PROCEEDING; OR

(2) REPORTING A CRIME OR DELINQUENT ACT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 762.

In the introductory language of subsection (a) this section, the former reference to "injure [another]" is deleted as redundant in light of the phrase "harm another".

Defined terms: "Official proceeding" § 9-301

"Person" § 1-101

"Victim" § 9-301

"Witness" § 9-301

9-304. COURT TO PREVENT INTIMIDATION OF VICTIM OR WITNESS.

(A) IN GENERAL.

A FINDING OF GOOD CAUSE UNDER THIS SECTION MAY BE BASED ON ANY RELEVANT EVIDENCE INCLUDING CREDIBLE HEARSAY.

(B) GOOD CAUSE.

(1) FOR GOOD CAUSE SHOWN, A COURT WITH JURISDICTION OVER A CRIMINAL MATTER OR JUVENILE DELINQUENCY CASE MAY PASS AN ORDER THAT IS REASONABLY NECESSARY TO STOP OR PREVENT:

(I) THE INTIMIDATION OF A VICTIM OR WITNESS; OR

(II) A VIOLATION OF THIS SUBTITLE.

(2) THE ORDER MAY:

(I) PROHIBIT A PERSON FROM VIOLATING THIS SUBTITLE;

(II) REQUIRE AN INDIVIDUAL TO MAINTAIN A CERTAIN PHYSICAL DISTANCE FROM ANOTHER PERSON SPECIFIED BY THE COURT;

(III) PROHIBIT A PERSON FROM COMMUNICATING WITH ANOTHER INDIVIDUAL SPECIFIED BY THE COURT, EXCEPT THROUGH AN ATTORNEY OR OTHER INDIVIDUAL SPECIFIED BY THE COURT; AND

(IV) IMPOSE OTHER REASONABLE CONDITIONS TO ENSURE THE SAFETY OF A VICTIM OR WITNESS.

(3) THE COURT MAY HOLD A HEARING TO DETERMINE IF AN ORDER SHOULD BE ISSUED UNDER THIS SUBSECTION.

(C) ENFORCEMENT.

(1) THE COURT MAY USE ITS CONTEMPT POWER TO ENFORCE AN ORDER ISSUED UNDER THIS SECTION.

(2) THE COURT MAY REVOKE THE PRETRIAL RELEASE OF A DEFENDANT OR CHILD RESPONDENT TO ENSURE THE SAFETY OF A VICTIM OR WITNESS OR THE INTEGRITY OF THE JUDICIAL PROCESS IF THE DEFENDANT OR CHILD RESPONDENT VIOLATES AN ORDER PASSED UNDER THIS SECTION.

(D) CONDITIONS OF PRETRIAL RELEASE.

A DISTRICT COURT COMMISSIONER OR AN INTAKE OFFICER, AS DEFINED IN § 3-8A-01 OF THE COURTS ARTICLE, MAY IMPOSE FOR GOOD CAUSE SHOWN A CONDITION DESCRIBED IN SUBSECTION (B)(2) OF THIS SECTION AS A CONDITION OF THE PRETRIAL RELEASE OF A DEFENDANT OR CHILD RESPONDENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 760(b) and 763.

In subsections (c) and (d) of this section, the references to a "defendant or child respondent" are substituted for the former defined term "defendant", for brevity and accuracy. The former defined term "defendant", which included both a person alleged to have committed a crime and a child

alleged to have committed a delinquent act, was used only in the source material for these two subsections.

In subsection (d) of this section, the reference to "§ 3-8A-01" of the Courts Article is substituted for the former obsolete reference to "§ 3-801(o)" of the Courts Article for accuracy. *See* Ch. 415, Acts of 2001.

Defined terms: "Person" § 1-101

"Victim" § 9-301

"Witness" § 9-301

9-305. INTIMIDATING OR CORRUPTING JUROR.

(A) PROHIBITED.

A PERSON MAY NOT, BY THREAT, FORCE, OR CORRUPT MEANS, TRY TO INFLUENCE, INTIMIDATE, OR IMPEDE A JUROR, A WITNESS, OR AN OFFICER OF A COURT OF THE STATE IN THE PERFORMANCE OF THE PERSON'S OFFICIAL DUTIES.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 26, as it referred to intimidating or corrupting a juror.

In subsection (a) of this section, the reference to "performance" of a duty is substituted for the former reference to "discharge" of duty for consistency within this article.

Also in subsection (a) of this section, the phrase "official duties" is substituted for the former word "duty" for clarity.

In subsection (b) of this section, the former phrase "according to the nature and aggravation of the offense" is deleted in light of the generally applicable standards utilized by the courts to determine a convicted person's sentence.

Also in subsection (b) of this section, the reference to a person who violates this section being "guilty of a misdemeanor" is added to state expressly that which was only 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 a misdemeanor. *See State v. Canova*, 278 Md. 483, 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 (1968).

For provisions on bribing a juror, *see* § 9-202 of this title.

Defined terms: "Person" § 1-101

"Witness" § 9-301

9-306. OBSTRUCTION OF JUSTICE.

(A) PROHIBITED.

A PERSON MAY NOT, BY THREAT, FORCE, OR CORRUPT MEANS, OBSTRUCT, IMPEDE, OR TRY TO OBSTRUCT OR IMPEDE THE ADMINISTRATION OF JUSTICE IN A COURT OF THE STATE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 26, as it related to obstructing justice.

In subsection (a) of this section, the former reference to "due" administration is deleted as surplusage.

In subsection (b) of this section, the former phrase "according to the nature and aggravation of the offense" is deleted in light of the generally applicable standards utilized by the courts to determine a convicted person's sentence.

Also in subsection (b) of this section, the reference to a person who violates this section being "guilty of a misdemeanor" is added to state expressly that which was only 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 a misdemeanor. *See State v. Canova*, 278 Md. 483, 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 (1968).

Defined term: "Person" § 1-101

SUBTITLE 4. HARBORING, ESCAPE, AND CONTRABAND.

PART I. HARBORING AND ESCAPE.

9-401. 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, §§ 136(a) and 268E(a).

The reference to this "subtitle" is substituted for the former references to this "subheading" to reflect the consolidation in this subtitle of material derived from the former "Escape and Contraband in Places of Confinement" and "Harboring" subheadings of Article 27.

(B) CONCEALMENT.

"CONCEALMENT" MEANS HIDING, SECRETING, OR KEEPING OUT OF SIGHT.

REVISOR'S NOTE: This formerly was Art. 27, § 268E(c).

No changes are made.

(C) ESCAPE.

"ESCAPE" RETAINS ITS JUDICIALLY DETERMINED MEANING.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 136(b).

No changes are made.

(D) FUGITIVE.

"FUGITIVE" MEANS AN INDIVIDUAL FOR WHOM A FELONY ARREST WARRANT HAS BEEN ISSUED AND IS OUTSTANDING.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 268E(d).

In this subsection, the phrase "and is outstanding" is added for clarity. Otherwise, an individual could be a "fugitive" under this subtitle even if a felony arrest warrant for the individual had been quashed. The Criminal Law Article Review Committee brings this addition to the attention of the General Assembly.

(E) HARBOR.

(1) "HARBOR" INCLUDES OFFERING A FUGITIVE OR ESCAPED INMATE:

(I) CONCEALMENT;

(II) LODGING;

(III) CARE AFTER CONCEALMENT; OR

(IV) OBSTRUCTION OF AN EFFORT OF AN AUTHORITY TO ARREST THE FUGITIVE OR ESCAPED INMATE.

(2) "HARBOR" DOES NOT INCLUDE FAILING TO REVEAL THE WHEREABOUTS OF A FUGITIVE OR AN ESCAPED INMATE BY A PERSON WHO DID NOT

PARTICIPATE IN THE EFFORT OF THE FUGITIVE OR ESCAPED INMATE TO ELUDE ARREST.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 268E(b).

In the introductory language of paragraph (1) and in paragraphs (1)(iv) and (2) of this subsection, the references to an "escaped inmate" are added for consistency with § 9-403 of this subtitle. The Criminal Law Article Review Committee brings these additions to the attention of the General Assembly.

Defined terms: "Inmate" § 1-101

"Person" § 1-101

(F) PLACE OF CONFINEMENT.

"PLACE OF CONFINEMENT" MEANS:

(1) A CORRECTIONAL FACILITY;

(2) A PLACE IDENTIFIED IN A HOME DETENTION ORDER OR AGREEMENT;

(3) A FACILITY OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

(4) A DETENTION CENTER FOR JUVENILES OR A FACILITY FOR JUVENILES LISTED IN ARTICLE 83C, § 2-117(A)(2) OF THE CODE; OR

(5) ANY OTHER FACILITY IN WHICH A PERSON IS CONFINED UNDER COLOR OF LAW.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 136(c).

Defined terms: "Correctional facility" § 1-101

"Person" § 1-101

9-402. HARBORING FUGITIVE.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY IF THE WARRANT IS FOR A TRAFFIC OFFENSE.

(B) PROHIBITED -- TO PREVENT ARREST.

A PERSON MAY NOT HARBOR A FUGITIVE TO PREVENT THE FUGITIVE'S DISCOVERY OR ARREST AFTER:

(1) BEING NOTIFIED, OR OTHERWISE KNOWING, THAT A FELONY WARRANT WAS ISSUED FOR THE ARREST OF THE FUGITIVE; AND

(2) BEING NOTIFIED THAT HARBORING THE FUGITIVE IS A CRIME.

(C) SAME -- TO AVOID PROSECUTION, CUSTODY, OR CONFINEMENT.

A PERSON MAY NOT KNOWINGLY HARBOR A FUGITIVE WHO IS AVOIDING:

(1) PROSECUTION;

(2) CUSTODY; OR

(3) CONFINEMENT AFTER CONVICTION OF A FELONY.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 268F.

In the introductory language of subsection (b) of this section, the reference to discovery "or" arrest is substituted for the former reference to discovery "and" arrest for clarity. The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

In subsection (b)(1) of this section, the word "arrest" is substituted for the former word "apprehension" for consistency within this subsection.

In subsection (b)(2) of this section, the word "crime" is substituted for the former phrase "punishable offense" for brevity.

Defined terms: "Fugitive" § 9-401

"Harbor" § 9-401

"Person" § 1-101

9-403. HARBORING ESCAPED INMATE.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY HARBOR AN INMATE, WHO WAS IMPRISONED FOR A FELONY AND WHO ESCAPED FROM THE CUSTODY OF THE DIVISION OF CORRECTION OR OTHER CORRECTIONAL UNIT TO WHICH THE INMATE HAS BEEN COMMITTED, AFTER:

(1) BEING NOTIFIED, OR OTHERWISE KNOWING, THAT THE INMATE ESCAPED; AND

(2) BEING NOTIFIED THAT HARBORING THE INMATE IS A CRIME.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 268G.

In the introductory language of subsection (a) of this section, the reference to an "other correctional unit to which the inmate has been committed" is substituted for the former reference to a "place of confinement" to avoid confusion with the broader term "place of confinement" defined in § 9-401 of this section and derived from former Art. 27, § 136(c) which applied to escape, not harboring. The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

In subsection (a) of this section, the references to the defined term "inmate" are substituted for the former references to a "person" for consistency with § 9-401(d) of this subtitle.

In item (a)(2) of this section, the word "crime" is substituted for the former language "punishable offense" for brevity.

Defined terms: "Escape" § 9-401

"Harbor" § 9-401

"Inmate" § 1-101

"Person" § 1-101

9-404. ESCAPE IN THE FIRST DEGREE.

(A) PROHIBITED -- IN GENERAL.

A PERSON MAY NOT KNOWINGLY ESCAPE FROM A PLACE OF CONFINEMENT.

(B) SAME -- FROM JUVENILE FACILITY WITH ASSAULT.

A PERSON MAY NOT ESCAPE FROM A DETENTION CENTER FOR JUVENILES OR A FACILITY FOR JUVENILES LISTED IN ARTICLE 83C, § 2-117(A)(2) OF THE CODE AND IN THE COURSE OF THE ESCAPE COMMIT AN ASSAULT.

(C) SAME -- VIOLATION OF TEMPORARY RELEASE OR HOME DETENTION.

(1) THIS SUBSECTION APPLIES TO A PERSON WHO IS:

(I) TEMPORARILY RELEASED FROM A PLACE OF CONFINEMENT; OR

(II) COMMITTED TO HOME DETENTION UNDER THE TERMS OF PRETRIAL RELEASE OR BY THE DIVISION OF CORRECTION UNDER TITLE 3, SUBTITLE 4 OF THE CORRECTIONAL SERVICES ARTICLE.

(2) A PERSON MAY NOT KNOWINGLY:

(I) VIOLATE ANY RESTRICTION ON MOVEMENT IMPOSED UNDER THE TERMS OF A TEMPORARY RELEASE OR A HOME DETENTION ORDER OR AGREEMENT; OR

(II) FAIL TO RETURN TO A PLACE OF CONFINEMENT UNDER THE TERMS OF A TEMPORARY RELEASE OR A HOME DETENTION ORDER OR AGREEMENT.

(D) PENALTY.

EXCEPT AS PROVIDED IN § 9-405 OF THIS SUBTITLE, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF ESCAPE IN THE FIRST DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $20,000 OR BOTH.

REVISOR'S NOTE: Subsections (a), (c), and (d) of this section are new language derived without substantive change from former Art. 27, § 137.

Subsection (b) of this section is new language added to state explicitly that which was only implied by the former law, *i.e.* that an escape from a juvenile facility involving an assault is escape in the first degree. *See* § 9-405(a)(4) of this subtitle.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the forms of home detention listed in subsection (c)(1)(ii) of this section do not cover home detention programs administered by counties or other available forms of custodial confinement. *See* Ch. 356, Acts of 2001.

Defined terms: "Escape" § 9-401

"Person" § 1-101

"Place of confinement" § 9-401

9-405. ESCAPE IN THE SECOND DEGREE.

(A) PROHIBITED.

(1) A PERSON WHO HAS BEEN LAWFULLY ARRESTED MAY NOT KNOWINGLY DEPART FROM CUSTODY WITHOUT THE AUTHORIZATION OF A LAW ENFORCEMENT OR JUDICIAL OFFICER.

(2) A PERSON MAY NOT KNOWINGLY FAIL TO OBEY A COURT ORDER TO REPORT TO A PLACE OF CONFINEMENT.

(3) A PERSON WHO IS SERVING A SENTENCE IN A HOME DETENTION PROGRAM OTHER THAN THE DIVISION OF CORRECTION HOME DETENTION PROGRAM UNDER TITLE 3, SUBTITLE 4 OF THE CORRECTIONAL SERVICES ARTICLE MAY NOT KNOWINGLY:

(I) VIOLATE ANY RESTRICTION ON MOVEMENT IMPOSED UNDER THE TERMS OF THE HOME DETENTION ORDER OR AGREEMENT; OR

(II) FAIL TO RETURN TO A PLACE OF CONFINEMENT UNDER THE TERMS OF THE HOME DETENTION ORDER OR AGREEMENT.

(4) EXCEPT AS OTHERWISE PUNISHABLE UNDER § 9-404(B) OF THIS SUBTITLE, A PERSON MAY NOT ESCAPE FROM A DETENTION CENTER FOR JUVENILES OR A FACILITY FOR JUVENILES LISTED IN ARTICLE 83C, § 2-117(A)(2) OF THE CODE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF ESCAPE IN THE SECOND DEGREE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS 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, § 137A.

In subsection (a)(4) of this section, the phrase "[e]xcept as otherwise punishable under § 9-404(b) of this subtitle," is added to distinguish an escape from a juvenile facility not involving an assault under this section from escaping from a juvenile facility "if the escape involves an assault" under § 9-404(b) of this subtitle.

Defined terms: "Escape" § 9-401

"Person" § 1-101

"Place of confinement" § 9-401

9-406. ESCAPE -- VOLUNTARY INTOXICATION NOT A DEFENSE.

VOLUNTARY INTOXICATION IS NOT A DEFENSE TO A CHARGE OF ESCAPE UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 139(b).

The reference to this "subtitle" is substituted for the former reference to this "subheading", although this subtitle is derived, in part, from material outside the former "Escape and Contraband in Places of Confinement" subheading of Article 27. Because the only charges of escape contained in this subtitle arise from material derived from the former "Escape and Contraband in Places of Confinement" subheading, no substantive change results.

Defined term: "Escape" § 9-401

9-407. SAME -- SENTENCING TERMS.

A SENTENCE IMPOSED FOR A VIOLATION OF § 9-404 OR § 9-405 OF THIS SUBTITLE:

(1) SHALL BE CONSECUTIVE TO ANY TERM OF CONFINEMENT BEING SERVED OR TO BE SERVED AT THE TIME OF THE ESCAPE;

(2) MAY NOT BE SUSPENDED; AND

(3) MAY INCLUDE THE ENTRY OF A JUDGMENT FOR ALL REASONABLE EXPENSES INCURRED IN RETURNING THE PERSON TO THE PLACE OF CONFINEMENT IF THE PERSON HAS RECEIVED TIMELY NOTICE OF AND AN OPPORTUNITY TO CONTEST THE ACCURACY OF THE EXPENSES ALLEGEDLY OWED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 139(a).

Defined terms: "Escape" § 9-401

"Person" § 1-101

"Place of confinement" § 9-401

9-408. RESERVED.

9-409. RESERVED.

PART II. CONTRABAND -- PLACES OF CONFINEMENT.

9-410. DEFINITIONS.

(A) IN GENERAL.

IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 138(a)(1).

In this subsection and throughout this part the references to this "part" are substituted for the former references to this "section" to reflect the reorganization of material derived from former Art. 27, § 138.

(B) ALCOHOLIC BEVERAGE.

"ALCOHOLIC BEVERAGE" MEANS BEER, WINE, OR DISTILLED SPIRITS.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 138(a)(2).

No changes are made.

(C) CONTRABAND.

"CONTRABAND" MEANS ANY ITEM, MATERIAL, SUBSTANCE, OR OTHER THING OF VALUE THAT:

(1) IS NOT AUTHORIZED FOR INMATE POSSESSION BY THE MANAGING OFFICIAL; OR

(2) IS BROUGHT INTO THE CORRECTIONAL FACILITY IN A MANNER PROHIBITED BY THE MANAGING OFFICIAL.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 138(a)(3).

No changes are made.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in the introductory language to this subsection, the reference to a thing "of value" is confusing, and should be deleted. It is unclear whether the standard of "value" relates to the prison environment or to the outside world. The General Assembly may wish to delete this reference in substantive legislation.

Defined terms: "Correctional facility" § 1-101

"Inmate" § 1-101

(D) CONTROLLED DANGEROUS SUBSTANCE.

"CONTROLLED DANGEROUS SUBSTANCE" HAS THE MEANING STATED IN § 5-101 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 138(a)(4)(i).

The former limitation "[e]xcept as provided in subparagraph (ii) of this paragraph" is deleted in light of the revision of former Art. 27, § 138(a)(4)(ii), which authorized certain prescribed inmate medications, as a scope provision in § 9-411 of this part.

(E) MANAGING OFFICIAL.

"MANAGING OFFICIAL" MEANS THE ADMINISTRATOR, DIRECTOR, WARDEN, SUPERINTENDENT, SHERIFF, OR OTHER INDIVIDUAL RESPONSIBLE FOR THE MANAGEMENT OF A PLACE OF CONFINEMENT.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 138(a)(5).

No changes are made.

Defined term: "Place of confinement" §§ 9-401, 9-410

(F) PLACE OF CONFINEMENT.

(1) "PLACE OF CONFINEMENT" HAS THE MEANING STATED IN § 9-401 OF THIS SUBTITLE.

(2) "PLACE OF CONFINEMENT" DOES NOT INCLUDE A PLACE IDENTIFIED IN A HOME DETENTION ORDER OR AGREEMENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 138(a)(6).

Paragraph (1) of this section is new language added to clarify that this definition of "place of confinement" restricts the general definition of the same term in § 9-401 of this subtitle.

Defined term: "Place of confinement" § 9-401

(G) WEAPON.

"WEAPON" MEANS A GUN, KNIFE, CLUB, EXPLOSIVE, OR OTHER ARTICLE THAT CAN BE USED TO KILL OR INFLICT BODILY INJURY.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 138(a)(7).

The former reference to "maim[ing]" is deleted as included in the reference to "inflict[ing] bodily injury". The separate crime of "maiming", formerly found in Art. 27, §§ 384 through 386, was incorporated into assault. *See* Ch. 632, Acts of 1996.

No other changes are made.

9-411. SCOPE OF PART.

THIS PART DOES NOT APPLY TO A DRUG OR SUBSTANCE THAT IS LEGALLY POSSESSED BY AN INDIVIDUAL UNDER A WRITTEN PRESCRIPTION ISSUED BY A PERSON AUTHORIZED BY LAW AND DESIGNATED BY THE MANAGING OFFICIAL TO PRESCRIBE INMATE MEDICATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 138(a)(4)(ii).

It is revised as a scope provision for this part rather than as a limitation of the defined term "controlled dangerous substance" for clarity.

Defined terms: "Inmate" § 1-101

"Managing official" § 9-410

"Person" § 1-101

9-412. CONTRABAND -- IN GENERAL.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) DELIVER ANY CONTRABAND TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT; OR

(2) POSSESS ANY CONTRABAND WITH INTENT TO DELIVER IT TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT.

(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 $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 138(d).

Defined terms: "Contraband" § 9-410

"Person" § 1-101

"Place of confinement" §§ 9-401, 9-410

9-413. SAME -- FOR ESCAPE.

(A) PROHIBITED.

(1) A PERSON MAY NOT DELIVER CONTRABAND TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT WITH THE INTENT TO EFFECT AN ESCAPE.

(2) A PERSON MAY NOT POSSESS CONTRABAND WITH THE INTENT TO DELIVER IT TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT TO EFFECT AN ESCAPE.

(3) A PERSON MAY NOT DEPOSIT OR CONCEAL ANY CONTRABAND IN OR ABOUT A PLACE OF CONFINEMENT OR ON ANY LAND APPURTENANT TO THE PLACE OF CONFINEMENT TO EFFECT AN ESCAPE.

(4) A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT MAY NOT RECEIVE CONTRABAND TO EFFECT AN ESCAPE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS 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, § 138(c).

Defined terms: "Contraband" § 9-410

"Escape" § 9-401

"Person" § 1-101

"Place of confinement" §§ 9-401, 9-410

9-414. SAME -- WEAPON.

(A) PROHIBITED.

(1) A PERSON MAY NOT DELIVER A WEAPON TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT.

(2) A PERSON MAY NOT POSSESS A WEAPON WITH THE INTENT TO DELIVER IT TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT.

(3) A PERSON MAY NOT DEPOSIT OR CONCEAL A WEAPON IN OR ABOUT A PLACE OF CONFINEMENT OR ON ANY LAND APPURTENANT TO THE PLACE OF CONFINEMENT TO EFFECT AN ESCAPE.

(4) A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT MAY NOT RECEIVE A WEAPON.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS 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, § 138(b).

Defined terms: "Escape" § 9-401

"Person" § 1-101

"Place of confinement" §§ 9-401, 9-410

"Weapon" § 9-410

9-415. SAME -- ALCOHOLIC BEVERAGE.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO AN ALCOHOLIC BEVERAGE DELIVERED OR POSSESSED IN A MANNER AUTHORIZED BY THE MANAGING OFFICIAL.

(B) PROHIBITED.

A PERSON MAY NOT:

(1) DELIVER AN ALCOHOLIC BEVERAGE TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT; OR

(2) POSSESS AN ALCOHOLIC BEVERAGE WITH THE INTENT TO DELIVER IT TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT.

(C) 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 $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 138(e).

Defined terms: "Alcoholic beverage" § 9-410

"Managing official" § 9-410

"Person" § 1-101

"Place of confinement" §§ 9-401, 9-410

9-416. SAME -- CONTROLLED DANGEROUS SUBSTANCE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) DELIVER A CONTROLLED DANGEROUS SUBSTANCE TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT; OR

(2) POSSESS A CONTROLLED DANGEROUS SUBSTANCE WITH THE INTENT TO DELIVER IT TO A PERSON DETAINED OR CONFINED IN A PLACE OF CONFINEMENT.

(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 $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 138(f).

Defined terms: "Controlled dangerous substance" § 9-410

"Person" § 1-101

"Place of confinement" §§ 9-401, 9-410

9-417. SEPARATE SENTENCE.

A SENTENCE IMPOSED UNDER THIS PART MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE CRIME UNDER THIS PART.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 138(g).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in light of the availability of consecutive sentences under this section, the rule of lenity does not appear to apply to a conviction for violating §§ 9-412 and 9-416 of this part, relating to

contraband in general and a controlled dangerous substance as contraband, respectively, and Title 5 of this article, relating to controlled dangerous substance and similar crimes.

SUBTITLE 5. FALSE STATEMENTS.

9-501. FALSE STATEMENT -- TO LAW ENFORCEMENT OFFICER.

(A) PROHIBITED.

A PERSON MAY NOT MAKE, OR CAUSE TO BE MADE, A STATEMENT, REPORT, OR COMPLAINT THAT THE PERSON KNOWS TO BE FALSE AS A WHOLE OR IN MATERIAL PART, TO A LAW ENFORCEMENT OFFICER OF THE STATE, OF A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION OF THE STATE, OR OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING POLICE WITH INTENT TO DECEIVE AND TO CAUSE AN INVESTIGATION OR OTHER ACTION TO BE TAKEN AS A RESULT OF THE STATEMENT, REPORT, OR COMPLAINT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 150(a) and (c).

In subsection (a) of this section, the term "municipal corporation" is substituted for the former term "city" to conform to Md. Constitution, Art. XI-E.

Also in subsection (a) of this section, the reference to a "law enforcement" officer is substituted for the former reference to a "peace or police" officer for consistency within this article.

Defined terms: "County" § 1-101

"Person" § 1-101

9-502. SAME -- WHEN UNDER ARREST.

(A) PROHIBITED.

A PERSON WHO IS ARRESTED BY A LAW ENFORCEMENT OFFICER OF THE STATE, OF A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION OF THE STATE, OR OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING POLICE MAY NOT KNOWINGLY, AND WITH INTENT TO DECEIVE, MAKE A FALSE STATEMENT TO A LAW ENFORCEMENT OFFICER CONCERNING THE PERSON'S IDENTITY, ADDRESS, OR DATE OF BIRTH.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 150(b) and (c).

In subsection (a) of this section, the references to a "law enforcement" officer are substituted for the former references to a "peace or police" officer for consistency within this article.

Defined terms: "County" § 1-101

"Person" § 1-101

9-503. SAME -- TO PUBLIC OFFICIAL CONCERNING CRIME OR HAZARD.

(A) PROHIBITED.

A PERSON MAY NOT MAKE, OR CAUSE TO BE MADE, A STATEMENT OR REPORT THAT THE PERSON KNOWS TO BE FALSE AS A WHOLE OR IN MATERIAL PART TO AN OFFICIAL OR UNIT OF THE STATE OR OF A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION OF THE STATE THAT A CRIME HAS BEEN COMMITTED OR THAT A CONDITION IMMINENTLY DANGEROUS TO PUBLIC SAFETY OR HEALTH EXISTS, WITH THE INTENT THAT THE OFFICIAL OR UNIT INVESTIGATE, CONSIDER, OR TAKE ACTION IN CONNECTION WITH THAT STATEMENT OR REPORT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from the initial clause of former Art. 27, § 151.

In subsection (a) of this section, the term "municipal corporation" is substituted for the former word "city" to conform to Md. Constitution, Art. XI-E.

Also in subsection (a) of this section, the word "unit" is substituted for the former word "agency", for consistency within this article. *See* General Revisor's Note to article.

In subsection (b) of this section, the former reference to "the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined terms: "County" § 1-101

"Person" § 1-101

9-504. SAME -- CONCERNING DESTRUCTIVE DEVICE OR TOXIC MATERIAL.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A STATEMENT MADE OR RUMOR CIRCULATED BY AN OFFICER, EMPLOYEE, OR AGENT OF A BONA FIDE CIVILIAN DEFENSE ORGANIZATION OR UNIT, IF MADE IN THE REGULAR COURSE OF THE PERSON'S DUTIES.

(B) PROHIBITED.

A PERSON MAY NOT CIRCULATE OR TRANSMIT TO ANOTHER, WITH INTENT THAT IT BE ACTED ON, A STATEMENT OR RUMOR THAT THE PERSON KNOWS TO BE FALSE ABOUT THE LOCATION OR POSSIBLE DETONATION OF A DESTRUCTIVE DEVICE OR THE LOCATION OR POSSIBLE RELEASE OF TOXIC MATERIAL, AS THOSE TERMS ARE DEFINED IN § 4-501 OF THIS ARTICLE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

(D) VENUE.

A CRIME UNDER THIS SECTION COMMITTED USING A TELEPHONE OR OTHER ELECTRONIC MEANS MAY BE PROSECUTED:

(1) IN THE COUNTY IN WHICH THE COMMUNICATION ORIGINATED; OR

(2) IN THE COUNTY IN WHICH THE COMMUNICATION WAS RECEIVED.

(E) RESTITUTION.

(1) IN ADDITION TO THE PENALTY PROVIDED IN SUBSECTION (C) OF THIS SECTION, A COURT MAY ORDER A PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER THIS SECTION TO PAY RESTITUTION TO:

(I) THE STATE, COUNTY, MUNICIPAL CORPORATION, BICOUNTY UNIT, OR SPECIAL TAXING DISTRICT FOR ACTUAL COSTS REASONABLY INCURRED DUE TO THE RESPONSE TO A LOCATION AND SEARCH FOR A DESTRUCTIVE DEVICE CAUSED BY THE FALSE STATEMENT OR RUMOR OF A DESTRUCTIVE DEVICE; AND

(II) THE OWNER OR TENANT OF A PROPERTY FOR THE ACTUAL VALUE OF ANY GOODS, SERVICES, OR INCOME LOST AS A RESULT OF THE EVACUATION OF THE PROPERTY IN RESPONSE TO THE FALSE STATEMENT OR RUMOR OF A DESTRUCTIVE DEVICE.

(2) THIS SUBSECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A PERSON TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE.

(3) (I) IF THE PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER THIS SECTION IS A MINOR, THE COURT MAY ORDER THE MINOR, THE MINOR'S PARENT, OR BOTH TO PAY THE RESTITUTION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(II) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE PROVISIONS OF TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE APPLY TO AN ORDER OF RESTITUTION UNDER THIS PARAGRAPH.

(F) LICENSE SUSPENSION OF MINOR.

IN ADDITION TO ANY OTHER PENALTY AUTHORIZED BY LAW, IF THE PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER THIS SECTION IS A MINOR, THE COURT MAY ORDER THE MOTOR VEHICLE ADMINISTRATION TO INITIATE AN ACTION, UNDER THE MOTOR VEHICLE LAWS, TO SUSPEND THE DRIVING PRIVILEGE OF THE MINOR FOR A SPECIFIED PERIOD NOT TO EXCEED:

(1) FOR A FIRST VIOLATION, 6 MONTHS; AND

(2) FOR EACH SUBSEQUENT VIOLATION, 1 YEAR OR UNTIL THE PERSON IS 21 YEARS OLD, WHICHEVER IS LONGER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 151A.

In subsection (b) of this section, the phrase "written, printed, by any electronic means, or by word of mouth" which formerly modified "statement" or "rumor" is deleted as surplusage.

In subsection (c) of this section, the former reference to a violator being subject to imprisonment or fine "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Subsection (d) of this section is revised as a venue provision for clarity.

In subsection (d) of this section, the references to "communication" are substituted for the former phrase "telephone call or calls or electronic communication" for brevity.

In subsection (e)(1)(i) of this section, the word "unit" is substituted for the former word "agency" for consistency within this article. *See* General Revisor's Note to article.

In subsections (e)(3) and (f) of this section, the defined term "minor" is substituted for the former defined term "child" for consistency within this article.

In subsection (f)(2) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a second or" subsequent

violation for consistency within this article.

Former Art. 27, § 151A(a), which defined "child" to mean a person under the age of 18 years, is deleted as unnecessary.

For provisions relating to destructive devices, *see* Title 4, Subtitle 5 of this article.

Defined terms: "County" § 1-101

"Minor" § 1-101

"Person" § 1-101

9-505. REPRESENTATION OF DESTRUCTIVE DEVICE.

(A) PROHIBITED.

A PERSON MAY NOT MANUFACTURE, POSSESS, TRANSPORT, OR PLACE A DEVICE THAT IS CONSTRUCTED TO REPRESENT A DESTRUCTIVE DEVICE, AS DEFINED IN § 4-501 OF THIS ARTICLE, WITH THE INTENT TO TERRORIZE, FRIGHTEN, INTIMIDATE, THREATEN, OR HARASS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

(C) RESTITUTION.

(1) IN ADDITION TO THE PENALTY PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER THIS SECTION MAY BE ORDERED BY THE COURT TO PAY RESTITUTION TO:

(I) THE STATE, COUNTY, MUNICIPAL CORPORATION, BICOUNTY UNIT, OR SPECIAL TAXING DISTRICT FOR ACTUAL COSTS REASONABLY INCURRED IN THE SEARCH FOR AND REMOVAL OF A DEVICE CONSTRUCTED TO REPRESENT A DESTRUCTIVE DEVICE; AND

(II) THE OWNER OR TENANT OF A PROPERTY FOR THE ACTUAL VALUE OF ANY GOODS, SERVICES, OR INCOME LOST AS A RESULT OF THE EVACUATION OF THE PROPERTY IN RESPONSE TO A DEVICE THAT IS CONSTRUCTED TO REPRESENT A DESTRUCTIVE DEVICE.

(2) THIS SUBSECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A PERSON TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE.

(3) (I) IF THE PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT IN VIOLATION OF THIS SECTION IS A MINOR, THE COURT MAY

ORDER THE MINOR, THE MINOR'S PARENT, OR BOTH TO PAY THE RESTITUTION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(II) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE PROVISIONS OF TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE APPLY TO AN ORDER OF RESTITUTION UNDER THIS PARAGRAPH.

(D) LICENSE SUSPENSION OF MINOR.

IN ADDITION TO ANY OTHER PENALTY AUTHORIZED BY LAW, IF THE PERSON CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER THIS SECTION IS A MINOR, THE COURT MAY ORDER THE MOTOR VEHICLE ADMINISTRATION TO INITIATE AN ACTION, UNDER THE MOTOR VEHICLE LAWS, TO SUSPEND THE DRIVING PRIVILEGE OF THE MINOR FOR A SPECIFIED PERIOD NOT TO EXCEED:

(1) FOR A FIRST VIOLATION, 6 MONTHS; AND

(2) FOR EACH SUBSEQUENT VIOLATION, 1 YEAR OR UNTIL THE PERSON IS 21 YEARS OLD, WHICHEVER IS LONGER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 151C.

In subsection (c)(1)(i) of this section, the word "unit" is substituted for the former word "agency" for consistency within this article. *See* General Revisor's Note to article.

Also in subsection (c)(1)(i) of this section, the reference to a "device that is constructed to represent" a destructive device is substituted for the former reference to the "representation of" a destructive device for clarity and consistency within this section.

In subsections (c)(3) and (d) of this section, the defined term "minor" is substituted for the former defined term "child" for consistency within this article.

In subsection (d)(1) and (2) of this section, the references to a "violation" are substituted for the former references to an "offense" for consistency within this article. *See* General Revisor's Note to article.

In subsection (d)(2) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a second or" subsequent violation for consistency within this article.

Former Art. 27, § 151C(a), which defined "child" to mean a person under the age of 18 years, is deleted as unnecessary.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the restitution to government units under

subsection (c)(1)(i) of this section only includes costs "in the search for and removal of" a representation of a destructive device, whereas the restitution available to government units under § 9-504(e)(1)(i) of this subtitle includes costs "due to the response to a location and search" for a destructive device or toxic material. The General Assembly may wish to address the disparity in the restitution available to government units under these two provisions.

Defined terms: "County" § 1-101

"Minor" § 1-101

"Person" § 1-101

9-506. MARYLAND HIGHER EDUCATION COMMISSION FUND APPLICATION -- FALSE OR CONCEALED MATERIAL FACT.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY AND WILLFULLY FALSIFY OR CONCEAL A MATERIAL FACT IN CONNECTION WITH AN APPLICATION FOR FUNDS FROM THE MARYLAND HIGHER EDUCATION COMMISSION.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(C) NOTICE TO APPLICANT.

THE MARYLAND HIGHER EDUCATION COMMISSION SHALL NOTIFY EACH APPLICANT FOR FUNDS OF THE CONDUCT THAT CONSTITUTES A VIOLATION OF THIS SECTION BEFORE A STATE SCHOLARSHIP AWARD OR GRANT IS AWARDED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 151B.

Defined term: "Person" § 1-101

9-507. COMMON-LAW CRIMINAL DEFAMATION REPEALED.

THE COMMON-LAW CRIME OF CRIMINAL DEFAMATION IS REPEALED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 150A.

The former reference to criminal defamation being "abrogated" is deleted in light of the reference to it being "repealed".

SUBTITLE 6. INTERFERENCE WITH GOVERNMENT OPERATIONS.

PART I. IN GENERAL.

9-601. INTERFERENCE WITH EMERGENCY COMMUNICATION.

(A) "EMERGENCY" DEFINED.

IN THIS SECTION, "EMERGENCY" MEANS A CIRCUMSTANCE IN WHICH:

(1) AN INDIVIDUAL IS OR IS REASONABLY BELIEVED BY THE PERSON TRANSMITTING THE COMMUNICATION TO BE IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY HARM; OR

(2) PROPERTY IS IN IMMINENT DANGER OF DAMAGE OR DESTRUCTION.

(B) PROHIBITED.

A PERSON MAY NOT:

(1) KNOWINGLY, INTENTIONALLY, OR RECKLESSLY INTERRUPT, DISRUPT, IMPEDE, OR OTHERWISE INTERFERE WITH THE TRANSMISSION OF A TWO-WAY RADIO COMMUNICATION MADE:

(I) TO INFORM OR INQUIRE ABOUT AN EMERGENCY; AND

(II) ON A FREQUENCY COMMONLY USED OR MONITORED BY AN EMERGENCY SERVICES ORGANIZATION; OR

(2) TRANSMIT FALSE INFORMATION ABOUT AN EMERGENCY ON A TWO-WAY RADIO FREQUENCY COMMONLY USED OR MONITORED BY AN EMERGENCY SERVICES ORGANIZATION.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(D) SEIZURE AND FORFEITURE OF PROPERTY.

(1) A TWO-WAY RADIO AND RELATED EQUIPMENT USED IN VIOLATION OF THIS SECTION IS SUBJECT TO SEIZURE.

(2) ON CONVICTION OF A VIOLATION OF THIS SECTION, ANY PROPERTY SEIZED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE FORFEITED TO THE STATE AND NO PROPERTY RIGHT SHALL EXIST IN THE PROPERTY.

(3) ANY PROPERTY THAT IS FORFEITED UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL BE TURNED OVER TO THE SECRETARY OF GENERAL SERVICES, WHO MAY:

(I) ORDER THAT THE PROPERTY BE RETAINED FOR OFFICIAL USE OF STATE UNITS; OR

(II) OTHERWISE DISPOSE OF THE PROPERTY AS THE SECRETARY CONSIDERS APPROPRIATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 125A.

In subsection (a) of this section, the former reference to a "condition" is deleted as surplusage.

Also in subsection (a) of this section, the former phrase "by the person transmitting the communication" is deleted as surplusage.

In subsections (b) and (c) of this section, the references to a "person" are substituted for the former references to an "individual" for consistency within this article.

In subsection (b) of this section, the former reference to acting "with criminal negligence" is deleted as surplusage. Criminal negligence appears to be encompassed in the reference to acting "recklessly".

In subsection (b)(1)(ii) and (2) of this section, the former references to "civilian or governmental" emergency services organizations are deleted as surplusage.

In subsection (d) of this section, the former phrase "as the Secretary may deem appropriate" is deleted as surplusage.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (d)(3)(ii) of this section, the Secretary of General Services apparently has not adopted guidelines for the disposition of proceeds of property that is disposed of.

Defined term: "Person" § 1-101

9-602. STATE PERSONNEL MONITORING OR RECORDING TELEPHONE CONVERSATION.

(A) PROHIBITED.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A STATE OFFICIAL OR EMPLOYEE MAY NOT DIRECTLY OR INDIRECTLY MONITOR OR RECORD IN ANY MANNER A TELEPHONE CONVERSATION MADE TO OR FROM A STATE UNIT.

(2) IF PRIOR APPROVAL IS GRANTED BY THE ATTORNEY GENERAL, A STATE OFFICIAL OR EMPLOYEE MAY MONITOR OR RECORD A TELEPHONE CONVERSATION:

(I) ON TELEPHONE LINES USED EXCLUSIVELY FOR INCOMING POLICE, FIRE, AND RESCUE CALLS; OR

(II) WITH RECORDER-CONNECTOR EQUIPMENT THAT AUTOMATICALLY PRODUCES A DISTINCTIVE RECORDER TONE REPEATED AT APPROXIMATELY 15-SECOND INTERVALS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND IS SUBJECT TO A FINE NOT EXCEEDING $1,000.

(C) DISMISSAL.

CONVICTION OF A VIOLATION OF THIS SECTION IS ALSO GROUNDS FOR IMMEDIATE DISMISSAL FROM STATE EMPLOYMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 555B.

In subsection (a) of this section, the reference to authorizing a State official or employee to monitor or record a telephone conversation on telephone lines used exclusively for incoming police, fire, and rescue calls with prior approval of the Attorney General is substituted for the former qualification that on telephone lines used for incoming police, fire, and rescue calls "it is not necessary to append" a recorder tone for clarity.

Also in subsection (a) of this section, the former phrase "contains a device" is deleted as surplusage.

Subsection (a)(2) of this section is revised to require only a single approval from the Attorney General to monitor a telephone conversation generally, using a 15-second beep tone, and to monitor a line used exclusively for incoming police, fire, and rescue calls, known as a "tone waiver eligible" telephone line and on which the beep tone is not used. Former Art. 27, § 555B(a) was unclear as to whether a single approval for monitoring sufficed, or whether a second, specific approval was needed to monitor without the beep tone on a tone waiver eligible line. The Attorney General advises that the practice has been to regard the general approval to monitor as tacit approval to monitor on a tone waiver eligible line. The revision reflects the practice of the Attorney General. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, p. 16 (October 17, 2000).

In subsection (b) of this section, the phrase "guilty of a misdemeanor" is added to state explicitly that which was only implied by the former law. In this State, any crime that was not considered a felony at common law and has not been declared a felony by statute is considered a misdemeanor. *See State v. Canova*, 278 Md. 483, 490 (1976); *Bowser v. State*, 136 Md. 342, 354 (1920); *Dutton v. State*, 123 Md. 373, 378 (1914); and *Williams v. State*, 4

Md. App. 342, 347 (1968).

Defined term: "Person" § 1-101

9-603. PRERECORDED EMERGENCY MESSAGE.

(A) PROHIBITED.

A PERSON MAY NOT ATTACH A DEVICE TO A TELEPHONE OR TELEPHONE LINE THAT DIALS BY REMOTE CONTROL A PREPROGRAMMED NUMBER AND TRANSMITS A PRERECORDED MESSAGE COMMUNICATING AN EXISTING EMERGENCY CONDITION, INCLUDING FIRE, ILLNESS, OR CRIME, WITHOUT WRITTEN APPROVAL FOR THE USE OF THE DEVICE FROM THE HOLDER OF THE NUMBER DIALED.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $50 FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 557B.

In subsection (a) of this section, the phrase "recipient of the message" is substituted for the former phrase "each holder of the telephone, which receives the prerecorded message" for clarity.

In subsection (b) of this section, the former reference to a "firm, or corporation" is deleted in light of the defined term "person".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (a) of this section appears to prohibit the mere attachment of remote dialing equipment rather than its use to transmit a message to a holder of the receiving telephone number. As a result, a person who attaches remote dialing equipment that dials many numbers whose holders have not approved use of the remote dialer would be chargeable only with one violation subject to a $50 fine, not: (1) $50 multiplied by the number of unapproving receiving numbers, or (2) $50 multiplied by the number of remote dialing incidents. The General Assembly may wish to address these matters in substantive legislation.

Defined term: "Person" § 1-101

9-604. FALSE ALARM.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY MAKE OR CAUSE TO BE MADE A FALSE:

(1) FIRE ALARM; OR

(2) CALL FOR AN AMBULANCE OR RESCUE SQUAD.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS 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, § 156.

In subsection (a) of this section, the phrase "make or cause to be made" is substituted for the former phrase "give or cause to be given" for clarity.

Also in subsection (a) of this section, the former references to a "telegraph box connected with any fire alarm telegraph or ... telephone or telegraph system, or ... other means or method" and to a "telephone or ... other means or method" are deleted as surplusage.

In subsection (b) of this section, the former reference to both "fine and imprisonment" is deleted as surplusage and for consistency within this article.

Defined term: "Person" § 1-101

GENERAL REVISOR'S NOTE TO PART

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that many of the electronic means of conveying false messages that interfere with governmental operations today are not covered by the provisions revised in this part. Cable equipment, computer networks, and hybrid wireless devices, as examples, are all capable of being used to send false alarms and related information to governmental units. The General Assembly may wish to address the scope of this part in substantive legislation.

9-605. RESERVED.

9-606. RESERVED.

PART II. ALARM SYSTEMS.

9-607. DEFINITIONS.

(A) IN GENERAL.

IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 156A(a).

The reference to this "part" is substituted for the former erroneous reference to this "subtitle" to reflect the reorganization of material derived from the former "Burglary and Robbery False Alarm" subheading in

Article 27.

No other changes are made.

(B) ALARM SYSTEM.

"ALARM SYSTEM" MEANS A BURGLARY ALARM SYSTEM, ROBBERY ALARM SYSTEM, OR AUTOMATIC FIRE ALARM SYSTEM.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 156A(c).

No changes are made.

(C) ALARM SYSTEM CONTRACTOR.

(1) "ALARM SYSTEM CONTRACTOR" MEANS A PERSON WHO INSTALLS, MAINTAINS, MONITORS, ALTERS, OR SERVICES ALARM SYSTEMS.

(2) "ALARM SYSTEM CONTRACTOR" DOES NOT INCLUDE A PERSON WHO ONLY MANUFACTURES OR SELLS ALARM SYSTEMS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 156A(d).

In paragraph (1) of this subsection, the former reference to an "agency that furnishes the services of a person engaged in" is deleted as included in the defined term "person".

Also in paragraph (1) of this subsection, the former phrase "engaged in" is deleted as surplusage.

In paragraph (2) of this subsection, the defined term "alarm system[s]" is substituted for the former term "alarm devices" for consistency within this part.

Also in paragraph (2) of this subsection, the former phrase "unless that person services, installs, monitors, or responds to alarm systems at protected premises" is deleted as surplusage since such a person is included in the term "alarm system contractor" defined in paragraph (1) of this subsection.

Defined term: "Person" § 1-101

(D) ALARM USER.

"ALARM USER" MEANS:

(1) A PERSON IN CONTROL OF AN ALARM SYSTEM WITHIN, ON, OR AROUND ANY BUILDING, STRUCTURE, FACILITY, OR SITE; OR

(2) THE OWNER OR LESSEE OF AN ALARM SYSTEM.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 156A(e).

Defined term: "Person" § 1-101

(E) FALSE ALARM.

(1) "FALSE ALARM" MEANS A REQUEST FOR IMMEDIATE ASSISTANCE FROM A LAW ENFORCEMENT UNIT OR FIRE DEPARTMENT REGARDLESS OF CAUSE THAT IS NOT IN RESPONSE TO AN ACTUAL EMERGENCY SITUATION OR THREATENED SUGGESTED CRIMINAL ACTIVITY.

(2) "FALSE ALARM" INCLUDES:

(I) A NEGLIGENTLY OR ACCIDENTALLY ACTIVATED SIGNAL;

(II) A SIGNAL THAT IS ACTIVATED AS THE RESULT OF FAULTY, MALFUNCTIONING, OR IMPROPERLY INSTALLED OR MAINTAINED EQUIPMENT; AND

(III) A SIGNAL THAT IS PURPOSELY ACTIVATED IN A NONEMERGENCY SITUATION.

(3) "FALSE ALARM" DOES NOT INCLUDE:

(I) A SIGNAL ACTIVATED BY UNUSUALLY SEVERE WEATHER CONDITIONS OR OTHER CAUSES BEYOND THE CONTROL OF THE ALARM USER OR ALARM SYSTEM CONTRACTOR; OR

(II) A SIGNAL ACTIVATED WITHIN 60 DAYS AFTER A NEW INSTALLATION OF AN ALARM SYSTEM.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 156A(g)(1), (2), and (3).

(F) LAW ENFORCEMENT UNIT.

"LAW ENFORCEMENT UNIT" MEANS THE DEPARTMENT OF STATE POLICE, THE POLICE DEPARTMENT OF A COUNTY OR MUNICIPAL CORPORATION, AND A SHERIFF'S DEPARTMENT OR OTHER GOVERNMENTAL LAW ENFORCEMENT UNIT HAVING EMPLOYEES AUTHORIZED TO MAKE ARRESTS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 156A(f).

The word "unit" is substituted for the former word "agency" for consistency within this article. *See* General Revisor's Note to article.

The former reference to "Baltimore City Police" is deleted as included in the reference to the "police department of a county" since Baltimore City is included in the defined term "county". *See* § 1-101 of this article.

The reference to a "municipal corporation" is substituted for the former reference to an "incorporated municipality" to conform to Md. Constitution, Art. XI-E.

The reference to a "governmental" law enforcement unit is added for clarity. The Criminal Law Article Review Committee brings this addition to the attention of the General Assembly.

Defined term: "County" § 1-101

(G) SIGNAL.

"SIGNAL" MEANS THE ACTIVATION OF AN ALARM SYSTEM THAT REQUESTS A RESPONSE BY A LAW ENFORCEMENT UNIT OR A FIRE DEPARTMENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 156A(b).

In this subsection, the word "signal" is substituted for the former phrase "[a]larm signal" for clarity and consistency within this part.

9-608. NONEMERGENCY ACTIVATION OF SIGNAL.

(A) PROHIBITED.

A PERSON MAY NOT INTENTIONALLY ACTIVATE A SIGNAL FOR A NONEMERGENCY SITUATION.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 156B.

Defined terms: "Person" § 1-101

"Signal" § 9-607

9-609. MULTIPLE FALSE ALARMS.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY:

(1) TO ALARM SYSTEMS ACTIVATED BY WEATHER CONDITIONS OR CAUSES BEYOND THE CONTROL OF THE ALARM USER;

(2) IN FREDERICK COUNTY IF THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY ADOPTS REGULATIONS UNDER ARTICLE 25, § 211A OF THE

CODE PROVIDING FOR THE REGISTRATION OF ALARM SYSTEM CONTRACTORS AND ALARM USERS, THE ISSUANCE OF CIVIL CITATIONS, AND PENALTIES FOR A VIOLATION OF A REGULATION; OR

(3) IN CALVERT COUNTY IF THE BOARD OF COUNTY COMMISSIONERS OF CALVERT COUNTY ADOPTS REGULATIONS UNDER ARTICLE 25, § 236D OF THE CODE PROVIDING FOR THE REGISTRATION OF ALARM SYSTEM CONTRACTORS AND ALARM USERS, THE ISSUANCE OF CIVIL CITATIONS, AND PENALTIES FOR A VIOLATION OF A REGULATION.

(B) RULE OF CONSTRUCTION -- OCCURRENCES AS SINGLE ALARM.

AN ALARM SYSTEM THAT IS ACTIVATED MORE THAN ONCE WITHIN A 12-HOUR PERIOD WHEN A PREMISES WITH AN ALARM SYSTEM IS UNOCCUPIED AND THAT IS NOT IN RESPONSE TO AN ACTUAL EMERGENCY SITUATION OR THREATENED SUGGESTED CRIMINAL ACTIVITY CONSTITUTES ONE FALSE ALARM IF:

(1) ACCESS TO THE BUILDING IS PROVIDED TO THE ALARM SYSTEM CONTRACTOR; AND

(2) AN ALARM SYSTEM CONTRACTOR OR AN EMPLOYEE OF AN ALARM SYSTEM CONTRACTOR RESPONDS TO THE ACTIVATED ALARM SYSTEM.

(C) CIVIL CITATION AND PENALTY.

(1) A LAW ENFORCEMENT UNIT OR FIRE DEPARTMENT MAY ISSUE A CIVIL CITATION TO AN ALARM USER FOR THE NEGLIGENT OR ACCIDENTAL ACTIVATION OF AN ALARM SYSTEM AS A RESULT OF FAULTY, MALFUNCTIONING, OR IMPROPERLY INSTALLED OR MAINTAINED EQUIPMENT OR FOR A FALSE ALARM IF THE NUMBER OF ACTIVATIONS OR FALSE ALARMS TO WHICH THE LAW ENFORCEMENT UNIT OR FIRE DEPARTMENT RESPONDS EXCEEDS:

(I) THREE RESPONSES WITHIN A 30-DAY PERIOD; OR

(II) EIGHT RESPONSES WITHIN A 12-MONTH PERIOD.

(2) A CIVIL CITATION ISSUED UNDER THIS SECTION SHALL ASSESS A PENALTY OF $30 FOR EACH NEGLIGENT OR ACCIDENTAL ACTIVATION OR FALSE ALARM.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 156C and 156A(g)(4)(i).

In subsection (a)(1) of this section, the former reference to "acts of God" is deleted as included in the reference to "causes beyond the control of the alarm user".

Subsection (a)(2) and (3) of this section is revised as two separate paragraphs, relating to Frederick County and Calvert County, respectively, to avoid the unintended consequence in former Art. 27, § 156C(a) that

action by the board of county commissioners of either county would exempt both counties from this section.

In subsection (a)(3) of this section, the reference to Article 25, § "236D" of the Code is substituted for the former incorrect reference to "§ 237" for accuracy.

In subsection (b) of this section, the reference to an alarm system activated "more than once" within a specific period is substituted for the former reference to an alarm system activated "a second time" within a specific period for clarity.

Former Art. 27, § 156A(g)(4)(ii), which provided that failing to comply with certain conditions would result in multiple alarms being treated as such, is deleted as surplusage, since those conditions, which are revised in subsection (b) of this section, must be met before multiple alarms may be treated as a single false alarm.

Defined terms: "Alarm system" § 9-607

"Alarm system contractor" § 9-607

"Alarm user" § 9-607

"False alarm" § 9-607

"Law enforcement unit" § 9-607

9-610. DEFECTIVE ALARM SYSTEM.

(A) "DEFECTIVE ALARM SYSTEM" DEFINED.

IN THIS SECTION, "DEFECTIVE ALARM SYSTEM" MEANS AN ALARM SYSTEM THAT ACTIVATES:

(1) MORE THAN THREE FALSE ALARMS WITHIN A 30-DAY PERIOD; OR

(2) EIGHT OR MORE FALSE ALARMS WITHIN A 12-MONTH PERIOD.

(B) NOTICE OF DEFECT; REPORT.

(1) A LAW ENFORCEMENT UNIT OR FIRE DEPARTMENT THAT RESPONDS TO FALSE ALARMS FROM A DEFECTIVE ALARM SYSTEM SHALL PROVIDE WRITTEN NOTICE OF THE DEFECTIVE CONDITION TO THE ALARM USER.

(2) THE ALARM USER, WITHIN 30 DAYS AFTER RECEIVING THE NOTICE, SHALL:

(I) 1. IF QUALIFIED, INSPECT THE ALARM SYSTEM; OR

2. HAVE THE ALARM SYSTEM INSPECTED BY AN ALARM SYSTEM CONTRACTOR; AND

(II) WITHIN 15 DAYS AFTER THE INSPECTION, FILE WITH THE LAW ENFORCEMENT UNIT OR FIRE DEPARTMENT THAT ISSUED THE NOTICE A WRITTEN REPORT THAT CONTAINS THE:

1. RESULT OF THE INSPECTION;

2. PROBABLE CAUSE OF THE FALSE ALARMS; AND

3. RECOMMENDATIONS OR ACTION TAKEN TO ELIMINATE THE FALSE ALARMS.

(C) PROHIBITED.

AN ALARM USER MAY NOT USE A DEFECTIVE ALARM SYSTEM AFTER RECEIVING A WRITTEN NOTICE UNDER SUBSECTION (B) OF THIS SECTION.

(D) PENALTY.

A PERSON WHO VIOLATES SUBSECTION (C) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 156D.

In subsection (b) of this section, the reference to responding to false alarms from "a defective alarm system" is substituted for the former reference to "answer[ing] to false alarms" in order to clarify the circumstances in which written notice is required.

In subsection (c) of this section, the reference to using a defective alarm system "after receiving a written notice under subsection (b) of this section" is substituted for the former reference to "continu[ing] to use" a defective alarm system for clarity and consistency within this section.

Defined terms: "Alarm system" § 9-607

"Alarm system contractor" § 9-607

"Alarm user" § 9-607

"False alarm" § 9-607

"Law enforcement unit" § 9-607

"Person" § 1-101

9-611. AUDIBLE ALARM SYSTEM.

(A) "AUDIBLE ALARM SYSTEM" DEFINED.

IN THIS SECTION, "AUDIBLE ALARM SYSTEM" MEANS AN ALARM SYSTEM THAT, WHEN ACTIVATED, EMITS AN AUDIBLE NOISE FROM AN ANNUNCIATOR.

(B) REQUIRED EQUIPMENT.

AN AUDIBLE ALARM SYSTEM SHALL BE EQUIPPED TO:

(1) AUTOMATICALLY SILENCE THE ANNUNCIATOR WITHIN 30 MINUTES AFTER ACTIVATION; AND

(2) ALLOW AN ACCIDENTAL OR NEGLIGENT ACTIVATION TO BE HALTED OR RESET.

(C) PROHIBITED.

AN ALARM SYSTEM CONTRACTOR MAY NOT SELL, LEASE, RENT, OR OFFER TO SELL, LEASE, OR RENT AN AUDIBLE ALARM SYSTEM THAT DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF $100 FOR EACH VIOLATION.

REVISOR'S NOTE: Subsection (a) of this section is new language added for clarity.

Subsections (b), (c), and (d) of this section are new language derived without substantive change from former Art. 27, § 156E.

Defined terms: "Alarm system" § 9-607

"Alarm system contractor" § 9-607

"Person" § 1-101

SUBTITLE 7. SABOTAGE.

9-701. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 535(a).

No changes are made.

(B) DEFENSE-RELATED ACTIVITY.

"DEFENSE-RELATED ACTIVITY" MEANS:

(1) THE PREPARATION OF THE UNITED STATES OR A STATE FOR DEFENSE OR WAR; OR

(2) THE PROSECUTION OF WAR BY THE UNITED STATES OR A COUNTRY WITH WHICH THE UNITED STATES MAINTAINS FRIENDLY RELATIONS.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 535(b).

No changes are made.

Defined term: "State" § 1-101

(C) IDENTIFICATION BADGE.

"IDENTIFICATION BADGE" MEANS A BADGE THAT A PERSON WEARS TO SHOW THE PERSON'S IDENTITY OR RIGHT TO BE IN OR ON ANY PREMISES DESCRIBED IN § 9-704 OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 535(c).

In this subsection and throughout this subtitle the references to this "subtitle" are substituted for the former references to this "subheading" to reflect the reorganization of material derived from the former "Sabotage and Related Crimes" subheading of Article 27.

Defined term: "Person" § 1-101

(D) IDENTIFICATION CARD.

"IDENTIFICATION CARD" MEANS A CARD OR PASS ISSUED FOR THE PURPOSE OF ESTABLISHING THE IDENTITY AND THE RIGHT OF THE PERSON TO BE IN OR ON ANY PREMISES DESCRIBED IN § 9-704 OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 535(d).

The reference to "§ 9-704 of this subtitle" is substituted for the former reference to "§ 538 of this subheading" to reflect the reorganization of material derived from the former "Sabotage and Related Crimes" subheading of Article 27.

No other changes are made.

Defined term: "Person" § 1-101

9-702. INJURY TO OR INTERFERENCE WITH PROPERTY -- ACTING WITH INTENT TO HINDER DEFENSE-RELATED ACTIVITY.

(A) PROHIBITED.

A PERSON MAY NOT DESTROY, IMPAIR, DAMAGE, OR INTERFERE OR TAMPER WITH REAL OR PERSONAL PROPERTY WITH INTENT TO HINDER, DELAY, OR INTERFERE WITH A DEFENSE-RELATED ACTIVITY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section formerly was Art. 27, § 536.

No changes are made.

Defined terms: "Defense-related activity" § 9-701

"Person" § 1-101

9-703. DEFECTIVE WORKMANSHIP -- ACTING WITH INTENT TO HINDER DEFENSE-RELATED ACTIVITY.

(A) PROHIBITED.

A PERSON MAY NOT INTENTIONALLY:

(1) MAKE OR CAUSE TO BE MADE OR OMIT TO NOTE ON INSPECTION A DEFECT IN A PRODUCT TO BE USED IN CONNECTION WITH A DEFENSE-RELATED ACTIVITY; AND

(2) ACT, OR FAIL TO ACT, WITH INTENT TO HINDER, DELAY, OR INTERFERE WITH A DEFENSE-RELATED ACTIVITY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

REVISOR'S NOTE: This section formerly was Art. 27, § 537.

No changes are made.

Defined terms: "Defense-related activity" § 9-701

"Person" § 1-101

9-704. IDENTIFICATION BADGES AND IDENTIFICATION CARDS -- CERTAIN FACILITIES.

(A) APPLICATION OF SECTION.

THIS SECTION APPLIES TO A PERSON POSSESSING AN IDENTIFICATION BADGE OR IDENTIFICATION CARD REQUIRED FOR EMPLOYMENT OR VISITATION THAT IS ISSUED BY:

(1) A UNIT OF THE STATE OR A COUNTY, MUNICIPAL CORPORATION, SPECIAL TAXING DISTRICT, OR PUBLIC CORPORATION OF THE STATE; OR

(2) A PERSON THAT OWNS OR OPERATES IN THE STATE:

(I) A FACTORY OR WAREHOUSE OR A MANUFACTURING, PRINTING, PUBLISHING, MECHANICAL, OR MERCANTILE ESTABLISHMENT OR A PLANT OF ANY KIND;

(II) A MINE OR QUARRY;

(III) A RAILWAY; OR

(IV) A WATER, SEWAGE, GAS, ELECTRIC, TRANSMISSION, HEATING, REFRIGERATING, TELEPHONE, OR OTHER PUBLICLY OWNED OR PUBLIC SERVICE COMPANY.

(B) SURRENDER REQUIRED AT END OF EMPLOYMENT OR VISIT.

A PERSON SHALL SURRENDER EACH IDENTIFICATION BADGE OR IDENTIFICATION CARD TO ITS ISSUER WHEN THE PERSON'S EMPLOYMENT OR AUTHORIZED VISIT ENDS.

(C) PROHIBITED.

A PERSON MAY NOT KNOWINGLY POSSESS AN IDENTIFICATION BADGE OR IDENTIFICATION CARD AFTER THE PERSON'S EMPLOYMENT OR AUTHORIZED VISIT ENDS.

(D) PENALTY.

A PERSON WHO WILLFULLY VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 538 and 535(e).

In subsection (a)(1) of this section, the reference to a "county, municipal corporation, special taxing district, or public corporation of the State" is substituted for the former defined term "political subdivision" for clarity.

In subsection (b) of this section, the reference to "each" identification badge or identification card is substituted for the former reference to "an" identification badge or identification card for clarity.

Defined terms: "County" § 1-101

"Identification badge" § 9-701

"Identification card" § 9-701

"Person" § 1-101

9-705. SAME -- REQUIRED SURRENDER.

A PERSON WHO FINDS OR GAINS POSSESSION OF AN IDENTIFICATION BADGE OR IDENTIFICATION CARD REQUIRED UNDER § 9-704 OF THIS SUBTITLE SHALL

SURRENDER IMMEDIATELY THE IDENTIFICATION BADGE OR IDENTIFICATION CARD TO THE NEAREST POLICE STATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 539(a).

Defined terms: "Identification badge" § 9-701

"Identification card" § 9-701

"Person" § 1-101

9-706. SAME -- PROHIBITIONS.

(A) PROHIBITED.

TO ENTER A PLACE OR ESTABLISHMENT IN WHICH A PERSON IS REQUIRED TO HAVE AN IDENTIFICATION BADGE OR IDENTIFICATION CARD UNDER § 9-704 OF THIS SUBTITLE, A PERSON MAY NOT WILLFULLY:

(1) MAKE UNAUTHORIZED USE OF AN IDENTIFICATION BADGE OR IDENTIFICATION CARD; OR

(2) ASSIST ANOTHER IN THE UNAUTHORIZED USE OF AN IDENTIFICATION BADGE OR IDENTIFICATION CARD.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 539(b) and (c).

Defined terms: "Identification badge" § 9-701

"Identification card" § 9-701

"Person" § 1-101

9-707. RIGHTS OF LABOR UNAFFECTED.

THIS SUBTITLE DOES NOT IMPAIR, CURTAIL, OR DESTROY THE RIGHTS OF EMPLOYEES AND THEIR REPRESENTATIVES TO:

(1) SELF-ORGANIZATION;

(2) FORM, JOIN, OR ASSIST LABOR ORGANIZATIONS;

(3) BARGAIN COLLECTIVELY THROUGH REPRESENTATIVES OF THEIR OWN CHOOSING; AND

(4) STRIKE, PICKET, OR ENGAGE IN CONCERTED ACTIVITIES FOR THE PURPOSE OF COLLECTIVE BARGAINING OR OTHER MUTUAL AID OR PROTECTION.

REVISOR'S NOTE: This section formerly was Art. 27, § 540.

No changes are made.

9-708. RELATION TO OTHER LAWS.

IF CONDUCT PROHIBITED BY THIS SUBTITLE IS ALSO UNLAWFUL UNDER ANOTHER LAW, A PERSON MAY BE CONVICTED FOR THE VIOLATION OF THIS SUBTITLE AND THE OTHER LAW.

REVISOR'S NOTE: This section formerly was Art. 27, § 541.

The only changes are in style.

Defined term: "Person" § 1-101

TITLE 10. CRIMES AGAINST PUBLIC HEALTH, CONDUCT, AND SENSIBILITIES.

SUBTITLE 1. CRIMES AGAINST PUBLIC HEALTH AND SAFETY.

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, § 404(a)(1).

In this subsection, the reference to this "subtitle" is substituted for the former reference to this "subheading" to reflect the organization of material derived from the former subheading on the sale of cigars and tobacco products to minors. Its application to the material derived from the former subheading on venereal disease remedies is not a substantive change. The defined term "tobacco product" is not used in the sections in this subtitle that deal with venereal diseases. The word "distributed" is used in § 10-102(a)(3) of this subtitle, but the definition of "distribute" in subsection (b) of this section does not materially change the meaning of the term as used in § 10-102(a)(3) of this subtitle.

No other changes are made.

(B) DISTRIBUTE.

"DISTRIBUTE" MEANS TO:

(1) GIVE, SELL, DELIVER, DISPENSE, ISSUE, OR OFFER TO GIVE, SELL, DELIVER, DISPENSE, OR ISSUE; OR

(2) CAUSE OR HIRE A PERSON TO GIVE, SELL, DELIVER, DISPENSE, ISSUE OR OFFER TO GIVE, SELL, DELIVER, DISPENSE, OR ISSUE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 404(a)(3).

Defined term: "Person" § 1-101

(C) TOBACCO PRODUCT.

(1) "TOBACCO PRODUCT" MEANS A SUBSTANCE CONTAINING TOBACCO.

(2) "TOBACCO PRODUCT" INCLUDES CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, AND SMOKELESS TOBACCO.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 404(a)(2).

(D) VENEREAL DISEASE.

"VENEREAL DISEASE" INCLUDES GONORRHEA, SYPHILIS, CHANCROID, AND ANY DISEASED CONDITION OF THE HUMAN GENITALIA CAUSED BY, RELATED TO, OR RESULTING FROM A VENEREAL DISEASE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the first sentences of former Art. 27, §§ 322 and 323 as they related to a description of the covered diseases.

The former references to "any other venereal disease" are deleted in light of the reference to "includes" which indicates that the three named types of the disease are named by way of illustration and not by way of limitation. *See* Art. 1, § 30.

10-102. VENEREAL DISEASE -- ADVERTISING CURE.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) A GOVERNMENT UNIT;

(2) A HEALTH OR MEDICAL AGENCY APPROVED BY THE SECRETARY OF HEALTH AND MENTAL HYGIENE;

(3) A MEDICAL, PHARMACEUTICAL, OR OTHER PROFESSIONAL PUBLICATION NOT PUBLICLY DISTRIBUTED; OR

(4) A NEWS ITEM OR ARTICLE PUBLISHED IN A NEWSPAPER, MAGAZINE, OR BOOK.

(B) PROHIBITED.

A PERSON MAY NOT ADVERTISE, ALLOW TO BE ADVERTISED, OR CALL TO PUBLIC ATTENTION:

(1) A DRUG, MEDICINE, PREPARATION, OR SUBSTANCE FOR THE TREATMENT, ALLEVIATION, OR CURE OF VENEREAL DISEASE; OR

(2) A PERSON FROM WHOM OR A PLACE WHERE A DRUG, MEDICINE, PREPARATION, OR SUBSTANCE FOR THE TREATMENT, ALLEVIATION, OR CURE OF VENEREAL DISEASE MAY BE OBTAINED.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $500 FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 322, as it related to the prohibition of and penalty for advertising a cure for venereal disease.

In subsection (a)(1) of this section, the phrase "government unit" is substituted for the former reference to "governmental agency" for consistency within this article. *See* General Revisor's Note to article.

Also in subsection (a)(1) of this section, the former reference to a "health department" is deleted as included in the reference to a "government unit".

In subsection (a)(2) of this section, the phrase "with the approval of the Secretary of Health and Mental Hygiene" is substituted for the former phrase "approved under this section by the Secretary of Health and Mental Hygiene" to clarify that with the approval of the Secretary, the prohibitions of this section do not apply to a health or medical agency.

In subsection (a)(3) of this section, the former reference to the "sale" of certain publications is deleted in light of the defined term "distribute", which includes to "sell".

In subsection (a)(4) of this section, the former references to "bona fide" are deleted as surplusage.

In subsection (b) of this section, the former reference to a "firm, company or corporation" is deleted in light of the defined term "person".

Also in subsection (b) of this section, the former reference to calling to public attention "in any manner whatsoever" is deleted as surplusage.

In subsection (b)(2) of this section, the phrase "treatment, alleviation, or cure of venereal disease" is added for clarity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that it is unclear whether the exemptions listed in subsection (a)(3) and (4) of this section apply to publication or republication by electronic means, including the Internet, which may make available to the public advertisements that are not initially intended for

public distribution.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that the general prohibition on advertising or calling to public attention a treatment for venereal disease or a source for that treatment may constitute a prior restraint or speech, a content-based restriction that raises free-speech concerns under the First Amendment to the United States Constitution and Md. Decl. of Rights, Art. 40.

Defined terms: "Distribute" § 10-101

"Person" § 1-101

"Venereal disease" § 10-101

10-103. SAME -- SALE OF REMEDY.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) A PHYSICIAN LICENSED TO PRACTICE MEDICINE;

(2) A GOVERNMENT UNIT; OR

(3) THE OTHERWISE LAWFUL CONDUCT OF BUSINESS BETWEEN COMMERCIAL, MEDICAL, PHARMACEUTICAL, SCIENTIFIC, OR GOVERNMENT UNITS.

(B) PROHIBITED.

EXCEPT IN ACCORDANCE WITH A PRESCRIPTION WRITTEN BY A PHYSICIAN LICENSED TO PRACTICE MEDICINE, A PERSON MAY NOT SELL, DISPENSE, OR GIVE TO ANOTHER A DRUG, MEDICINE, PREPARATION, SUBSTANCE, OR A PREPARATION CONTAINING A SULFONAMIDE DRUG TO ALLEVIATE, TREAT, OR CURE VENEREAL DISEASE.

(C) REQUIREMENTS FOR PRESCRIPTION.

(1) A PRESCRIPTION UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE:

(I) THE PHYSICIAN'S SIGNATURE AND ADDRESS; AND

(II) THE DATE THE PRESCRIPTION WAS WRITTEN.

(2) THE PERSON FILLING THE PRESCRIPTION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION:

(I) SHALL WRITE ON THE PRESCRIPTION THE DATE IT WAS FILLED;

(II) SHALL KEEP THE PRESCRIPTION ON FILE FOR AT LEAST 2 YEARS AFTER IT WAS FILLED;

(III) SHALL ALLOW THE PRESCRIPTION TO BE INSPECTED BY STATE AND LOCAL HEALTH AUTHORITIES; AND

(IV) MAY NOT REFILL THE PRESCRIPTION EXCEPT ON THE ORDER OF THE PHYSICIAN WHO WROTE THE PRESCRIPTION.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:

(1) $50 FOR THE FIRST VIOLATION; AND

(2) $250 FOR EACH SUBSEQUENT VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 323, as it related to the prohibition of and penalty for sale of a remedy for venereal disease.

In subsection (a)(2) and (3) of this section, the phrase "government unit[s]" is substituted for the former references to "governmental agency" and "governmental agencies" for consistency within this article. *See* General Revisor's Note to article.

In subsection (a)(2) of this section, the former reference to a "health department" is deleted as included in the reference to a "government unit".

In subsection (b) of this section, the former reference to a "firm, company or corporation" is deleted in light of the defined term "person".

Also in subsection (b) of this section, the first former reference to a "sulfonamide drug" is deleted in light of the comprehensive reference to a "drug".

Subsection (c)(2) of this section clarifies that the person who fills the prescription, who in most cases is not the physician who wrote the prescription, shall write on the prescription the date it was filled, shall keep the prescription on file for 2 years, and shall keep the prescription open for inspection.

Defined terms: "Person" § 1-101

"Venereal disease" § 10-101

10-104. SALE OF NONLATEX CONDOM BY VENDING MACHINE.

(A) PROHIBITED.

A PERSON MAY NOT SELL OR OFFER FOR SALE A NONLATEX CONDOM BY MEANS OF A VENDING MACHINE OR OTHER AUTOMATIC DEVICE.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000 FOR EACH VIOLATION.

(2) EACH VENDING MACHINE OR OTHER AUTOMATIC DEVICE IN VIOLATION OF THIS SECTION IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 41.

In subsection (a) of this section, the former reference to a "firm, or corporation" is deleted in light of the defined term "person".

Defined term: "Person" § 1-101

10-105. SALE OF CONTRACEPTIVE BY VENDING MACHINE IN SCHOOL.

(A) PROHIBITED.

A PERSON MAY NOT SELL OR OFFER FOR SALE A CONTRACEPTIVE OR A CONTRACEPTIVE DEVICE, WHETHER OR NOT ADVERTISED AS A PROPHYLACTIC, BY MEANS OF A VENDING MACHINE OR OTHER AUTOMATIC DEVICE AT A KINDERGARTEN, NURSERY SCHOOL, OR ELEMENTARY OR SECONDARY SCHOOL.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000 FOR EACH VIOLATION.

(2) EACH VENDING MACHINE OR OTHER AUTOMATIC DEVICE IN A SCHOOL IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 41A.

In subsection (a) of this section, the former definition of "school" is incorporated as part of the substantive provision because the term is only used once.

Also in subsection (a) of this section, the reference to "[a] person" is added for clarity.

In subsection (b) of this section, the former reference to a "firm, or corporation" is deleted in light of the defined term "person".

Also in subsection (b) of this section, the phrase "is guilty of a misdemeanor" is added to state expressly that which only was implied in the former law by reference to a person who is "convicted". 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. 483, 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 (1968).

Defined term: "Person" § 1-101

10-106. SALE OF CLOVE CIGARETTES.

(A) PROHIBITED.

A PERSON MAY NOT SELL OR OFFER FOR SALE A CLOVE CIGARETTE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF $500.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 40A.

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

Defined term: "Person" § 1-101

10-107. DISTRIBUTION OF TOBACCO PRODUCT TO MINOR.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO THE DISTRIBUTION OF A COUPON THAT IS REDEEMABLE FOR A TOBACCO PRODUCT, IF THE COUPON IS:

(1) CONTAINED IN A NEWSPAPER, MAGAZINE, OR OTHER TYPE OF PUBLICATION IN WHICH THE COUPON IS INCIDENTAL TO THE PRIMARY PURPOSE OF THE PUBLICATION; OR

(2) SENT THROUGH THE MAIL.

(B) PROHIBITED -- BY DISTRIBUTOR OF TOBACCO PRODUCT.

(1) THIS SUBSECTION DOES NOT APPLY TO THE DISTRIBUTION OF A TOBACCO PRODUCT TO A MINOR WHO IS ACTING SOLELY AS THE AGENT OF THE MINOR'S EMPLOYER IF THE EMPLOYER DISTRIBUTES TOBACCO PRODUCTS FOR COMMERCIAL PURPOSES.

(2) A PERSON WHO DISTRIBUTES TOBACCO PRODUCTS FOR COMMERCIAL PURPOSES, INCLUDING A PERSON LICENSED UNDER TITLE 16 OF THE BUSINESS REGULATION ARTICLE, MAY NOT DISTRIBUTE TO A MINOR:

(I) A TOBACCO PRODUCT;

(II) A CIGARETTE ROLLING PAPER; OR

(III) A COUPON REDEEMABLE FOR A TOBACCO PRODUCT.

(C) SAME -- BY OTHER PERSON.

A PERSON NOT DESCRIBED IN SUBSECTION (B)(2) OF THIS SECTION MAY NOT:

(1) PURCHASE FOR OR SELL A TOBACCO PRODUCT TO A MINOR; OR

(2) DISTRIBUTE A CIGARETTE ROLLING PAPER TO A MINOR.

(D) DEFENSE.

IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS A DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER'S OR RECIPIENT'S DRIVER'S LICENSE OR OTHER VALID IDENTIFICATION ISSUED BY AN EMPLOYER, GOVERNMENT UNIT, OR INSTITUTION OF HIGHER EDUCATION THAT POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS AT LEAST 18 YEARS OF AGE.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:

(1) $300 FOR A FIRST VIOLATION;

(2) $1,000 FOR A SECOND VIOLATION OCCURRING WITHIN 2 YEARS AFTER THE FIRST VIOLATION; AND

(3) $3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING WITHIN 2 YEARS AFTER THE PRECEDING VIOLATION.

(F) SEPARATE INCIDENT A VIOLATION.

FOR PURPOSES OF THIS SECTION, EACH SEPARATE INCIDENT AT A DIFFERENT TIME AND OCCASION IS A VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 404(b) through (d) and 405.

In subsection (a)(1) of this section, the defined term "minor" is substituted for the former reference to "a person under 18" for clarity.

In subsection (b)(1) of this section, the phrase "if the minor's employer

distributes tobacco products for commercial purposes" is substituted for the former reference to an employer "who is in the business of distributing tobacco products" for clarity.

In subsection (b)(2) of this section, the former reference to "selling" tobacco products is deleted in light of the defined term "distribute", which includes to "sell".

In subsection (c)(2) of this section, the defined term "distribute" is substituted for the former references to "sell" and "[d]eliver" for consistency within this subtitle.

In subsection (d) of this section, the phrase "government unit" is substituted for the former reference to a "governmental entity" for consistency within this article. *See* General Revisor's Note to article.

In subsection (e) of this section, the phrase "is 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. 483, 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 (1968).

In subsection (e)(3) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a third or" subsequent violation for consistency within this article.

Defined terms: "Distribute" § 10-101

"Minor" § 1-101

"Person" § 1-101

"Tobacco product" § 10-101

10-108. POSSESSION OF TOBACCO PRODUCT BY MINOR; USE OF FALSE IDENTIFICATION.

(A) "VIOLATION" DEFINED.

IN THIS SECTION, "VIOLATION" HAS THE MEANING STATED IN § 3-8A-01 OF THE COURTS ARTICLE.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO THE POSSESSION OF A TOBACCO PRODUCT OR CIGARETTE ROLLING PAPER BY A MINOR WHO IS ACTING AS THE AGENT OF THE MINOR'S EMPLOYER WITHIN THE SCOPE OF EMPLOYMENT.

(C) PROHIBITED.

A MINOR MAY NOT:

(1) USE OR POSSESS A TOBACCO PRODUCT OR CIGARETTE ROLLING PAPER; OR

(2) OBTAIN OR ATTEMPT TO OBTAIN A TOBACCO PRODUCT OR CIGARETTE ROLLING PAPER BY USING A FORM OF IDENTIFICATION THAT:

(I) IS FALSIFIED; OR

(II) IDENTIFIES AN INDIVIDUAL OTHER THAN THE MINOR.

(D) PENALTY.

(1) A VIOLATION OF THIS SECTION IS A CIVIL OFFENSE.

(2) A MINOR WHO VIOLATES THIS SECTION IS SUBJECT TO THE PROCEDURES AND DISPOSITIONS PROVIDED IN TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.

(E) CITATION.

A LAW ENFORCEMENT OFFICER AUTHORIZED TO MAKE ARRESTS SHALL ISSUE A CITATION TO A MINOR IF THE LAW ENFORCEMENT OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE MINOR IS COMMITTING OR HAS COMMITTED A VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 406.

Subsection (a) of this section is revised as a cross-reference to the defined term "violation" in CJ § 3-8A-01, for clarity.

In subsection (c)(2) of this section, the reference to a "form of identification" is new language added for clarity.

In subsection (c)(2)(ii) of this section, the reference to identification that "identifies an individual" is new language added for clarity.

In subsections (d) and (e) of this section, the defined term "minor" is substituted for the former references to "individual", "person", and "child", for clarity.

In subsection (d)(2) of this section, the reference to "Title 3, Subtitle 8A" of the Courts Article is substituted for the former obsolete reference to "Title 3, Subtitle 8" of the Courts Article which was rendered incorrect by the reorganization of material related to juvenile causes in the Courts Article enacted as part of Ch. 415, Acts of 2001.

In subsection (e) of this section, the former reference to the "Code" is deleted as unnecessary in light of the defined term "violation".

Defined terms: "Minor" § 1-101

"Tobacco product" § 10-101

10-109. ABANDONED REFRIGERATOR.

(A) PROHIBITED.

A PERSON MAY NOT PLACE OR ALLOW TO BE PLACED OUTSIDE OF A BUILDING OR DWELLING AN ABANDONED OR DISCARDED REFRIGERATOR, ICEBOX, OR FREEZER CABINET THAT:

(1) IS IN A PLACE ACCESSIBLE TO CHILDREN;

(2) IS UNCRATED; AND

(3) HAS A DOOR OR A LOCK THAT CANNOT BE RELEASED FOR OPENING FROM THE INSIDE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE NOT EXCEEDING $100 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 334.

The former references to a "firm or corporation" are deleted in light of the defined term "person".

In subsection (b) of this section, the former reference to a "jail" is deleted as unnecessary.

Also in subsection (b) of this section, the reference to "both" a fine or imprisonment is substituted for the former reference to "in the discretion of the court" for clarity. It is not necessary to state that the court has the discretion to impose one penalty or another.

Defined term: "Person" § 1-101

10-110. LITTER CONTROL LAW.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "BI-COUNTY UNIT" MEANS:

(I) THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION; OR

(II) THE WASHINGTON SUBURBAN SANITARY COMMISSION.

(3) "LITTER" MEANS ALL RUBBISH, WASTE MATTER, REFUSE, GARBAGE, TRASH, DEBRIS, DEAD ANIMALS, OR OTHER DISCARDED MATERIALS OF EVERY KIND AND DESCRIPTION.

(4) "PUBLIC OR PRIVATE PROPERTY" MEANS:

(I) THE RIGHT-OF-WAY OF A ROAD OR HIGHWAY;

(II) A BODY OF WATER OR WATERCOURSE OR THE SHORES OR BEACHES OF A BODY OF WATER OR WATERCOURSE;

(III) A PARK;

(IV) A PARKING FACILITY;

(V) A PLAYGROUND;

(VI) PUBLIC SERVICE COMPANY PROPERTY OR TRANSMISSION LINE RIGHT-OF-WAY;

(VII) A BUILDING;

(VIII) A REFUGE OR CONSERVATION OR RECREATION AREA;

(IX) RESIDENTIAL OR FARM PROPERTY; OR

(X) TIMBERLANDS OR A FOREST.

(B) DECLARATION OF INTENT.

THE GENERAL ASSEMBLY INTENDS TO:

(1) PROHIBIT UNIFORMLY THROUGHOUT THE STATE THE IMPROPER DISPOSAL OF LITTER ON PUBLIC OR PRIVATE PROPERTY; AND

(2) CURB THE DESECRATION OF THE BEAUTY OF THE STATE AND HARM TO THE HEALTH, WELFARE, AND SAFETY OF ITS CITIZENS CAUSED BY THE IMPROPER DISPOSAL OF LITTER.

(C) PROHIBITED.

A PERSON MAY NOT:

(1) DISPOSE OF LITTER ON A HIGHWAY OR PERFORM AN ACT THAT VIOLATES THE STATE VEHICLE LAWS REGARDING DISPOSAL OF LITTER, GLASS, AND OTHER PROHIBITED SUBSTANCES ON HIGHWAYS; OR

(2) DISPOSE OR CAUSE OR ALLOW THE DISPOSAL OF LITTER ON PUBLIC OR PRIVATE PROPERTY UNLESS:

(I) THE PROPERTY IS DESIGNATED BY THE STATE, A UNIT OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE FOR THE DISPOSAL OF LITTER AND THE PERSON IS AUTHORIZED BY THE PROPER PUBLIC AUTHORITY TO USE THE PROPERTY; OR

(II) THE LITTER IS PLACED INTO A LITTER RECEPTACLE OR CONTAINER INSTALLED ON THE PROPERTY.

(D) PRESUMPTION OF RESPONSIBILITY.

IF TWO OR MORE INDIVIDUALS ARE OCCUPYING A MOTOR VEHICLE, BOAT, AIRPLANE, OR OTHER CONVEYANCE FROM WHICH LITTER IS DISPOSED IN VIOLATION OF SUBSECTION (C) OF THIS SECTION, AND IT CANNOT BE DETERMINED WHICH OCCUPANT IS THE VIOLATOR:

(1) IF PRESENT, THE OWNER OF THE CONVEYANCE IS PRESUMED TO BE RESPONSIBLE FOR THE VIOLATION; OR

(2) IF THE OWNER OF THE CONVEYANCE IS NOT PRESENT, THE OPERATOR IS PRESUMED TO BE RESPONSIBLE FOR THE VIOLATION.

(E) PROPERTY OWNER NOT IN COURT.

NOTWITHSTANDING ANY OTHER LAW, IF THE FACTS OF A CASE IN WHICH A PERSON IS CHARGED WITH VIOLATING THIS SECTION ARE SUFFICIENT TO PROVE THAT THE PERSON IS RESPONSIBLE FOR THE VIOLATION, THE OWNER OF THE PROPERTY ON WHICH THE VIOLATION ALLEGEDLY OCCURRED NEED NOT BE PRESENT AT A COURT PROCEEDING REGARDING THE CASE.

(F) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO THE PENALTIES PROVIDED IN THIS SUBSECTION.

(2) (I) A PERSON WHO DISPOSES OF LITTER IN VIOLATION OF THIS SECTION IN AN AMOUNT NOT EXCEEDING 100 POUNDS OR 27 CUBIC FEET AND NOT FOR COMMERCIAL GAIN IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(II) A PERSON WHO DISPOSES OF LITTER IN VIOLATION OF THIS SECTION IN AN AMOUNT EXCEEDING 100 POUNDS OR 27 CUBIC FEET, BUT NOT EXCEEDING 500 POUNDS OR 216 CUBIC FEET, AND NOT FOR COMMERCIAL GAIN IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $10,000 OR BOTH.

(III) A PERSON WHO DISPOSES OF LITTER IN VIOLATION OF THIS SECTION IN AN AMOUNT EXCEEDING 500 POUNDS OR 216 CUBIC FEET OR IN ANY AMOUNT FOR COMMERCIAL GAIN IS GUILTY OF A MISDEMEANOR AND ON

CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $25,000 OR BOTH.

(3) IN ADDITION TO THE PENALTIES PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A COURT MAY ORDER THE VIOLATOR TO:

(I) REMOVE OR RENDER HARMLESS THE LITTER DISPOSED OF IN VIOLATION OF THIS SECTION;

(II) REPAIR OR RESTORE ANY PROPERTY DAMAGED BY, OR PAY DAMAGES FOR, THE DISPOSAL OF THE LITTER IN VIOLATION OF THIS SECTION;

(III) PERFORM PUBLIC SERVICE RELATING TO THE REMOVAL OF LITTER DISPOSED OF IN VIOLATION OF THIS SECTION OR TO THE RESTORATION OF AN AREA POLLUTED BY LITTER DISPOSED OF IN VIOLATION OF THIS SECTION; OR

(IV) REIMBURSE THE STATE, COUNTY, MUNICIPAL CORPORATION, OR BI-COUNTY UNIT FOR ITS COSTS INCURRED IN REMOVING THE LITTER DISPOSED OF IN VIOLATION OF THIS SECTION.

(4) IN ADDITION TO, OR INSTEAD OF, THE PENALTIES PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, THE COURT MAY SUSPEND FOR UP TO 7 DAYS THE LICENSE OF THE PERSON TO OPERATE THE TYPE OF CONVEYANCE USED IN THE VIOLATION WHO IS PRESUMED TO BE RESPONSIBLE FOR THE VIOLATION UNDER SUBSECTION (D) OF THIS SECTION.

(G) ENFORCEMENT.

A LAW ENFORCEMENT UNIT, OFFICER, OR OFFICIAL OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE, OR AN ENFORCEMENT UNIT, OFFICER, OR OFFICIAL OF A COMMISSION OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE, SHALL ENFORCE COMPLIANCE WITH THIS SECTION.

(H) RECEPTACLES TO BE PROVIDED; NOTICE OF PROVISIONS.

A UNIT THAT SUPERVISES STATE PROPERTY SHALL:

(1) ESTABLISH AND MAINTAIN RECEPTACLES FOR THE DISPOSAL OF LITTER AT APPROPRIATE LOCATIONS WHERE THE PUBLIC FREQUENTS THE PROPERTY;

(2) POST SIGNS DIRECTING PERSONS TO THE RECEPTACLES AND SERVING NOTICE OF THE PROVISIONS OF THIS SECTION; AND

(3) OTHERWISE PUBLICIZE THE AVAILABILITY OF LITTER RECEPTACLES AND THE REQUIREMENTS OF THIS SECTION.

(I) DISPOSITION OF FINES.

(1) FINES COLLECTED FOR VIOLATIONS OF THIS SECTION SHALL BE DISBURSED:

(I) TO THE COUNTY OR MUNICIPAL CORPORATION WHERE THE VIOLATION OCCURRED; OR

(II) IF THE BI-COUNTY UNIT IS THE ENFORCEMENT UNIT AND THE VIOLATIONS OCCURRED ON PROPERTY OVER WHICH THE BI-COUNTY UNIT EXERCISES JURISDICTION, TO THE BI-COUNTY UNIT.

(2) FINES COLLECTED SHALL BE USED TO PAY FOR LITTER RECEPTACLES AND POSTING SIGNS AS REQUIRED BY SUBSECTION (H) OF THIS SECTION AND FOR OTHER PURPOSES RELATING TO THE REMOVAL OR CONTROL OF LITTER.

(J) AUTHORITY OF LOCAL GOVERNMENTS.

(1) THE LEGISLATIVE BODY OF A MUNICIPAL CORPORATION MAY:

(I) PROHIBIT LITTERING; AND

(II) CLASSIFY LITTERING AS A MUNICIPAL INFRACTION UNDER ARTICLE 23A, § 3(B) OF THE CODE.

(2) THE GOVERNING BODY OF PRINCE GEORGE'S COUNTY MAY ADOPT AN ORDINANCE TO PROHIBIT LITTERING UNDER THIS SECTION AND, FOR VIOLATIONS OF THE ORDINANCE, MAY IMPOSE CRIMINAL PENALTIES AND CIVIL PENALTIES THAT DO NOT EXCEED THE CRIMINAL PENALTIES AND CIVIL PENALTIES SPECIFIED IN SUBSECTION (F)(1) THROUGH (3) OF THIS SECTION.

(K) SHORT TITLE.

THIS SECTION MAY BE CITED AS THE "LITTER CONTROL LAW".

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 468(a), (b), (c)(1), (2), (4), and (5), and (d) through (j).

Throughout this section, the words "dispose", "disposed", and "disposal" are substituted for various former references to "dump[ing]", "deposit[ing]", "drop[ping]", "throw[ing]", "leav[ing]", "put[ting]", and "plac[ing]" litter for clarity and brevity.

Also throughout this section, the defined term "litter" is substituted for various former references to "trash", "garbage", "junk", and "refuse" for clarity and brevity.

In subsection (a) of this section, the former definition of "commercial purpose" is deleted as unnecessary. Throughout this section, the phrase "economic gain", which was the definition of "commercial purpose", is substituted for former references to "commercial purposes" for clarity.

In subsections (a)(2), (f)(3)(iv), and (i)(1)(ii) of this section, the references to

a bi-county "unit" are substituted for the former references to a bi-county "agency" for consistency within this article. *See* General Revisor's Note to article. Similarly, in subsections (c)(2)(i), (g), and (h) of this section, the references to a "unit" of the State are substituted for the former references to "agencies" of the State and State "authorit[ies]". Also similarly, in subsection (i)(1)(ii) of this section, the reference to an enforcement "unit" is substituted for the former reference to an enforcement "agency".

In subsection (b) of this section, the reference to the "General Assembly" is substituted for the former reference to the "legislature" for consistency throughout the revised articles of the Code.

Also in subsection (b) of this section, the former reference to making provision "by this section" for uniform litter control is deleted as surplusage.

In subsections (b)(1) and (c)(1) of this section, the former references to "Maryland" are deleted as unnecessary.

In subsection (b)(1) and (2) of this section, the references to "disposal of litter" are substituted for the former references to "littering" and "litter" for consistency within this section.

In subsection (b)(2) of this section, the reference to "citizens" of the State is retained. The term "citizens", however, lacks a precise legal meaning and is usually read to refer to residency. *See Crosse v. Board of Supervisors of Elections of Baltimore City*, 243 Md. 555 (1966).

In subsection (c)(2) of this section, the former reference to disposing of litter "in this State, or any waters in this State" is deleted as unnecessary in light of the defined term "public or private property", which includes a reference to "waters".

In subsection (d)(1) and (2) of this section, the former references to a "vehicle, boat, airplane or other conveyance" are deleted as included in the comprehensive references to a "conveyance".

In subsection (f)(2) of this section, the former phrases "in weight" and "in volume" are deleted as implicit in the references to particular "pounds" and "cubic feet".

In subsection (f)(2)(iii) of this section, the word "amount" is substituted for the former reference to "quantity" for consistency within the section.

In subsection (f)(3) of this section, the word "penalties" is substituted for the former reference to "sentences", because the sanctions provided in subsection (f)(2) of the section are penalties.

Subsection (f)(4) of this section clarifies that a court may order the suspension of the license to operate the conveyance.

In subsections (g) and (h) of this section, the word "shall" is substituted for the former phrases "are hereby authorized, empowered, and directed to" and "are authorized, empowered and instructed to", respectively, for clarity. If the units are "directed to" or "instructed to" enforce this section, then they are by implication "authorized [and] empowered" to do so.

In subsection (h) of this section, the reference to a "municipal corporation" is substituted for the former reference to a "city" for consistency with the usage in Md. Constitution, Art. XI-E.

In subsection (i)(2) of this section, the reference to using collected fines to "pay for litter receptacles" is substituted for the former reference to "defray[ing] the expense of establishment and maintenance of receptacles" for brevity and clarity.

In subsection (j) of this section, the former phrase "[h]owever, to permit more active enforcement of littering prohibitions within a municipality" is deleted as surplusage. There is no need to state why the municipal corporations are given the authority granted in the subsection.

Former Art. 27, § 468(c)(3), which defined "person", is revised in § 1-101 of this article.

Former Art. 27, § 468(k), which authorized the Washington County Board of County Commissioners to regulate recycling by ordinance, is revised in Art. 22, § 1-704 of the Public Local Laws of Washington County.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that under its over half-decade old "Maryland Parks Are Trash-Free" program, the Department of Natural Resources has removed trash receptacles from the parks under its jurisdiction. The Department's web site notes that "[v]isitors to day-use areas are provided with bags when they enter parks and are asked to take home their own refuse". Nevertheless, the Department is arguably in violation of subsection (h) of this section, notwithstanding the Department's belief in the success of the program.

Defined terms: "County" § 1-101

"Person" § 1-101

SUBTITLE 2. DISTURBING THE PEACE, DISORDERLY CONDUCT, AND RELATED CRIMES.

10-201. DISTURBING THE PUBLIC PEACE AND DISORDERLY CONDUCT.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "PUBLIC CONVEYANCE" MEANS A CONVEYANCE TO WHICH THE PUBLIC OR A PORTION OF THE PUBLIC HAS ACCESS TO AND A RIGHT TO USE FOR TRANSPORTATION.

(II) "PUBLIC CONVEYANCE" INCLUDES AN AIRPLANE, VESSEL, BUS, RAILWAY CAR, SCHOOL VEHICLE, AND SUBWAY CAR.

(3) (I) "PUBLIC PLACE" MEANS A PLACE TO WHICH THE PUBLIC OR A PORTION OF THE PUBLIC HAS ACCESS AND A RIGHT TO RESORT FOR BUSINESS, DWELLING, ENTERTAINMENT, OR OTHER LAWFUL PURPOSE.

(II) "PUBLIC PLACE" INCLUDES:

1. A RESTAURANT, SHOP, SHOPPING CENTER, STORE, TAVERN, OR OTHER PLACE OF BUSINESS;

2. A PUBLIC BUILDING;

3. A PUBLIC PARKING LOT;

4. A PUBLIC STREET, SIDEWALK, OR RIGHT-OF-WAY;

5. A PUBLIC PARK OR OTHER PUBLIC GROUNDS;

6. THE COMMON AREAS OF A BUILDING CONTAINING FOUR OR MORE SEPARATE DWELLING UNITS, INCLUDING A CORRIDOR, ELEVATOR, LOBBY, AND STAIRWELL;

7. A HOTEL OR MOTEL;

8. A PLACE USED FOR PUBLIC RESORT OR AMUSEMENT, INCLUDING AN AMUSEMENT PARK, GOLF COURSE, RACE TRACK, SPORTS ARENA, SWIMMING POOL, AND THEATER;

9. AN INSTITUTION OF ELEMENTARY, SECONDARY, OR HIGHER EDUCATION;

10. A PLACE OF PUBLIC WORSHIP;

11. A PLACE OR BUILDING USED FOR ENTERING OR EXITING A PUBLIC CONVEYANCE, INCLUDING AN AIRPORT TERMINAL, BUS STATION, DOCK, RAILWAY STATION, SUBWAY STATION, AND WHARF; AND

12. THE PARKING AREAS, SIDEWALKS, AND OTHER GROUNDS AND STRUCTURES THAT ARE PART OF A PUBLIC PLACE.

(B) CONSTRUCTION OF SECTION.

FOR PURPOSES OF A PROSECUTION UNDER THIS SECTION, A PUBLIC CONVEYANCE OR A PUBLIC PLACE NEED NOT BE DEVOTED SOLELY TO PUBLIC USE.

(C) PROHIBITED.

(1) A PERSON MAY NOT WILLFULLY AND WITHOUT LAWFUL PURPOSE OBSTRUCT OR HINDER THE FREE PASSAGE OF ANOTHER IN A PUBLIC PLACE OR ON A PUBLIC CONVEYANCE.

(2) A PERSON MAY NOT WILLFULLY ACT IN A DISORDERLY MANNER THAT DISTURBS THE PUBLIC PEACE.

(3) A PERSON MAY NOT WILLFULLY FAIL TO OBEY A REASONABLE AND LAWFUL ORDER THAT A LAW ENFORCEMENT OFFICER MAKES TO PREVENT A DISTURBANCE TO THE PUBLIC PEACE.

(4) A PERSON WHO ENTERS THE LAND OR PREMISES OF ANOTHER, WHETHER AN OWNER OR LESSEE, OR A BEACH ADJACENT TO RESIDENTIAL RIPARIAN PROPERTY, MAY NOT WILLFULLY:

(I) DISTURB THE PEACE OF PERSONS ON THE LAND, PREMISES, OR BEACH BY MAKING AN UNREASONABLY LOUD NOISE; OR

(II) ACT IN A DISORDERLY MANNER.

(5) A PERSON FROM ANY LOCATION MAY NOT, BY MAKING AN UNREASONABLY LOUD NOISE, WILLFULLY DISTURB THE PEACE OF ANOTHER:

(I) ON THE OTHER'S LAND OR PREMISES;

(II) IN A PUBLIC PLACE; OR

(III) ON A PUBLIC CONVEYANCE.

(6) IN WORCESTER COUNTY, A PERSON MAY NOT BUILD A BONFIRE OR ALLOW A BONFIRE TO BURN ON A BEACH OR OTHER PROPERTY BETWEEN 1 A.M. AND 5 A.M.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 60 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 121.

Subsection (b) of this section is revised as a construction provision for clarity.

In subsection (a)(2)(i) and (3)(i) of this section, the former references to the "general" public are deleted as unnecessary.

In subsection (a)(2)(ii) of this section, the former reference to a "boat" is

deleted as included in the comprehensive reference to a "vessel".

Also in subsection (a)(2)(ii) of this section, the former reference to a "school bus" is deleted in light of the comprehensive reference to a "school vehicle".

In subsection (a)(3)(ii)12 of this section, the former reference to parking "lots" is deleted as included in the reference to "parking areas".

In subsection (c)(5) of this section, the former phrase "in a place of business" is deleted as included in the definition of "public place".

Defined term: "Person" § 1-101

10-202. KEEPING DISORDERLY HOUSE -- PENALTY.

A PERSON WHO KEEPS A DISORDERLY HOUSE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT LESS THAN 10 DAYS AND NOT EXCEEDING 6 MONTHS OR A FINE NOT LESS THAN $50 AND NOT EXCEEDING $300 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 122.

The reference to a person who keeps a disorderly house being "guilty of a misdemeanor" is added to state expressly that which was only implied in the former law. At common law, keeping a disorderly house was a misdemeanor, and former Art. 27, § 122 merely established the penalty for it. *Ward v. State*, 9 Md. App. 583 (1970); *Beard v. State*, 71 Md. 275 (1889). In this State, any crime that was not considered a felony at common law and has not been declared a felony by statute is considered a misdemeanor. *See State v. Canova*, 278 Md. 483, 490 (1976); *Bowser v. State*, 136 Md. 342, 354 (1920); *Dutton v. State*, 123 Md. 373, 378 (1914); and *Williams v. State*, 4 Md. App. 342, 347 (1968).

The former reference to imprisonment "in jail" is deleted for consistency within this article. Currently inmates are sentenced to the custody of the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Defined term: "Person" § 1-101

10-203. INTERFERENCE WITH COMMERCIAL ATHLETIC EVENT.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMMERCIAL ATHLETIC CONTEST" MEANS AN ATHLETIC OR SPORTING EVENT HELD IN A PUBLIC ARENA, FIELD, HALL, OR STADIUM FOR ADMISSION TO WHICH THE GENERAL PUBLIC MUST PAY AN ADMISSION CHARGE.

(3) "OBJECT" MEANS AN ITEM THAT MAY CAUSE INJURY TO A PARTICIPANT IN OR OBSERVER OF THE COMMERCIAL ATHLETIC CONTEST.

(B) PROHIBITED.

A PERSON MAY NOT DISRUPT OR INTERFERE WITH A COMMERCIAL ATHLETIC CONTEST BY THROWING OR PROJECTING AN OBJECT ON THE PLAYING FIELD OR SEATING AREA.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 MONTHS OR A FINE NOT EXCEEDING $250 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 125 1/2.

In subsection (a)(2) of this section, the former phrase "of the State" is deleted as surplusage.

Also in subsection (a)(2) of this section, the references to the potential venues for a commercial athletic event are revised in light of Art. 1, § 8 which provides that the singular includes the plural unless that construction is unreasonable.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b) of this section the reference to the "playing field or seating area" may not include many areas that may need to be secured from disruption and interference in the course of a commercial athletic contest. For example, it is not clear that a bullpen, on-deck circle, dugout, or penalty box is part of the "playing field or seating area". The General Assembly may wish to explore the areas that may need to be included in order to secure a commercial athletic contest from interference.

Defined term: "Person" § 1-101

10-204. INTERFERENCE WITH ACCESS TO OR EGRESS FROM A MEDICAL FACILITY.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "MEDICAL FACILITY" MEANS:

1. A FACILITY AS DEFINED IN § 10-101 OF THE HEALTH - GENERAL ARTICLE; OR

2. A HEALTH CARE FACILITY AS DEFINED IN § 19-114 OF THE HEALTH - GENERAL ARTICLE.

(II) "MEDICAL FACILITY" INCLUDES AN AGENCY, CLINIC, OR OFFICE OPERATED UNDER THE DIRECTION OF THE LOCAL HEALTH OFFICER OR UNDER THE REGULATORY AUTHORITY OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

(B) SCOPE OF SECTION.

(1) THIS SECTION DOES NOT APPLY TO:

(I) THE CHIEF EXECUTIVE OFFICER OF THE MEDICAL FACILITY;

(II) A DESIGNEE OF THE CHIEF EXECUTIVE OFFICER OF THE MEDICAL FACILITY;

(III) AN AGENT OF THE MEDICAL FACILITY; OR

(IV) A LAW ENFORCEMENT OFFICER.

(2) THIS SECTION DOES NOT PROHIBIT:

(I) SPEECH; OR

(II) PICKETING IN CONNECTION WITH A LABOR DISPUTE AS DEFINED IN § 4-301 OF THE LABOR AND EMPLOYMENT ARTICLE.

(C) PROHIBITED.

A PERSON MAY NOT INTENTIONALLY ACT, ALONE OR WITH OTHERS, TO PREVENT ANOTHER FROM ENTERING OR EXITING A MEDICAL FACILITY BY PHYSICALLY:

(1) DETAINING THE OTHER; OR

(2) OBSTRUCTING, IMPEDING, OR HINDERING THE OTHER'S PASSAGE.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 577B.

Subsection (b) of this section is revised as a scope provision for clarity.

In subsection (b)(2)(ii) of this section, the former reference to a picketing "assembly" is deleted for consistency with § 3-707 of this article.

Defined term: "Person" § 1-101

SUBTITLE 3. HATE CRIMES.

10-301. DAMAGING PROPERTY OF RELIGIOUS ENTITY.

A PERSON MAY NOT DEFACE, DAMAGE, OR DESTROY, OR ATTEMPT TO DEFACE, DAMAGE, OR DESTROY, PERSONAL OR REAL PROPERTY THAT IS OWNED, LEASED, OR USED BY A RELIGIOUS ENTITY OR FOR ANY RELIGIOUS PURPOSE INCLUDING:

(1) A CHURCH, SYNAGOGUE, OR OTHER PLACE OF WORSHIP;

(2) A CEMETERY;

(3) A RELIGIOUS SCHOOL, EDUCATIONAL FACILITY, OR COMMUNITY CENTER; AND

(4) THE GROUNDS ADJACENT TO THEM.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 470A(a)(1) and (3) and (b)(1).

In this section, the term "religious real property" defined in former Art. 27, § 470A(a)(3) is incorporated into the substantive provision to which it applied.

In item (3) of this section, the former reference to a religious "structure, or other real property" is deleted as surplusage.

Defined term: "Person" § 1-101

10-302. OBSTRUCTING EXERCISE OF RELIGIOUS BELIEF.

A PERSON MAY NOT, BY FORCE OR THREAT OF FORCE, OBSTRUCT OR ATTEMPT TO OBSTRUCT ANOTHER IN THE FREE EXERCISE OF THAT PERSON'S RELIGIOUS BELIEFS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 470A(b)(2).

Defined term: "Person" § 1-101

10-303. HARASSMENT; DESTRUCTION OF PROPERTY.

BECAUSE OF ANOTHER'S RACE, COLOR, RELIGIOUS BELIEFS, OR NATIONAL ORIGIN, A PERSON MAY NOT:

(1) HARASS OR COMMIT A CRIME AGAINST THAT PERSON;

(2) DAMAGE THE REAL OR PERSONAL PROPERTY OF THAT PERSON;

(3) DEFACE, DAMAGE, OR DESTROY, ATTEMPT TO DEFACE, DAMAGE, OR DESTROY THE REAL OR PERSONAL PROPERTY OF THAT PERSON; OR

(4) BURN OR ATTEMPT TO BURN AN OBJECT ON THE REAL OR PERSONAL PROPERTY OF THAT PERSON.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 470A(b)(3)(i) and (4)(i).

Defined term: "Person" § 1-101

10-304. DAMAGE TO ASSOCIATED BUILDING.

A PERSON MAY NOT DEFACE, DAMAGE, OR DESTROY, ATTEMPT TO DEFACE, DAMAGE, OR DESTROY, BURN OR ATTEMPT TO BURN AN OBJECT ON, OR DAMAGE THE REAL OR PERSONAL PROPERTY CONNECTED TO A BUILDING THAT IS PUBLICLY OR PRIVATELY OWNED, LEASED, OR USED, INCLUDING A CEMETERY, LIBRARY, MEETING HALL, RECREATION CENTER, OR SCHOOL:

(1) BECAUSE A PERSON OR GROUP OF A PARTICULAR RACE, COLOR, RELIGIOUS BELIEF, OR NATIONAL ORIGIN HAS CONTACTS OR IS ASSOCIATED WITH THE BUILDING; OR

(2) IF THERE IS EVIDENCE THAT EXHIBITS ANIMOSITY AGAINST A PERSON OR GROUP, BECAUSE OF THE RACE, COLOR, RELIGIOUS BELIEFS, OR NATIONAL ORIGIN OF THAT PERSON OR GROUP.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 470A(a)(1) and (2) and (b)(3)(ii) and (4)(ii).

In this section, the term "institution" defined in former Art. 27, § 470A(a)(2) is incorporated into the substantive provision to which it applied.

Defined term: "Person" § 1-101

10-305. PENALTY.

A PERSON WHO VIOLATES THIS SUBTITLE IS SUBJECT TO THE FOLLOWING PENALTIES:

(1) IF THE VIOLATION INVOLVES A SEPARATE CRIME THAT IS A FELONY, THE PERSON IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT:

(I) TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH; OR

(II) IF THE VIOLATION ALSO RESULTS IN DEATH TO A VICTIM, TO IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $20,000 OR BOTH; AND

(2) IN ALL OTHER CASES, THE PERSON 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.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 470A(c).

Defined term: "Person" § 1-101

10-306. ADDITIONAL PROSECUTION NOT PRECLUDED.

PROSECUTION OF A PERSON UNDER THIS SUBTITLE DOES NOT PRECLUDE PROSECUTION AND IMPOSITION OF PENALTIES FOR ANOTHER CRIME IN ADDITION TO THE PENALTIES IMPOSED UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 470A(d).

Defined term: "Person" § 1-101

SUBTITLE 4. CRIMES RELATING TO HUMAN REMAINS.

10-401. 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, § 265(a)(1) and the introductory language of former §§ 267(a)(1) and 267A(a)(1).

In this subsection, the reference to this "subtitle" is substituted for the former references to "subheading" and this "section" to reflect the reorganization of material derived from the former subheadings on the removal of human remains from burial sites, graveyard desecration, and trading in human remains and associated funerary objects. Although this substitution applies the defined term "permanent cemetery" in § 10-404(e), which is derived from former Art. 27, § 267(d), a provision to which it did not originally apply, the term is used in a manner consistent with the term "permanent cemetery" used in the former law. No substantive change is intended.

(B) BURIAL SITE.

(1) "BURIAL SITE" MEANS A NATURAL OR PREPARED PHYSICAL LOCATION, WHETHER ORIGINALLY LOCATED BELOW, ON, OR ABOVE THE SURFACE OF THE EARTH, INTO WHICH HUMAN REMAINS OR FUNERARY OBJECTS ARE DEPOSITED AS A PART OF A DEATH CEREMONY OF A CULTURE, RELIGION, OR GROUP.

(2) "BURIAL SITE" INCLUDES THE HUMAN REMAINS AND FUNERARY OBJECTS THAT RESULT FROM A SHIPWRECK OR ACCIDENT AND ARE LEFT INTENTIONALLY TO REMAIN AT THE SITE.

REVISOR'S NOTE: This subsection is new language substituted for former Art. 27, §§ 265(a)(2), 267(a), and 267A(a) as they defined "associated funerary object".

In this subsection and throughout this subtitle, the former references to a death "rite" are deleted as included in the references to a death "ceremony".

(C) FUNERARY OBJECT.

(1) "FUNERARY OBJECT" MEANS AN ITEM OF HUMAN MANUFACTURE OR USE THAT IS INTENTIONALLY PLACED:

(I) WITH HUMAN REMAINS AT THE TIME OF INTERMENT IN A BURIAL SITE; OR

(II) AFTER INTERMENT, AS A PART OF A DEATH CEREMONY OF A CULTURE, RELIGION, OR GROUP.

(2) "FUNERARY OBJECT" INCLUDES A GRAVESTONE, MONUMENT, TOMB, OR OTHER STRUCTURE IN OR DIRECTLY ASSOCIATED WITH A BURIAL SITE.

REVISOR'S NOTE: This subsection is new language substituted for former Art. 27, § 265(a)(3).

In this subsection and throughout this subtitle, the defined term "funerary object" is substituted for the former defined term "associated funerary object" for brevity.

In this subsection, the reference to placement "after interment" is substituted for the former reference to "later" placement for clarity.

(D) PERMANENT CEMETERY.

"PERMANENT CEMETERY" MEANS A CEMETERY THAT IS OWNED BY:

(1) A CEMETERY COMPANY REGULATED UNDER TITLE 5 OF THE BUSINESS REGULATION ARTICLE;

(2) A NONPROFIT ORGANIZATION; OR

(3) THE STATE.

REVISOR'S NOTE: This subsection is new language substituted for former Art. 27, § 265(a)(4).

10-402. REMOVING HUMAN REMAINS WITHOUT AUTHORITY.

(A) PROHIBITED.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON MAY NOT REMOVE OR ATTEMPT TO REMOVE HUMAN REMAINS FROM A BURIAL SITE.

(B) EXCEPTION.

SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE STATE'S ATTORNEY FOR A COUNTY MAY AUTHORIZE IN WRITING THE REMOVAL OF HUMAN REMAINS FROM A BURIAL SITE IN THE STATE'S ATTORNEY'S JURISDICTION:

(1) TO ASCERTAIN THE CAUSE OF DEATH OF THE PERSON WHOSE REMAINS ARE TO BE REMOVED;

(2) TO DETERMINE WHETHER THE HUMAN REMAINS WERE INTERRED ERRONEOUSLY;

(3) FOR THE PURPOSE OF REBURIAL; OR

(4) FOR MEDICAL OR SCIENTIFIC EXAMINATION OR STUDY ALLOWED BY LAW.

(C) SAME -- NOTICE.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE STATE'S ATTORNEY FOR A COUNTY SHALL REQUIRE A PERSON WHO REQUESTS AUTHORIZATION TO RELOCATE PERMANENTLY HUMAN REMAINS FROM A BURIAL SITE TO PUBLISH A NOTICE OF THE PROPOSED RELOCATION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE BURIAL SITE IS LOCATED.

(2) THE NOTICE SHALL BE PUBLISHED IN THE NEWSPAPER ONE TIME.

(3) THE NOTICE SHALL CONTAIN:

(I) A STATEMENT THAT AUTHORIZATION FROM THE STATE'S ATTORNEY IS BEING REQUESTED TO REMOVE HUMAN REMAINS FROM A BURIAL SITE;

(II) THE PURPOSE FOR WHICH THE AUTHORIZATION IS BEING REQUESTED;

(III) THE LOCATION OF THE BURIAL SITE, INCLUDING THE TAX MAP AND PARCEL NUMBER OR LIBER AND FOLIO NUMBER; AND

(IV) ALL KNOWN PERTINENT INFORMATION CONCERNING THE BURIAL SITE, INCLUDING THE NAMES OF THE PERSONS WHOSE HUMAN REMAINS ARE INTERRED IN THE BURIAL SITE, IF KNOWN.

(4) (I) THE STATE'S ATTORNEY MAY AUTHORIZE THE TEMPORARY RELOCATION OF HUMAN REMAINS FROM A BURIAL SITE FOR GOOD CAUSE, NOTWITHSTANDING THE NOTICE REQUIREMENTS OF THIS SUBSECTION.

(II) IF THE PERSON REQUESTING THE AUTHORIZATION SUBSEQUENTLY INTENDS TO RELOCATE THE REMAINS PERMANENTLY, THE PERSON PROMPTLY SHALL PUBLISH NOTICE AS REQUIRED UNDER THIS SUBSECTION.

(5) THE PERSON REQUESTING THE AUTHORIZATION FROM THE STATE'S ATTORNEY SHALL PAY THE COST OF PUBLISHING THE NOTICE.

(6) THE STATE'S ATTORNEY MAY AUTHORIZE THE REMOVAL OF THE HUMAN REMAINS FROM THE BURIAL SITE AFTER:

(I) RECEIVING PROOF OF THE PUBLICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) 15 DAYS AFTER THE DATE OF PUBLICATION.

(7) THIS SUBSECTION MAY NOT BE CONSTRUED TO DELAY, PROHIBIT, OR OTHERWISE LIMIT THE STATE'S ATTORNEY'S AUTHORIZATION FOR THE REMOVAL OF HUMAN REMAINS FROM A BURIAL SITE.

(8) FOR A KNOWN, BUT NOT NECESSARILY DOCUMENTED, UNMARKED BURIAL SITE, THE PERSON REQUESTING AUTHORIZATION FOR THE REMOVAL OF HUMAN REMAINS FROM THE BURIAL SITE HAS THE BURDEN OF PROVING BY ARCHAEOLOGICAL EXCAVATION OR ANOTHER ACCEPTABLE METHOD THE PRECISE LOCATION AND BOUNDARIES OF THE BURIAL SITE.

(D) SAME -- REINTERMENT.

(1) ANY HUMAN REMAINS THAT ARE REMOVED FROM A BURIAL SITE UNDER THIS SECTION SHALL BE REINTERRED IN:

(I) 1. A PERMANENT CEMETERY THAT PROVIDES PERPETUAL CARE; OR

2. A PLACE OTHER THAN A PERMANENT CEMETERY WITH THE AGREEMENT OF A PERSON IN INTEREST AS DEFINED UNDER § 14-121(A)(4) OF THE REAL PROPERTY ARTICLE; AND

(II) IN THE PRESENCE OF:

1. A MORTICIAN, PROFESSIONAL CEMETERIAN, OR OTHER INDIVIDUAL QUALIFIED IN THE INTERMENT OF HUMAN REMAINS;

2. A MINISTER, PRIEST, OR OTHER RELIGIOUS LEADER; OR

3. A TRAINED ANTHROPOLOGIST OR ARCHAEOLOGIST.

(2) THE LOCATION OF THE FINAL DISPOSITION AND TREATMENT OF HUMAN REMAINS THAT ARE REMOVED FROM A BURIAL SITE UNDER THIS SECTION SHALL BE ENTERED INTO THE LOCAL BURIAL SITES INVENTORY OR, IF NO LOCAL BURIAL SITES INVENTORY EXISTS, INTO A RECORD OR INVENTORY DEEMED APPROPRIATE BY THE STATE'S ATTORNEY OR THE MARYLAND HISTORICAL TRUST.

(E) CONSTRUCTION OF SECTION.

THIS SECTION MAY NOT BE CONSTRUED TO:

(1) PREEMPT THE NEED FOR A PERMIT REQUIRED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 4-215 OF THE HEALTH - GENERAL ARTICLE TO REMOVE HUMAN REMAINS FROM A BURIAL SITE; OR

(2) INTERFERE WITH THE NORMAL OPERATION AND MAINTENANCE OF A CEMETERY, AS LONG AS THE OPERATION AND MAINTENANCE OF THE CEMETERY ARE PERFORMED IN ACCORDANCE WITH STATE LAW.

(F) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

(G) 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, § 265(b) through (g).

In subsection (a) of this section, the former reference to "the State" is deleted as unnecessary.

In the introductory language of subsection (b) of this section and throughout this section, the former references to "the provisions of" specified law are deleted as surplusage.

Also in the introductory language of subsection (b) of this section and throughout this section, the former references to "Baltimore City" are deleted in light of the defined term "county".

In subsection (b)(1) and (2) of this section, the references to authorization "to ascertain [or determine]" certain facts are substituted for the former references to authorization "for the purpose of ascertaining [or determining]" certain facts for clarity and brevity.

In subsection (b)(4) of this section, the reference to examination or study

"allowed" by law is substituted for the former reference to examination or study "as permitted" by law for clarity.

In subsection (c)(4)(ii) of this section, the reference to a person "subsequently" intending certain action is substituted for the former reference to a person "thereafter" intending certain action for clarity.

In subsection (c)(6)(ii) of this section, the reference to 15 days "after" publication is substituted for the former reference to 15 days "having expired after" publication for clarity and brevity.

Also in subsection (c)(6)(ii) of this section, the former redundant reference to publication "of the required notice" is deleted as unnecessary.

In the introductory language of subsection (d)(1) of this section and throughout this section, the reference to removal "under" certain law is substituted for the former reference to removal "in accordance with" certain law for brevity.

In subsection (d)(1)(i)2 of this section, the former reference to reinterment in a certain place "at the request of" a person in interest is deleted as included in the reference to reinterment in a certain place "with the agreement of" a person in interest.

In subsection (d)(2) of this section, the reference to "a" record is substituted for the former reference to "whatever" record for clarity and consistency.

In subsection (e)(2) of this section, the former reference to a "public or private" cemetery is deleted as surplusage.

Defined terms: "Burial site" § 10-401

"County" § 1-101

"Permanent cemetery" § 10-401

"Person" § 1-101

10-403. REMOVAL OF HUMAN REMAINS OR FUNERARY OBJECT.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) A PERSON ACTING IN THE COURSE OF MEDICAL, ARCHAEOLOGICAL, EDUCATIONAL, OR SCIENTIFIC STUDY;

(2) A LICENSED MORTICIAN OR OTHER PROFESSIONAL WHO TRANSPORTS HUMAN REMAINS IN THE COURSE OF CARRYING OUT PROFESSIONAL DUTIES; OR

(3) A PERSON ACTING UNDER THE AUTHORITY OF:

(I) § 10-402 OF THIS SUBTITLE; OR

(II) § 4-215 OR § 5-408 OF THE HEALTH - GENERAL ARTICLE.

(B) PROHIBITED.

A PERSON MAY NOT KNOWINGLY SELL, BUY, OR TRANSPORT FOR SALE OR PROFIT, OR OFFER TO BUY, SELL, OR TRANSPORT FOR SALE OR PROFIT:

(1) UNLAWFULLY REMOVED HUMAN REMAINS; OR

(2) A FUNERARY OBJECT OBTAINED IN VIOLATION OF § 10-404 OF THIS SUBTITLE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(D) APPROPRIATION AND DISPOSITION.

THE MARYLAND HISTORICAL TRUST MAY APPROPRIATE ALL HUMAN REMAINS AND FUNERARY OBJECTS OBTAINED IN VIOLATION OF THIS SUBTITLE FOR MANAGEMENT, CARE, AND ADMINISTRATION UNTIL A DETERMINATION OF FINAL DISPOSITION AS PROVIDED BY LAW.

(E) CONSTRUCTION OF SECTION.

THIS SECTION MAY NOT BE CONSTRUED TO INTERFERE WITH THE NORMAL OPERATION AND MAINTENANCE OF A CEMETERY INCLUDING:

(1) CORRECTION OF IMPROPER BURIAL SITING; AND

(2) MOVING THE HUMAN REMAINS WITHIN A CEMETERY WITH THE CONSENT OF A PERSON WHO QUALIFIES AS AN HEIR AS DEFINED IN § 1-101 OF THE ESTATES AND TRUSTS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 267A(b) through (d).

In subsection (a)(2) of this section, the former reference to "responsibilities" is deleted as surplusage.

In subsections (b) and (d) of this section, the former references to the "State" are deleted as unnecessary.

In subsection (d) of this section, the reference to this "subtitle" is substituted for the former reference to "this subheading or of Article 27, §§ 265 and 267 of the Code", to reflect the reorganization of material derived from the former subheading on graveyard desecration.

In subsection (e) of this section, the reference to an heir as defined in "§

1-101 of" the Estates and Trusts Article is added for clarity.

Also in subsection (e) of this section, the former references to a "public or private" cemetery are deleted as surplusage.

Defined terms: "Funerary object" § 10-401

"Person" § 1-101

10-404. CEMETERY -- DESTROYING FUNERARY OBJECTS; INDECENT CONDUCT.

(A) PROHIBITED -- DESTRUCTION OF FUNERARY OBJECT.

A PERSON MAY NOT WILLFULLY DESTROY, DAMAGE, DEFACE, OR REMOVE:

(1) A FUNERARY OBJECT OR ANOTHER STRUCTURE PLACED IN A CEMETERY; OR

(2) A BUILDING, WALL, FENCE, RAILING, OR OTHER WORK, FOR THE USE, PROTECTION, OR ORNAMENTATION OF A CEMETERY.

(B) SAME -- DESTRUCTION OF FOLIAGE.

A PERSON MAY NOT WILLFULLY DESTROY, DAMAGE, OR REMOVE A TREE, PLANT, OR SHRUB IN A CEMETERY.

(C) SAME -- INDECENT OR DISORDERLY CONDUCT.

A PERSON MAY NOT ENGAGE IN INDECENT OR DISORDERLY CONDUCT IN A CEMETERY.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A VIOLATION OF SUBSECTION (A) OF THIS SECTION, IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH; AND

(2) FOR A VIOLATION OF SUBSECTION (B) OR (C) OF THIS SECTION, IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $500 OR BOTH.

(E) CONSTRUCTION OF SECTION.

THIS SECTION DOES NOT PROHIBIT THE REMOVAL OF HUMAN REMAINS OR A FUNERARY OBJECT FROM AN ABANDONED CEMETERY IF:

(1) THE REMOVAL IS AUTHORIZED IN WRITING BY THE STATE'S ATTORNEY OF THE COUNTY IN WHICH THE CEMETERY CONTAINING THE HUMAN REMAINS OR FUNERARY OBJECT IS LOCATED; AND

(2) THE HUMAN REMAINS OR FUNERARY OBJECT ARE PLACED IN AN ACCESSIBLE PLACE IN A PERMANENT CEMETERY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 267(b) through (d).

In subsections (a) and (b) of this section, the former references to "this State" are deleted as unnecessary.

In subsection (a) of this section, the former references to a person who "mutilates" or "injures" are deleted as included in the reference to a person who "destroy[s], damage[s], [or] deface[s]".

In subsection (b) of this section, the word "damage" is substituted for the former reference to "cuts [and] breaks" for clarity and brevity.

In subsection (e) of this section, the words "human remains" are substituted for the former reference to "remains of any human body" for clarity and uniformity within this subtitle.

In subsection (e)(1) of this section, the former reference to "Baltimore City" is deleted in light of the defined term "county".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that a literal reading of subsection (b) of this section, prohibiting the willful destruction, damage, and removal of a plant in a cemetery, would prohibit normal horticultural maintenance, including trimming of trees and shrubs and even lawn cutting.

Defined terms: "County" § 1-101

"Funerary object" § 10-401

"Permanent cemetery" § 10-401

"Person" § 1-101

SUBTITLE 5. CRIMES AGAINST MARRIAGE.

10-501. ADULTERY.

(A) PROHIBITED.

A PERSON MAY NOT COMMIT ADULTERY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION SHALL BE FINED $10.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 3.

This section is revised in standard language used to describe a statutory crime. Adultery was not a crime at common law, although it did have consequences relating to marriage and divorce. *See Cole v. State*, 126 Md. 239, 94 A. 913 (1915).

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 by the reference to a "conviction". 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. 483, 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 (1968).

The former reference to "in any of the circuit courts for counties in this State" is deleted in light of CJ § 4-301, which provides that the District Court generally has exclusive original jurisdiction of common-law and statutory misdemeanors, unless the potential penalty includes confinement for at least 3 years or a fine of at least $2,500. The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

Defined term: "Person" § 1-101

10-502. BIGAMY.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A PERSON IF:

(1) THE PERSON'S PREVIOUS LAWFUL SPOUSE HAS BEEN ABSENT FROM THE PERSON FOR A CONTINUOUS PERIOD OF 7 YEARS; AND

(2) THE PERSON DOES NOT KNOW WHETHER THE PERSON'S PREVIOUS LAWFUL SPOUSE IS LIVING AT THE TIME OF THE SUBSEQUENT MARRIAGE CEREMONY.

(B) PROHIBITED.

WHILE LAWFULLY MARRIED TO A LIVING PERSON, A PERSON MAY NOT ENTER INTO A MARRIAGE CEREMONY WITH ANOTHER.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF BIGAMY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 9 YEARS.

(D) CHARGING DOCUMENT.

AN INDICTMENT OR WARRANT FOR BIGAMY IS SUFFICIENT IF IT SUBSTANTIALLY STATES: "(NAME OF DEFENDANT) ON (DATE), IN (COUNTY), HAVING A

LIVING SPOUSE, FELONIOUSLY ENTERED INTO A MARRIAGE CEREMONY WITH (NAME OF SUBSEQUENT SPOUSE), IN VIOLATION OF § 10-502 OF THE CRIMINAL LAW ARTICLE, 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, §§ 18 and 19.

In subsection (c) of this section, the reference to being "guilty of the felony" is added to state expressly that which only was implied in the former law by the reference to a "conviction". At common law, the crime of bigamy is classified as a felony. *See Barber v. State*, 50 Md. 161, 170 (1878).

In subsection (d) of this section, the reference to "§ 10-502 of the Criminal Law Article" is substituted for the former archaic phrase "contrary to the form of the Act of Assembly ... and provided" for clarity and consistency within this article.

In subsection (d) of this section, the reference to "enter[ing] into a marriage ceremony with" a subsequent spouse is substituted for the former reference to "marr[ying]" a subsequent spouse for consistency within this section.

Defined terms: "County" § 1-101

"Person" § 1-101

SUBTITLE 6. CRIMES RELATING TO ANIMALS.

10-601. DEFINITIONS.

(A) IN GENERAL.

IN 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) ANIMAL.

"ANIMAL" MEANS A LIVING CREATURE EXCEPT A HUMAN BEING.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 62, as it defined "animal".

(C) CRUELTY.

(1) "CRUELTY" MEANS THE UNNECESSARY OR UNJUSTIFIABLE PHYSICAL PAIN OR SUFFERING CAUSED OR ALLOWED BY AN ACT, OMISSION, OR NEGLECT.

(2) "CRUELTY" INCLUDES TORTURE AND TORMENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 62, as it defined "cruelty".

(D) HUMANE SOCIETY.

"HUMANE SOCIETY" MEANS A SOCIETY OR ASSOCIATION INCORPORATED IN MARYLAND FOR THE PREVENTION OF CRUELTY TO ANIMALS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, §§ 60B and 63, as they related to humane societies.

10-602. LEGISLATIVE INTENT.

IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT EACH ANIMAL IN THE STATE BE PROTECTED FROM INTENTIONAL CRUELTY, INCLUDING ANIMALS THAT ARE:

(1) PRIVATELY OWNED;

(2) STRAYS;

(3) DOMESTICATED;

(4) FERAL;

(5) FARM ANIMALS;

(6) CORPORATELY OR INSTITUTIONALLY OWNED; OR

(7) USED IN PRIVATELY, LOCALLY, STATE, OR FEDERALLY FUNDED SCIENTIFIC OR MEDICAL ACTIVITIES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 59(a).

In the introductory language of this section, the word "including" is substituted for the former word "if" for clarity.

Defined terms: "Animal" § 10-601

"Cruelty" § 10-601

10-603. APPLICATION OF §§ 10-601 THROUGH 10-608.

SECTIONS 10-601 THROUGH 10-608 OF THIS SUBTITLE DO NOT APPLY TO:

(1) CUSTOMARY AND NORMAL VETERINARY AND AGRICULTURAL HUSBANDRY PRACTICES INCLUDING DEHORNING, CASTRATION, TAIL DOCKING, AND LIMIT FEEDING;

(2) RESEARCH CONDUCTED IN ACCORDANCE WITH PROTOCOLS APPROVED BY AN ANIMAL CARE AND USE COMMITTEE, AS REQUIRED UNDER THE FEDERAL ANIMAL WELFARE ACT OR THE FEDERAL HEALTH RESEARCH EXTENSION ACT;

(3) AN ACTIVITY THAT MAY CAUSE UNAVOIDABLE PHYSICAL PAIN TO AN ANIMAL, INCLUDING FOOD PROCESSING, PEST ELIMINATION, ANIMAL TRAINING, AND HUNTING, IF THE PERSON PERFORMING THE ACTIVITY USES THE MOST HUMANE METHOD REASONABLY AVAILABLE; OR

(4) NORMAL HUMAN ACTIVITIES IN WHICH THE INFLICTION OF PAIN TO AN ANIMAL IS PURELY INCIDENTAL AND UNAVOIDABLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 59(d).

In the introductory language of this section, the reference to "[s]ections 10-601 through 10-608 of this subtitle" is substituted for the former reference to "[t]his section" to reflect the reorganization of material derived from former Art. 27, § 59.

In item (1) of this section, the former phrase "but not limited to" is deleted in light of Art. 1, § 30, which provides that "[t]he words `includes' or `including' mean, unless the context requires otherwise, includes or including by way of illustration and not by way of limitation".

Item (3) of this section is revised as an exclusion from the application of animal cruelty provisions, rather than a definition of "cruelty", for clarity. Similarly, item (4) of this section is revised as an exclusion from the application of animal cruelty provisions, rather than an immunity from criminal prosecution provision, for clarity and consistency.

For provisions relating to humane methods of slaughtering livestock, *see* AG § 4-123.1.

Defined term: "Animal" § 1-101

10-604. ABUSE OR NEGLECT OF ANIMAL.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) OVERDRIVE OR OVERLOAD AN ANIMAL;

(2) DEPRIVE AN ANIMAL OF NECESSARY SUSTENANCE;

(3) CAUSE, PROCURE, OR AUTHORIZE AN ACT PROHIBITED UNDER ITEM (1) OR ITEM (2) OF THIS SUBSECTION; OR

(4) IF THE PERSON HAS CHARGE OR CUSTODY OF AN ANIMAL, AS OWNER OR OTHERWISE:

(I) INFLICT UNNECESSARY SUFFERING OR PAIN ON THE ANIMAL; OR

(II) UNNECESSARILY FAIL TO PROVIDE THE ANIMAL WITH NUTRITIOUS FOOD IN SUFFICIENT QUANTITY, NECESSARY VETERINARY CARE, PROPER DRINK, AIR, SPACE, SHELTER, OR PROTECTION FROM THE WEATHER.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(2) AS A CONDITION OF SENTENCING, THE COURT MAY ORDER A DEFENDANT CONVICTED OF VIOLATING THIS SECTION TO PARTICIPATE IN AND PAY FOR PSYCHOLOGICAL COUNSELING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 59(b)(1)(i) through (iv) and (2).

Defined terms: "Animal" § 10-601

"Person" § 1-101

10-605. ATTENDING DOGFIGHT.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY ATTEND A DELIBERATELY CONDUCTED DOGFIGHT AS A SPECTATOR.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(2) AS A CONDITION OF SENTENCING, THE COURT MAY ORDER A DEFENDANT CONVICTED OF VIOLATING THIS SECTION TO PARTICIPATE IN AND PAY FOR PSYCHOLOGICAL COUNSELING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 59(b)(1)(v) and (2).

Defined term: "Person" § 1-101

10-606. AGGRAVATED CRUELTY TO ANIMALS -- IN GENERAL.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) INTENTIONALLY MUTILATE, TORTURE, CRUELLY BEAT, OR CRUELLY KILL AN ANIMAL;

(2) CAUSE, PROCURE, OR AUTHORIZE AN ACT PROHIBITED UNDER ITEM (1) OF THIS SUBSECTION; OR

(3) EXCEPT IN THE CASE OF SELF-DEFENSE, INTENTIONALLY INFLICT BODILY HARM, PERMANENT DISABILITY, OR DEATH ON AN ANIMAL OWNED OR USED BY A LAW ENFORCEMENT UNIT.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF AGGRAVATED CRUELTY TO ANIMALS AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(2) AS A CONDITION OF SENTENCING, THE COURT MAY ORDER A DEFENDANT CONVICTED OF VIOLATING THIS SECTION TO PARTICIPATE IN AND PAY FOR PSYCHOLOGICAL COUNSELING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 59(c)(1)(i), (ii), and (v) and (2).

Defined terms: "Animal" § 10-601

"Cruelty" § 10-601

"Person" § 1-101

10-607. SAME -- ARRANGING, CONDUCTING, OR USING DOG IN DOGFIGHT.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) USE OR ALLOW A DOG TO BE USED IN A DOGFIGHT; OR

(2) ARRANGE OR CONDUCT A DOGFIGHT.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF AGGRAVATED CRUELTY TO ANIMALS AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(2) AS A CONDITION OF SENTENCING, THE COURT MAY ORDER A DEFENDANT CONVICTED OF VIOLATING THIS SECTION TO PARTICIPATE IN AND PAY FOR PSYCHOLOGICAL COUNSELING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 59(c)(1)(iii) and (2).

Defined terms: "Animal" § 10-601

"Cruelty" § 10-601

"Person" § 1-101

10-608. SAME -- COCKFIGHT.

(A) PROHIBITED.

A PERSON MAY NOT USE OR ALLOW THE USE OF A FOWL, COCK, OR OTHER BIRD TO FIGHT WITH ANOTHER ANIMAL.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE FELONY OF AGGRAVATED CRUELTY TO ANIMALS AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(2) AS A CONDITION OF SENTENCING, THE COURT MAY ORDER A DEFENDANT CONVICTED OF VIOLATING THIS SECTION TO PARTICIPATE IN AND PAY FOR PSYCHOLOGICAL COUNSELING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 59(c)(1)(iv) and (2).

In subsection (a) of this section, the former phrase "commonly known as cockfighting" is deleted as unnecessary.

Defined terms: "Animal" § 10-601

"Cruelty" § 10-601

"Person" § 1-101

10-609. ARREST BY HUMANE SOCIETY OFFICER.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF AN OFFICER OF A HUMANE SOCIETY SEES A PERSON COMMITTING A MISDEMEANOR THAT INVOLVES CRUELTY TO AN ANIMAL, THE OFFICER SHALL ARREST AND BRING BEFORE THE DISTRICT COURT THE PERSON COMMITTING THE MISDEMEANOR.

(B) LOCAL ENFORCEMENT -- BALTIMORE COUNTY.

IN BALTIMORE COUNTY, THE BALTIMORE COUNTY DEPARTMENT OF HEALTH, DIVISION OF ANIMAL CONTROL SHALL ENFORCE THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 63.

In subsection (a) of this section, the former reference to a "commissioner" is deleted as included in the reference to the "District Court".

In subsection (b) of this section, the reference to the Baltimore County "Department of Health, Division of Animal Control" is substituted for the former obsolete reference to the "Bureau of Animal Control" for accuracy.

Defined terms: "Animal" § 10-601

"Cruelty" § 10-601

"Humane society" § 10-601

"Person" § 1-101

10-610. ANIMAL AS PRIZE.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A PERSON GIVING AWAY AN ANIMAL:

(1) AS AN AGRICULTURAL PROJECT;

(2) FOR CONSERVATION PURPOSES; OR

(3) THAT IS INTENDED FOR SLAUGHTER.

(B) PROHIBITED.

WITHOUT THE APPROVAL OF THE SECRETARY OF AGRICULTURE, A PERSON MAY NOT GIVE AWAY A LIVE ANIMAL AS:

(1) A PRIZE FOR, OR INDUCEMENT TO ENTER, A CONTEST, GAME, OR OTHER COMPETITION;

(2) AN INDUCEMENT TO ENTER A PLACE OF AMUSEMENT; OR

(3) AN INCENTIVE TO MAKE A BUSINESS AGREEMENT IF THE OFFER IS TO ATTRACT TRADE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION 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, § 60A.

In the introductory language of subsection (b) of this section, the former reference to a live "equine, or bird" is deleted as included in the comprehensive reference to a live "animal".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the purpose paragraph of Ch. 480, Acts of

1978, which enacted former Art. 27, § 60A, described the animals the offer of which is regulated by this section as "vertebrate" animals. No bill review letter, nor any other advice of the Attorney General, noted the discrepancy between the term "vertebrate animal" used in the title of the bill and the term "animal" used in the body of the bill.

Defined terms: "Animal" § 10-601

"Person" § 1-101

10-611. KILLING OF DOG OR CAT -- PROHIBITED MEANS.

(A) PROHIBITED.

A PERSON MAY NOT KILL OR ALLOW A DOG OR CAT TO BE KILLED BY USE OF:

(1) A DECOMPRESSION CHAMBER;

(2) CARBON MONOXIDE GAS; OR

(3) CURARIFORM DRUGS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION 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, § 59A.

In subsection (a)(1) of this section, the former reference to the description of a decompression chamber as a "high-altitude, low-pressure chamber" is deleted as surplusage.

Defined term: "Person" § 1-101

10-612. ABANDONING DOMESTIC ANIMAL.

(A) PROHIBITED.

A PERSON WHO OWNS, POSSESSES, OR HAS CUSTODY OF A DOMESTIC ANIMAL MAY NOT DROP OR LEAVE THE ANIMAL ON A ROAD, IN A PUBLIC PLACE, OR ON PRIVATE PROPERTY WITH THE INTENT TO ABANDON THE ANIMAL.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $100.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 60.

In subsection (a) of this section, the former reference to a "partnership or corporation" is deleted as included in the reference to the defined term "person".

Also in subsection (a) of this section, the former references to a "dog" and a "cat" are deleted as included in the reference to a "domestic animal".

Defined terms: "Animal" § 10-601

"Person" § 1-101

10-613. SALE OF PUPPY OR KITTEN.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO:

(1) A BIOMEDICAL FACILITY THAT IS LICENSED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE; OR

(2) AN ANIMAL THAT IS ACCOMPANIED BY A SIGNED STATEMENT FROM A LICENSED VETERINARIAN STATING THAT THE ANIMAL'S DAM IS INCAPACITATED FOR HUMANE OR MEDICAL REASONS AND CANNOT CARE FOR THE ANIMAL.

(B) PROHIBITED.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT SELL OR DISTRIBUTE IN THE STATE OR BRING INTO THE STATE FOR THE PURPOSE OF SALE OR DISTRIBUTION A DOMESTIC DOG OR CAT LESS THAN 8 WEEKS OF AGE UNLESS ACCOMPANIED BY ITS DAM.

(2) A PERSON MAY GIVE AN UNACCOMPANIED DOG OR CAT TO:

(I) AN ANIMAL SHELTER OR POUND THAT IS OPERATED OR SUPPORTED BY A GOVERNMENT; OR

(II) A HUMANE SOCIETY.

(C) PENALTY.

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

(2) FOR PURPOSES OF HUMANE DISPOSAL, A COURT MAY SEIZE AN ANIMAL BROUGHT INTO THIS STATE IN VIOLATION OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 60B.

In subsection (b) of this section, the former parenthetical references to "Canis familiaris" and "Felis catus" are deleted as surplusage.

Defined terms: "Animal" § 10-601

"Humane society" § 10-601

"Person" § 1-101

10-614. TRANSFER OR COLORING OF CHICK.

(A) "CHICK" DEFINED.

IN THIS SECTION, "CHICK" MEANS A CHICKEN, DUCKLING, OR OTHER FOWL UNDER THE AGE OF 3 WEEKS.

(B) EXCEPTION.

THIS SECTION DOES NOT PROHIBIT THE SALE OR DISPLAY OF A CHICK IN PROPER FACILITIES BY A BREEDER OR STORE ENGAGED IN THE BUSINESS OF SELLING CHICKS FOR COMMERCIAL BREEDING AND RAISING.

(C) PROHIBITED.

A PERSON MAY NOT:

(1) SELL, OFFER FOR SALE, BARTER, OR GIVE AWAY A CHICK AS A PET, TOY, PREMIUM, OR NOVELTY; OR

(2) COLOR, DYE, STAIN, OR OTHERWISE CHANGE THE NATURAL COLOR OF A CHICK.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $25.

REVISOR'S NOTE: This section is new language derived without substantive change from former CL § 11-904.

Defined term: "Person" § 1-101

10-615. CARE OF MISTREATED ANIMAL.

(A) COURT-ORDERED REMOVAL.

IF AN OWNER OR CUSTODIAN OF AN ANIMAL IS CONVICTED OF AN ACT OF ANIMAL CRUELTY, THE COURT MAY ORDER THE REMOVAL OF THE ANIMAL OR ANY OTHER ANIMAL AT THE TIME OF CONVICTION FOR THE PROTECTION OF THE ANIMAL.

(B) SEIZURE.

(1) AN OFFICER OR AUTHORIZED AGENT OF A HUMANE SOCIETY, OR A POLICE OFFICER OR OTHER PUBLIC OFFICIAL REQUIRED TO PROTECT ANIMALS MAY SEIZE AN ANIMAL IF NECESSARY TO PROTECT THE ANIMAL FROM CRUELTY.

(2) (I) AN ANIMAL THAT A MEDICAL AND SCIENTIFIC RESEARCH FACILITY POSSESSES MAY BE REMOVED UNDER THIS SUBSECTION ONLY AFTER REVIEW BY AND A RECOMMENDATION FROM THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, DIVISION OF VETERINARY MEDICINE.

(II) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL:

1. CONDUCT AN INVESTIGATION WITHIN 24 HOURS AFTER RECEIVING A COMPLAINT; AND

2. WITHIN 24 HOURS AFTER COMPLETING THE INVESTIGATION, REPORT TO THE STATE'S ATTORNEY FOR THE COUNTY IN WHICH THE FACILITY IS SITUATED.

(C) IMPOUNDED ANIMAL.

(1) IF AN ANIMAL IS IMPOUNDED, YARDED, OR CONFINED WITHOUT NECESSARY FOOD, WATER, OR PROPER ATTENTION, IS SUBJECT TO CRUELTY, OR IS NEGLECTED, AN OFFICER OR AUTHORIZED AGENT OF A HUMANE SOCIETY, A POLICE OFFICER, ANOTHER PUBLIC OFFICIAL REQUIRED TO PROTECT ANIMALS, OR ANY INVITED AND ACCOMPANYING VETERINARIAN LICENSED IN THE STATE, MAY:

(I) ENTER THE PLACE WHERE THE ANIMAL IS LOCATED AND SUPPLY THE ANIMAL WITH NECESSARY FOOD, WATER, AND ATTENTION; OR

(II) REMOVE THE ANIMAL IF REMOVAL IS NECESSARY FOR THE HEALTH OF THE ANIMAL.

(2) A PERSON WHO ENTERS A PLACE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS NOT LIABLE BECAUSE OF THE ENTRY.

(D) NOTIFICATION TO OWNER.

(1) A PERSON WHO REMOVES AN ANIMAL UNDER SUBSECTION (C) OF THIS SECTION SHALL NOTIFY THE ANIMAL'S OWNER OR CUSTODIAN OF:

(I) THE REMOVAL; AND

(II) ANY ADMINISTRATIVE REMEDIES THAT MAY BE AVAILABLE TO THE OWNER OR CUSTODIAN.

(2) IF AN ADMINISTRATIVE REMEDY IS NOT AVAILABLE, THE OWNER OR CUSTODIAN MAY FILE A PETITION FOR THE RETURN OF THE ANIMAL IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE REMOVAL OCCURRED WITHIN 10 DAYS AFTER THE REMOVAL.

(E) STRAY.

AN ANIMAL IS CONSIDERED A STRAY IF:

(1) AN OWNER OR CUSTODIAN OF THE ANIMAL WAS NOTIFIED UNDER SUBSECTION (D) OF THIS SECTION AND FAILED TO FILE A PETITION WITHIN 10 DAYS AFTER REMOVAL; OR

(2) THE OWNER OR CUSTODIAN OF THE ANIMAL IS UNKNOWN AND CANNOT BE ASCERTAINED BY REASONABLE EFFORT FOR 20 DAYS TO DETERMINE THE OWNER OR CUSTODIAN.

(F) LIMITATIONS.

THIS SECTION DOES NOT ALLOW:

(1) ENTRY INTO A PRIVATE DWELLING; OR

(2) REMOVAL OF A FARM ANIMAL WITHOUT THE PRIOR RECOMMENDATION OF A VETERINARIAN LICENSED IN THE STATE.

(G) LOCAL ENFORCEMENT -- BALTIMORE COUNTY.

IN BALTIMORE COUNTY, THE BALTIMORE COUNTY DEPARTMENT OF HEALTH, DIVISION OF ANIMAL CONTROL OR AN ORGANIZATION THAT THE BALTIMORE COUNTY GOVERNMENT APPROVES SHALL ENFORCE THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 67.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a) of this section, the reference to removal of "the animal or any other animal" is substituted for the former reference to removal of "that animal or animals" for clarity and accuracy.

In subsections (c)(1) and (f)(2) of this section, the references to a "veterinarian licensed in the State" are substituted for the former references to a "licensed veterinarian of the State" for clarity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (c)(1) of this section, the former reference to an animal "continu[ing]" without necessary food, water, or proper attention is deleted as implicit in the reference to "confine[ment]" of the animal.

In subsection (d) of this section, the former phrase "[i]n all cases" is deleted as redundant.

In subsection (e) of this section, the reference to being "considered a stray" is substituted for the former phrase "held to be an estray" for clarity.

In subsection (f)(2) of this section, the reference to "removal" is substituted for the former reference to "taking" for clarity.

In subsection (g) of this section, the reference to the Baltimore County

"Department of Health, Division of Animal Control" is substituted for the former obsolete reference to the "Bureau of Animal Control" for accuracy.

For other provisions on stray animals, *see* Title 3, Subtitle 6 of the Agriculture Article.

Defined terms: "Animal" § 10-601

"County" § 1-101

"Cruelty" § 10-601

"Humane society" § 10-601

"Person" § 1-101

10-616. KENNEL INSPECTION.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO PREMISES:

(1) WHERE DOGS ARE KEPT OR BRED SOLELY FOR MEDICAL OR RELATED RESEARCH OR LABORATORY TESTS;

(2) OPERATED BY A LICENSED AND REGULARLY PRACTICING VETERINARIAN; OR

(3) WHERE HUNTING DOGS ARE HOUSED, IF THE BUYING, SELLING, TRADING, OR BREEDING IS INCIDENTAL TO THE MAIN PURPOSES OF HOUSING, KEEPING, AND USING DOGS.

(B) AUTHORITY TO INSPECT.

(1) TO DETERMINE IF DOGS ARE BEING TREATED INHUMANELY IN VIOLATION OF THIS SUBTITLE OR OTHER LAW, AN AUTHORIZED DIRECTOR OF A HUMANE SOCIETY, ACCOMPANIED BY A SHERIFF OR A DEPUTY SHERIFF, MAY INSPECT A PREMISES:

(I) WHERE A PERSON IS ENGAGED IN THE BUSINESS OF BUYING, SELLING, TRADING, OR BREEDING DOGS; OR

(II) OF A KENNEL WHERE 25 OR MORE DOGS ARE KEPT.

(2) A PERSON WHO INSPECTS PREMISES UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL GIVE PRIOR WRITTEN NOTICE OF THE TIME AND DATE OF THE INSPECTION TO THE OWNER OR OCCUPANT OF THE PREMISES.

(C) LOCAL ENFORCEMENT.

(1) IN BALTIMORE CITY, THE BALTIMORE CITY HEALTH DEPARTMENT SHALL ENFORCE THIS SECTION.

(2) IN BALTIMORE COUNTY, THE BALTIMORE COUNTY DEPARTMENT OF HEALTH, DIVISION OF ANIMAL CONTROL OR AN ORGANIZATION THAT THE BALTIMORE COUNTY GOVERNMENT APPROVES SHALL ENFORCE THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 67A.

In subsection (b)(1) of this section, the former reference to "applicable law" is deleted as implicit in the reference to "other law".

Also in subsection (b)(1) of this section, the former reference to a "State-chartered" humane society is deleted as implicit in the definition of "humane society" in § 10-601 of this subtitle.

Also in subsection (b)(1) of this section, the former reference to "visit[ing]" is deleted as implicit in the reference to "inspect[ing]".

In subsection (c)(2) of this section, the reference to the Baltimore County "Department of Health, Division of Animal Control" is substituted for the former obsolete reference to the "Bureau of Animal Control" for accuracy.

Defined terms: "Humane society" § 10-601

"Person" § 1-101

10-617. DISPOSAL OF DOMESTIC ANIMAL.

(A) "ANIMAL CONTROL UNIT" DEFINED.

IN THIS SECTION, "ANIMAL CONTROL UNIT" MEANS THE LOCAL ORGANIZATION OR GOVERNMENTAL UNIT THAT THE APPROPRIATE LOCAL GOVERNMENTAL BODY DESIGNATES TO HOUSE, CARE FOR, AND CONTROL DOMESTIC ANIMALS OF UNKNOWN OWNERSHIP.

(B) IN GENERAL.

AN ANIMAL CONTROL UNIT SHALL DISPOSE OF AN UNCLAIMED DOG OR CAT ONLY BY:

(1) PLACING THE ANIMAL IN A SUITABLE HOME;

(2) RETAINING THE ANIMAL IN THE ANIMAL CONTROL UNIT; OR

(3) HUMANELY DESTROYING THE ANIMAL.

(C) WAITING PERIOD.

A DOMESTIC ANIMAL THAT IS IMPOUNDED BY AN ANIMAL CONTROL UNIT MAY NOT BE SOLD, PLACED, OR DESTROYED UNTIL THE ANIMAL HAS BEEN CAREFULLY INSPECTED FOR A TAG, TATTOO, OR OTHER IDENTIFICATION TO ASCERTAIN THE OWNER AND:

(1) 72 HOURS HAVE ELAPSED AFTER NOTICE HAS BEEN GIVEN TO THE OWNER;

(2) IF THE OWNER CANNOT BE NOTIFIED, 72 HOURS HAVE ELAPSED AFTER THE ANIMAL IS IMPOUNDED;

(3) THE ANIMAL IS SERIOUSLY DISEASED OR SEVERELY INJURED; OR

(4) THE ANIMAL IS UNDER 3 MONTHS OF AGE.

(D) LIABILITY OF OWNER AND NEW OWNER.

(1) AN OWNER WHO RETRIEVES AN ANIMAL FROM AN ANIMAL CONTROL UNIT SHALL PAY ALL FEES, COSTS, AND EXPENSES INCURRED BY THE ANIMAL CONTROL UNIT.

(2) THE NECESSARY EXPENSES FOR FOOD AND ATTENTION GIVEN TO AN ANIMAL UNDER THIS SECTION MAY BE COLLECTED FROM THE OWNER, AND THE ANIMAL IS NOT EXEMPT FROM LEVY AND SALE ON EXECUTION OF A JUDGMENT FOR THE EXPENSES.

(3) A NEW OWNER WITH WHOM AN ANIMAL IS PLACED UNDER SUBSECTION (B)(1) OF THIS SECTION MAY BE CHARGED AN ADOPTION FEE.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION 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, §§ 67B and 68.

Throughout this section, the references to an animal control "unit" are substituted for the former references to an animal control "agency" for consistency within this article. *See* General Revisor's Note to article.

In subsection (b)(1) of this section, the former reference to "adoption" is deleted as implicit in the reference to "placing ... in a suitable home".

In subsection (b)(2) of this section, the reference to retaining an animal "in the animal control unit" is substituted for the former reference to retention "by the shelter" for consistency within this section.

In subsection (c)(4) of this section, the former reference to a "litter" is deleted as unnecessary since an individual animal is treated the same whether or not part of a litter.

Defined terms: "Animal" § 10-601

"Person" § 1-101

10-618. POISONING DOG.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY GIVE POISON OR GROUND GLASS TO A DOG, OR EXPOSE POISON OR GROUND GLASS, WITH THE INTENT THAT A DOG INGEST IT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $100 FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 69.

In subsection (a) of this section, the former phrase "on his own lands or the lands of another" is deleted as surplusage.

Defined term: "Person" § 1-101

10-619. DANGEROUS DOG.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DANGEROUS DOG" MEANS A DOG THAT:

(I) WITHOUT PROVOCATION HAS KILLED OR INFLICTED SEVERE INJURY ON A PERSON; OR

(II) IS DETERMINED BY THE APPROPRIATE UNIT OF A COUNTY OR MUNICIPAL CORPORATION UNDER SUBSECTION (C) OF THIS SECTION TO BE A POTENTIALLY DANGEROUS DOG AND, AFTER THE DETERMINATION IS MADE:

1. BITES A PERSON;

2. WHEN NOT ON ITS OWNER'S REAL PROPERTY, KILLS OR INFLICTS SEVERE INJURY ON A DOMESTIC ANIMAL; OR

3. ATTACKS WITHOUT PROVOCATION.

(3) (I) "OWNER'S REAL PROPERTY" MEANS REAL PROPERTY OWNED OR LEASED BY THE OWNER OF A DOG.

(II) "OWNER'S REAL PROPERTY" DOES NOT INCLUDE A PUBLIC RIGHT-OF-WAY OR A COMMON AREA OF A CONDOMINIUM, APARTMENT COMPLEX, OR TOWNHOUSE DEVELOPMENT.

(4) "SEVERE INJURY" MEANS A PHYSICAL INJURY THAT RESULTS IN BROKEN BONES OR DISFIGURING LACERATIONS REQUIRING MULTIPLE SUTURES OR COSMETIC SURGERY.

(B) EXCEPTION.

THIS SECTION DOES NOT APPLY TO A DOG OWNED BY AND WORKING FOR A GOVERNMENTAL OR LAW ENFORCEMENT UNIT.

(C) DETERMINATION OF POTENTIALLY DANGEROUS DOG.

AN APPROPRIATE UNIT OF A COUNTY OR MUNICIPAL CORPORATION MAY DETERMINE THAT A DOG IS POTENTIALLY DANGEROUS IF THE UNIT:

(1) FINDS THAT THE DOG:

(I) HAS INFLICTED A BITE ON A PERSON WHILE ON PUBLIC OR PRIVATE REAL PROPERTY;

(II) WHEN NOT ON ITS OWNER'S REAL PROPERTY, HAS KILLED OR INFLICTED SEVERE INJURY ON A DOMESTIC ANIMAL; OR

(III) HAS ATTACKED WITHOUT PROVOCATION; AND

(2) NOTIFIES THE DOG OWNER IN WRITING OF THE REASONS FOR THIS DETERMINATION.

(D) PROHIBITED.

A DOG OWNER MAY NOT:

(1) LEAVE A DANGEROUS DOG UNATTENDED ON THE OWNER'S REAL PROPERTY UNLESS THE DOG IS:

(I) CONFINED INDOORS;

(II) IN A SECURELY ENCLOSED AND LOCKED PEN; OR

(III) IN ANOTHER STRUCTURE DESIGNED TO RESTRAIN THE DOG; OR

(2) ALLOW A DANGEROUS DOG TO LEAVE THE OWNER'S REAL PROPERTY UNLESS THE DOG IS LEASHED AND MUZZLED, OR IS OTHERWISE SECURELY RESTRAINED AND MUZZLED.

(E) REQUIRED NOTICE.

AN OWNER OF A DANGEROUS DOG OR POTENTIALLY DANGEROUS DOG WHO SELLS OR GIVES THE DOG TO ANOTHER SHALL NOTIFY IN WRITING:

(1) THE AUTHORITY THAT MADE THE DETERMINATION UNDER SUBSECTION (C) OF THIS SECTION, OF THE NAME AND ADDRESS OF THE NEW OWNER OF THE DOG; AND

(2) THE PERSON TAKING POSSESSION OF THE DOG, OF THE DANGEROUS BEHAVIOR OR POTENTIALLY DANGEROUS BEHAVIOR OF THE DOG.

(F) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $2,500.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 70E(a)(1), (2), (4), (5), and (b) through (f).

In subsections (a)(2) and (c) of this section, the references to a "unit" of a county or municipal corporation are substituted for the former references to a county or municipal "authority" for consistency within this article. *See* General Revisor's Note to article. Similarly, in subsection (c) of this section, the reference to a governmental or law enforcement "unit" is substituted for the former reference to a governmental or law enforcement "agency".

In subsection (a)(3) of this section, the defined term "owner's real property" is substituted for the former defined term "real property" for clarity and accuracy.

In subsections (c)(2) and (d) of this section, the references to the "dog owner" are substituted for the former references to the "owner" for clarity.

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

In subsection (e) of this section, the defined term "person" is substituted for the former word "owner" for consistency within this article.

Former Art. 27, § 70E (a)(3) which defined "owner" to mean "any person or local entity that has a possessory right in a dog" is deleted as surplusage.

Defined terms: "Animal" § 10-601

"County" § 1-101

"Person" § 1-101

10-620. INTERFERENCE WITH RACE HORSE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) WILLFULLY AND MALICIOUSLY INTERFERE WITH, INJURE, DESTROY, OR TAMPER WITH A HORSE USED FOR RACING OR BREEDING OR FOR A COMPETITIVE EXHIBITION OF SKILL, BREED, OR STAMINA;

(2) WILLFULLY START, INSTIGATE, ENGAGE IN, OR FURTHER AN ACT THAT INTERFERES WITH, INJURES, DESTROYS, OR TAMPERS WITH A HORSE USED FOR RACING OR BREEDING OR FOR A COMPETITIVE EXHIBITION OF SKILL, BREED, OR STAMINA; OR

(3) COMMIT AN ACT THAT TENDS TO INTERFERE WITH, INJURE, DESTROY, OR TAMPER WITH A HORSE USED FOR RACING OR BREEDING OR FOR A COMPETITIVE EXHIBITION OF SKILL, BREED, OR STAMINA.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF NOT LESS THAN 1 YEAR AND NOT EXCEEDING 3 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 61.

In subsection (a) of this section, the former phrase "whether such horse be the property of himself or another," is deleted as unnecessary in light of the unqualified references to interfering with, injuring, destroying, or tampering with "a" horse.

In subsection (a)(2) of this section, the reference to "start[ing]" a horse is substituted for the former reference to "set[ting] [a horse] on foot" for clarity.

Defined term: "Person" § 1-101

10-621. IMPORT, OFFER, OR TRANSFER OF DANGEROUS ANIMAL.

(A) SCOPE OF SECTION.

(1) THIS SECTION DOES NOT APPLY TO A PERSON WHO:

(I) OFFERS THE SPECIES LISTED IN SUBSECTION (B) OF THIS SECTION FOR SALE, TRADE, BARTER, IMPORT, OR EXCHANGE TO A PUBLIC ZOO, PARK, MUSEUM, OR EDUCATIONAL INSTITUTION; OR

(II) HOLDS A VALID STATE OR FEDERAL PERMIT TO USE THE SPECIES LISTED IN SUBSECTION (B) OF THIS SECTION FOR EDUCATIONAL, MEDICAL, SCIENTIFIC, OR EXHIBITION PURPOSES.

(2) THIS SECTION DOES NOT APPLY TO AN ANIMAL OF A SPECIES OF WILDLIFE NOT KEPT AS A HOUSEHOLD PET THAT IS INDIVIDUALLY EXEMPTED FROM

THIS SECTION UNDER A PERMIT ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES.

(B) PROHIBITED.

A PERSON MAY NOT IMPORT INTO THE STATE, OFFER FOR SALE, TRADE, BARTER, OR EXCHANGE AS A HOUSEHOLD PET A LIVE:

(1) FOX, SKUNK, RACCOON, OR BEAR;

(2) ALLIGATOR OR CROCODILE;

(3) MEMBER OF THE CAT FAMILY OTHER THAN THE DOMESTIC CAT; OR

(4) POISONOUS SNAKE IN THE FAMILY GROUPS OF HYDROPHIDAE, ELAPIDAE, VIPERIDAE, OR CROTOLIDAE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) IF AN INDIVIDUAL, A FINE NOT EXCEEDING $1,000; OR

(2) IF NOT AN INDIVIDUAL, A FINE NOT EXCEEDING $10,000.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 70D.

Defined terms: "Animal" § 10-601

"Person" § 1-101

10-622. INJURING OR TRAPPING CARRIER PIGEON.

(A) PROHIBITED -- KILLING OR MAIMING.

A PERSON MAY NOT SHOOT, KILL, OR MAIM A CARRIER PIGEON.

(B) SAME -- TRAPPING OR DETAINING.

A PERSON MAY NOT ENTRAP, CATCH, OR DETAIN A CARRIER PIGEON THAT HAS:

(1) THE OWNER'S NAME STAMPED ON THE CARRIER PIGEON'S WING OR TAIL; OR

(2) A LEG BAND THAT INCLUDES THE OWNER'S INITIALS, NAME, OR NUMBER.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $10 FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 64, 65, and 66.

In subsection (a) of this section, the term "carrier pigeon" is substituted for the former reference to "Antwerp or homing" pigeons for brevity.

Also in subsection (a) of this section, the former reference to "persons" is deleted in light of Art. 1, § 8, which states that the singular includes the plural.

Also in subsection (a) of this section, the former reference to a carrier pigeon "either while in flight or at rest" is deleted as unnecessary in light of the unqualified reference to shooting, killing, or maiming "a" carrier pigeon.

In subsection (c) of this section, the reference to "each violation" is substituted for the former reference to "every such offense" for consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

GENERAL REVISOR'S NOTE TO SUBTITLE

Former Art. 27, § 70, which prohibited the owner of a dog in heat in Cecil, Dorchester, Frederick, Talbot, and Wicomico counties from allowing the dog to run at large, is revised in Art. 24, § 11-512.

Former Art. 27, § 70A, which prohibited the owner of a dog in heat in Harford County from allowing the dog outdoors loose or on a leash, is revised in Art. 24, § 11-513.

Former Art. 27, § 70B, which required the owner of a dog in heat in Howard and St. Mary's counties to confine and protect the dog from other dogs, is revised in Art. 24, § 11-514.

Former Art. 27, § 70C, which required an owner of a dog kept out-of-doors in Frederick County to provide shelter for it, is revised in § 1-5-26 of the Public Local Laws of Frederick County.

SUBTITLE 7. MARYLAND UNIFORM FLAG LAW.

10-701. "FLAG" DEFINED.

IN THIS SUBTITLE, "FLAG" INCLUDES ANY SIZE FLAG, STANDARD, COLOR, ENSIGN, OR SHIELD MADE OF ANY SUBSTANCE OR REPRESENTED OR PRODUCED ON ANY SUBSTANCE, THAT PURPORTS TO BE A FLAG, STANDARD, COLOR, ENSIGN, OR SHIELD OF THE UNITED STATES OR OF THIS STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 81.

The phrase "on any substance" was added for clarity.

Throughout this subtitle, the former reference to "standard, color, ensign or shield" is deleted as included in the word "flag".

10-702. SCOPE OF SUBTITLE.

THIS SUBTITLE DOES NOT APPLY TO:

(1) AN ACT ALLOWED BY THE STATUTES OF THE UNITED STATES OR OF THIS STATE, OR BY THE REGULATIONS OF THE UNITED STATES ARMY OR NAVY; OR

(2) A DOCUMENT OR PRODUCT, STATIONERY, ORNAMENT, PICTURE, APPAREL, OR JEWELRY THAT DEPICTS A FLAG WITHOUT A DESIGN OR WORDS ON THE FLAG AND THAT IS NOT CONNECTED WITH AN ADVERTISEMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 84.

In item (2) of this section, the former reference to "printed or written" is deleted as implicit in the word "document".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that item (1) of this section refers to regulations of the "United States Army or Navy", and not of the "Air Force". At the time of enactment of the former law, there was not yet a separate United States Air Force. American military air operations in the World War were being conducted by the recently formed Air Service of the United States Army in the American Expeditionary Force. *See* Ch. 281, Acts of 1918.

Defined term: "Flag" § 10-701

10-703. MARKED FLAG AND MERCHANDISE.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A FLAG OF THE UNITED STATES OR OF THIS STATE, OR A FLAG THAT IS AUTHORIZED BY LAW OF THE UNITED STATES OR OF THIS STATE.

(B) PROHIBITED -- ADVERTISING MARKING.

FOR EXHIBITION OR DISPLAY, A PERSON MAY NOT PLACE OR CAUSE TO BE PLACED A WORD, FIGURE, MARK, PICTURE, DESIGN, OR ADVERTISEMENT OF ANY NATURE ON A FLAG.

(C) SAME -- PUBLIC DISPLAY OF MARKED FLAG.

A PERSON MAY NOT PUBLICLY EXHIBIT A FLAG WITH A WORD, FIGURE, MARK, PICTURE, DESIGN, OR ADVERTISEMENT PRINTED, PAINTED, OR PRODUCED ON OR ATTACHED TO THE FLAG.

(D) SAME -- MERCHANDISE MARKED WITH FLAG.

A PERSON MAY NOT PUBLICLY DISPLAY FOR SALE, MANUFACTURE, OR OTHERWISE, OR SELL, GIVE, OR POSSESS FOR SALE OR FOR USE AS A GIFT OR FOR ANY OTHER PURPOSE, AN ARTICLE OF MERCHANDISE OR RECEPTACLE ON WHICH A FLAG IS PRODUCED OR ATTACHED TO ADVERTISE, DECORATE, OR MARK THE MERCHANDISE.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION 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, § 82 and the first sentence of § 85.

In subsections (b) and (c) of this section, the former references to a "drawing" are deleted as included in the references to a "figure".

In subsection (b) of this section, the former reference to placing any word, etc. "in any manner" is deleted as surplusage.

In subsection (c) of this section, the former reference to being "appended, affixed or annexed" is deleted as included in the reference to being "attached".

Also in subsection (c) of this section, the former reference to "[e]xpos[ing] to public view" is deleted as included in the reference to "exhibit[ing]". Similarly, in subsection (d) of this section, the former reference "for exhibition or display [e]xpos[ing] to public view" is deleted as included in the reference to "display[ing]".

In subsection (d) of this section, the former reference to "any substance" is deleted as included in the reference to "an article".

Also in subsection (d) of this section, the former reference to a "thing for holding or carrying merchandise" is deleted as included in the reference to a "receptacle".

Also in subsection (d) of this section, the former references to "call[ing] attention to" and "distinguish[ing]" an article are deleted as included in the references to "advertis[ing]" and "mark[ing]" the merchandise.

Defined terms: "Flag" § 10-701

"Person" § 1-101

10-704. MUTILATION.

(A) PROHIBITED.

A PERSON MAY NOT INTENTIONALLY MUTILATE, DEFACE, DESTROY, BURN, TRAMPLE, OR USE A FLAG:

(1) IN A MANNER INTENDED TO INCITE OR PRODUCE AN IMMINENT BREACH OF THE PEACE; AND

(2) UNDER CIRCUMSTANCES LIKELY TO INCITE OR PRODUCE AN IMMINENT BREACH OF THE PEACE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 83 and the second sentence of § 85.

In subsection (b) of this section, the phrase "is guilty of a misdemeanor" is added to state expressly that which only was implied in the former law by reference to a "punishable" violation. 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. 483, 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 (1968).

Also in subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined terms: "Flag" § 10-701

"Person" § 1-101

10-705. CONSTRUCTION OF SUBTITLE.

THIS SUBTITLE SHALL BE CONSTRUED TO CARRY OUT ITS GENERAL PURPOSE AND TO MAKE UNIFORM THE LAWS OF THE STATES THAT ENACT IT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 86.

Defined term: "State" § 1-101

10-706. SHORT TITLE.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND UNIFORM FLAG LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 87.

The reference to the "Maryland" Uniform Flag Law is added to reflect changes made to this subtitle that were not reflected in the former uniform law recommended by the National Conference of Commissioners on Uniform State Laws.

Defined term: "Flag" § 10-701

GENERAL REVISOR'S NOTE TO SUBTITLE

The National Conference of Commissioners on Uniform State Laws originally promulgated and recommended the Uniform Flag Law in 1917. It remained a recommended uniform law until 1966, when the National Conference withdrew the uniform law as obsolete. During its history as a uniform law, the Uniform Flag Law was adopted by 17 states, four of which substantially modified it. Only three other states still style their statutes as the "Uniform Flag Law" and retain language on uniform construction among the adopting states. They are Maine, Vermont, and Virginia.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that §§ 10-603 and 10-604 of this subtitle present constitutional issues relating to freedom of expression under the First Amendment to the U.S. Constitution and Maryland Declaration of Rights, Art. 40. In particular, former Art. 27, § 82, which prohibits marking and merchandising involving a flag and is revised as § 10-603 of this subtitle, has been limited to apply only to the flag and Great Seal of the State, not to representations of either. Former Art. 27, § 83, which prohibits mutilation of a flag and is revised as § 10-604 of this subtitle, constitutionally may reach only commercial actions, not political expression. The General Assembly may wish to address these concerns in substantive legislation. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 3-7 (October 17, 2000).

TITLE 11. INDECENCY AND OBSCENITY.

SUBTITLE 1. ADULT SEXUAL DISPLAYS AND RELATED CRIMES.

11-101. 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 the introductory language of former Art. 27, § 416A.

The reference to "this subtitle" is substituted for the former reference to "this subheading". Although this subtitle contains material on "indecent

exposure" derived from material outside of the former "Nudity and Sexual Displays" subheading of Article 27, the terms defined in this section are only used in revised material that is derived from that former subheading; thus no substantive change results.

(B) ADVERTISING PURPOSES.

"ADVERTISING PURPOSES" MEANS THE PURPOSE OF PROPAGANDIZING IN CONNECTION WITH THE COMMERCIAL:

(1) SALE OF A PRODUCT;

(2) OFFERING OF A SERVICE; OR

(3) EXHIBITION OF ENTERTAINMENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 416A(a).

In item (1) of this subsection, the former reference to "products" is deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

(C) SADOMASOCHISTIC ABUSE.

"SADOMASOCHISTIC ABUSE" MEANS:

(1) FLAGELLATION OR TORTURE COMMITTED BY OR INFLICTED ON AN INDIVIDUAL WHO IS:

(I) NUDE;

(II) WEARING ONLY UNDERGARMENTS; OR

(III) WEARING A REVEALING OR BIZARRE COSTUME; OR

(2) BINDING, FETTERING, OR OTHERWISE PHYSICALLY RESTRAINING AN INDIVIDUAL WHO IS:

(I) NUDE;

(II) WEARING ONLY UNDERGARMENTS; OR

(III) WEARING A REVEALING OR BIZARRE COSTUME.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 416A(c).

In item (2) of this subsection, the former phrase "or so clothed" is deleted for brevity.

(D) SEXUAL CONDUCT.

"SEXUAL CONDUCT" MEANS:

(1) HUMAN MASTURBATION;

(2) SEXUAL INTERCOURSE; OR

(3) WHETHER ALONE OR WITH ANOTHER INDIVIDUAL OR ANIMAL, ANY TOUCHING OF OR CONTACT WITH:

(I) THE GENITALS, BUTTOCKS, OR PUBIC AREAS OF AN INDIVIDUAL; OR

(II) BREASTS OF A FEMALE INDIVIDUAL.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 416A(d).

In item (3) of this subsection, the reference to conduct "with another individual" is substituted for the former reference to conduct "between members of the same or opposite sex" for brevity and clarity.

Also in item (3) of this subsection, the reference to buttocks "of an individual" is substituted for the former reference to buttocks "of the human male or female" for brevity and clarity.

(E) SEXUAL EXCITEMENT.

"SEXUAL EXCITEMENT" MEANS:

(1) THE CONDITION OF THE HUMAN GENITALS WHEN IN A STATE OF SEXUAL STIMULATION;

(2) THE CONDITION OF THE HUMAN FEMALE BREASTS WHEN IN A STATE OF SEXUAL STIMULATION; OR

(3) THE SENSUAL EXPERIENCES OF INDIVIDUALS ENGAGING IN OR WITNESSING SEXUAL CONDUCT OR NUDITY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 416A.

In item (1) of this subsection, the former reference to "male or female" genitals is deleted as included in the reference to "human" genitals.

REVISOR'S NOTE TO SECTION

Former Art. 27, § 416A(b), which defined "minor", is revised in § 1-101 of this article.

11-102. ADULT SEXUAL DISPLAYS -- SELLING OR OFFERING TO SELL TO MINOR.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY SELL OR OFFER TO SELL TO A MINOR:

(1) A PICTURE, PHOTOGRAPH, DRAWING, SCULPTURE, MOTION PICTURE, FILM, OR OTHER VISUAL REPRESENTATION OR IMAGE OF AN INDIVIDUAL OR PORTION OF THE HUMAN BODY THAT DEPICTS SADOMASOCHISTIC ABUSE, SEXUAL CONDUCT, OR SEXUAL EXCITEMENT;

(2) A BOOK, MAGAZINE, PAPERBACK, PAMPHLET, OR OTHER WRITTEN OR PRINTED MATTER HOWEVER REPRODUCED, THAT CONTAINS:

(I) ANY MATTER ENUMERATED IN ITEM (1) OF THIS SECTION;

(II) OBSCENE MATERIAL; OR

(III) EXPLICIT VERBAL DESCRIPTIONS OR NARRATIVE ACCOUNTS OF SADOMASOCHISTIC ABUSE, SEXUAL CONDUCT, OR SEXUAL EXCITEMENT; OR

(3) A SOUND RECORDING THAT CONTAINS:

(I) OBSCENE MATERIAL; OR

(II) EXPLICIT VERBAL DESCRIPTIONS OR NARRATIVE ACCOUNTS OF SADOMASOCHISTIC ABUSE, SEXUAL CONDUCT, OR SEXUAL EXCITEMENT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 416B and 416G.

In subsection (a)(2)(ii) and (3)(i) of this section and throughout this subtitle, the references to "obscene material" are substituted for the former reference to "obscenities" for clarity. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 3-4 (May 21, 2001).

In subsection (a)(3) of this section, the former reference to "any matter enumerated in subsection (a) [picture, photograph, ...]" is deleted because sound recordings cannot contain "visual representations".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in this section and throughout this subtitle, the standard for determining whether material is "obscene" appears to follow that established by Supreme Court precedent. This applies equally

to prohibitions on obscene material relating to minors, §§ 11-102 through 11-104 of this subtitle, derived from former Art. 27, §§ 416B, 416C, and 416E, and to the prohibition on obscene material in advertising, § 11-105, derived from former Art. 27, § 416D. *See* Letter of Advice from Attorney General J. Joseph Curran to Judge Alan M. Wilner, pp. 1-3 (May 21, 2001), citing *Smiley v. State*, 294 Md. 461 (1982). *See also, State v. Randall Book Corp.*, 53 Md. App. 30 (1982), *cert. denied*, 295 Md. 441, *cert. denied*, 464 U.S. 919 (1983); and *cf. Ginsberg v. New York*, 390 U.S. 629 (1968).

As to the penalty provided in subsection (b) of this section, *see* General Revisor's Note to subtitle.

Defined terms: "Minor" § 1-101

"Person" § 1-101

"Sadomasochistic abuse" § 11-101

"Sexual conduct" § 11-101

"Sexual excitement" § 11-101

11-103. SAME -- EXHIBITION TO MINORS.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A MOTION PICTURE SHOW OR OTHER PRESENTATION, WHETHER ANIMATED OR LIVE, THAT WHOLLY OR PARTLY:

(1) DEPICTS OR REVEALS:

(I) SADOMASOCHISTIC ABUSE;

(II) SEXUAL CONDUCT; OR

(III) SEXUAL EXCITEMENT; OR

(2) INCLUDES OBSCENE MATERIAL OR EXPLICIT VERBAL DESCRIPTIONS OR NARRATIVE ACCOUNTS OF SEXUAL CONDUCT.

(B) PROHIBITED.

FOR MONETARY CONSIDERATION OR OTHER VALUABLE COMMODITY OR SERVICE, A PERSON MAY NOT KNOWINGLY:

(1) EXHIBIT TO A MINOR WITHOUT THE PRESENCE OF THE MINOR'S PARENT OR GUARDIAN A MOTION PICTURE SHOW OR OTHER PRESENTATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION;

(2) SELL TO A MINOR AN ADMISSION TICKET OR OTHER MEANS TO GAIN ENTRANCE TO A MOTION PICTURE SHOW OR OTHER PRESENTATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION; OR

(3) ADMIT A MINOR WITHOUT THE PRESENCE OF THE MINOR'S PARENT OR GUARDIAN TO PREMISES WHERE A MOTION PICTURE SHOW OR OTHER PRESENTATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS EXHIBITED.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 416C and 416G.

In subsection (a)(2) of this section, the reference to "obscene material" is substituted for the former reference to "obscenities" for clarity.

In subsection (b)(1) and (3) of this section, the reference to "without the presence of the minor's parent or guardian" is substituted for the former reference to "unaccompanied by his parent or guardian" for style.

As to the penalty provided in subsection (c) of this section, *see* General Revisor's Note to subtitle.

Defined terms: "Minor" § 1-101

"Person" § 1-101

"Sadomasochistic abuse" § 11-101

"Sexual conduct" § 11-101

"Sexual excitement" § 11-101

11-104. SAME -- ALLOWING MINORS TO ENTER OR REMAIN ON PREMISES.

(A) PROHIBITED.

A PERSON WHO OPERATES OR IS EMPLOYED IN A SALES, CASHIER, OR MANAGERIAL CAPACITY IN A RETAIL ESTABLISHMENT MAY NOT KNOWINGLY ALLOW A MINOR WITHOUT THE PRESENCE OF THE MINOR'S PARENT OR GUARDIAN TO ENTER OR REMAIN ON ANY PREMISES WHERE AN ITEM OR ACTIVITY DETAILED IN § 11-102(A) OF THIS SUBTITLE IS SHOWN, DISPLAYED, OR DEPICTED.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 416E and 416G.

In subsection (a) of this section, the reference "without the presence of the minor's parent or guardian" is substituted for the former reference

"unaccompanied by his parent or guardian" for style.

As to the penalty provided in subsection (b) of this section, *see* General Revisor's Note to subtitle.

Defined terms: "Minor" § 1-101

"Person" § 1-101

11-105. SAME -- DISPLAYING OR ALLOWING DISPLAY FOR ADVERTISING PURPOSES.

(A) PROHIBITED -- DISPLAY.

A PERSON MAY NOT KNOWINGLY DISPLAY FOR ADVERTISING PURPOSES A PICTURE, PHOTOGRAPH, DRAWING, SCULPTURE, OR OTHER VISUAL REPRESENTATION OR IMAGE OF AN INDIVIDUAL OR PORTION OF A HUMAN BODY THAT:

(1) DEPICTS SADOMASOCHISTIC ABUSE;

(2) DEPICTS SEXUAL CONDUCT;

(3) DEPICTS SEXUAL EXCITEMENT; OR

(4) CONTAINS A VERBAL DESCRIPTION OR NARRATIVE ACCOUNT OF SADOMASOCHISTIC ABUSE, SEXUAL CONDUCT, OR SEXUAL EXCITEMENT.

(B) SAME -- ALLOWING DISPLAY.

A PERSON MAY NOT KNOWINGLY ALLOW A DISPLAY DESCRIBED IN SUBSECTION (A) OF THIS SECTION ON PREMISES THAT THE PERSON OWNS, RENTS, OR MANAGES.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 416D and 416G.

In subsection (a)(4) of this section, the reference to "sadomasochistic abuse, sexual conduct, or sexual excitement" is substituted for the former reference to "these activities or items" for clarity.

As to the penalty provided in subsection (c) of this section, *see* General Revisor's Note to subtitle.

Defined terms: "Advertising purposes" § 11-101

"Person" § 1-101

"Sadomasochistic abuse" § 11-101

"Sexual conduct" § 11-101

"Sexual excitement" § 11-101

11-106. SAME -- PRESUMPTIONS.

FOR PURPOSES OF §§ 11-101 THROUGH 11-105 OF THIS SUBTITLE, AN EMPLOYEE OF A PERSON WHO OPERATES PREMISES WHERE A PUBLIC DISPLAY VIOLATES THIS SUBTITLE IS PRESUMED TO HAVE BEEN THE OPERATOR OF THE PREMISES WHEN THE VIOLATION OCCURRED IF THE EMPLOYEE WAS ON THE PREMISES AT THE TIME OF THE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 416F.

This section applies only to §§ 11-101 through 11-105 of this subtitle to reflect the reorganization of the former Nudity and Sexual Displays subheading. The crime of "indecent exposure" was not included in the former subheading and was not subject to the presumption outlined in this section.

Defined term: "Person" § 1-101

11-107. INDECENT EXPOSURE.

A PERSON CONVICTED OF INDECENT EXPOSURE IS GUILTY OF A MISDEMEANOR AND IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 335A.

Defined term: "Person" § 1-101

GENERAL REVISOR'S NOTE TO SUBTITLE

The former Nudity and Sexual Displays subheading of Article 27 contained a general penalty provision, Art. 27, § 416G, that applied to all violations of the subheading. In *Randall Book Corp. v. State*, 316 Md. 315, 329 (1989), the Court of Appeals concluded that "the legislature [in Art. 27, § 416D] intended the knowing display of each separate obscene magazine to constitute a separate offense, separately punishable". As each crime is separately punishable, for clarity, the former penalty provision is repeated in each section to which the penalty applies.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that, in §§ 11-102 through 11-105 of this subtitle, a violator is subject to either imprisonment or a fine, but not both. In almost every other criminal statute that allows punishment by imprisonment or a fine, a violator may be sentenced to both imprisonment and fine.

SUBTITLE 2. OBSCENE MATTER.

11-201. 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 the introductory language of former Art. 27, § 417.

(B) DISTRIBUTE.

"DISTRIBUTE" MEANS TO TRANSFER POSSESSION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 417(3).

The former phrase "whether with or without consideration" is deleted because it does not limit the transfers that are included in the scope of the definition.

(C) KNOWINGLY.

"KNOWINGLY" MEANS HAVING KNOWLEDGE OF THE CHARACTER AND CONTENT OF THE MATTER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 417(4).

(D) MATTER.

"MATTER" MEANS:

(1) A BOOK, MAGAZINE, NEWSPAPER, OR OTHER PRINTED OR WRITTEN MATERIAL;

(2) A PICTURE, DRAWING, PHOTOGRAPH, MOTION PICTURE, OR OTHER PICTORIAL REPRESENTATION;

(3) A STATUE OR OTHER FIGURE;

(4) A RECORDING, TRANSCRIPTION, OR MECHANICAL, CHEMICAL, OR ELECTRICAL REPRODUCTION; OR

(5) ANY OTHER ARTICLE, EQUIPMENT, MACHINE, OR MATERIAL.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 417(1).

(E) SADOMASOCHISTIC ABUSE.

"SADOMASOCHISTIC ABUSE" HAS THE MEANING STATED IN § 11-101 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the references in former Art. 27, §§ 419A(b), (c), (d), (e), and (g) and 419B(a) to the definitions in former Art. 27, § 416A - now § 11-101 of this title - to avoid repetition of the phrase "as defined in § 11-101 of this title".

(F) SEXUAL CONDUCT.

"SEXUAL CONDUCT" HAS THE MEANING STATED IN § 11-101 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from the references in former Art. 27, §§ 419A(b), (c), (d), (e), and (g) and 419B(a) to the definitions in former § 416A - now § 11-101 of this title - to avoid repetition of the phrase "as defined in § 11-101 of this title".

(G) SEXUAL EXCITEMENT.

"SEXUAL EXCITEMENT" HAS THE MEANING STATED IN § 11-101 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 419B(a) as it related to a definition of "sexual excitement".

REVISOR'S NOTE TO SECTION

Former Art. 27, §§ 417(2) and 419A(a), which defined "person" and "minor", respectively, are revised in § 1-101 of this article.

11-202. OBSCENE MATTER -- DISTRIBUTION, EXHIBITION, IMPORTATION, AND PUBLICATION.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) KNOWINGLY SEND OR CAUSE TO BE SENT ANY OBSCENE MATTER INTO THE STATE FOR SALE OR DISTRIBUTION;

(2) KNOWINGLY BRING OR CAUSE TO BE BROUGHT ANY OBSCENE MATTER INTO THE STATE FOR SALE OR DISTRIBUTION;

(3) IN THE STATE PREPARE, PUBLISH, PRINT, EXHIBIT, DISTRIBUTE, OR OFFER TO DISTRIBUTE ANY OBSCENE MATTER; OR

(4) POSSESS ANY OBSCENE MATTER IN THE STATE WITH THE INTENT TO DISTRIBUTE, OFFER TO DISTRIBUTE, OR EXHIBIT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(C) INJUNCTION.

(1) THE STATE'S ATTORNEY MAY MAINTAIN AN ACTION FOR AN INJUNCTION IN THE CIRCUIT COURT AGAINST A PERSON TO PREVENT THE SALE, FURTHER SALE, DISTRIBUTION, FURTHER DISTRIBUTION, ACQUISITION, PUBLICATION, OR POSSESSION WITHIN THE STATE OF ANY BOOK, MAGAZINE, PAMPHLET, NEWSPAPER, STORY PAPER, WRITING PAPER, PICTURE, CARD, DRAWING, PHOTOGRAPH, MOTION PICTURE FILM OR SHOWING, OR ANY ARTICLE OR INSTRUMENT THE USE OF WHICH IS OBSCENE.

(2) THE CIRCUIT COURT MAY ENJOIN THE SALE OR DISTRIBUTION OF A BOOK, MAGAZINE, MOTION PICTURE FILM OR SHOWING, OR OTHER PUBLICATION OR ITEM THAT IS PROHIBITED UNDER THIS SECTION FROM SALE OR DISTRIBUTION.

(3) AFTER BEING SERVED A SUMMONS AND COMPLAINT IN AN ACTION BY THE STATE'S ATTORNEY UNDER THIS SECTION, A PERSON WHO SELLS, DISTRIBUTES, OR ACQUIRES THE ENJOINED MATERIAL IS CHARGEABLE WITH KNOWLEDGE OF THE CONTENTS OF THE MATERIALS DESCRIBED IN THIS SECTION.

(4) THE DEFENDANT IS ENTITLED TO A TRIAL OF THE ISSUES WITHIN 1 DAY AFTER JOINDER OF ISSUE.

(5) THE COURT SHALL RENDER A DECISION WITHIN 2 DAYS AFTER THE CONCLUSION OF THE TRIAL.

(6) IF AN ORDER OR JUDGMENT IS ENTERED IN FAVOR OF THE STATE'S ATTORNEY, THE FINAL ORDER OR JUDGMENT SHALL CONTAIN PROVISIONS:

(I) DIRECTING THE PERSON TO SURRENDER THE OBSCENE MATTER TO THE PEACE OFFICER DESIGNATED BY THE COURT OR THE COUNTY SHERIFF; AND

(II) DIRECTING THE PEACE OFFICER OR COUNTY SHERIFF TO SEIZE AND DESTROY THE OBSCENE MATTER.

(7) IN AN ACTION BROUGHT UNDER THIS SECTION, THE STATE'S ATTORNEY IS NOT:

(I) REQUIRED TO FILE A BOND BEFORE AN INJUNCTION ORDER IS ISSUED;

(II) LIABLE FOR COSTS; OR

(III) LIABLE FOR DAMAGES SUSTAINED BECAUSE OF THE INJUNCTION ORDER IF JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 418, 418A, and 424.

As to the penalty provided in subsection (b) of this section, *see* General Revisor's Note to subtitle.

In subsection (b) of this section, the former phrase, "unless otherwise provided", is deleted because there are no alternative penalties provided for a violation of this section.

In subsection (b)(1) of this section, the qualification "[f]or a first violation" is added for clarity.

In subsection (c)(1) of this section, the former reference to the circuit courts "of the counties" is deleted as implicit in the reference to the "circuit court".

Also in subsection (c)(1) of this section, the phrase, "under this section", is substituted for the former phrase, "as hereinafter specified", for clarity.

In subsection (c)(2) of this section, the former reference to "the counties in which a person ... sells ... any book ... which is obscene" is deleted because it describes the person to be enjoined, not the action which the State's Attorney seeks to enjoin.

In subsection (c)(4) and (7)(iii) of this section, the references to the "defendant" are substituted for the former references to the "person sought to be enjoined" for brevity and clarity.

In subsection (c)(6) of this section, the former phrase, "against the person ... sought to be enjoined", is deleted as implicit in the reference to an order or judgment in favor of the State's Attorney, which, by definition, must be against the person sought to be enjoined.

Also in subsection (c)(6) of this section, the word "materials" is substituted for the former reference to "matter" because "matter" is a defined term and its use here would be inconsistent with the definition.

In subsection (c)(7) of this section, the former phrase, "provided for by this section", is deleted since the scope of the paragraph is limited to an "action

brought under this section".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the list of material that may be enjoined does not appear to include some of the newer materials that may contain obscene matter, such as videodiscs, computer software, and interactive CD-ROM or DVD discs.

The Criminal Law Article Review Committee also notes, for the attention of the General Assembly, that in subsection (c)(1) and (3) of this section, the defined term "matter" could not be used because the list of items contained in (c)(2) differed in several particulars from the items listed in the defined term. This section, derived from former Art. 27, § 418A, which was enacted by Ch. 382, Acts of 1961, contains a list based on former Art. 27, § 418, which prohibited the preparation, distribution, and importation of lewd, obscene, or indecent books and materials, and which was completely rewritten under Ch. 394 of the Acts of 1967. The one substantive amendment to the § 418A list was the inclusion of "a motion picture film or showing" under Ch. 619, Acts of 1968. The list of "matter" in former Art. 27, § 417, enacted by Ch. 394 of the Acts of 1967, had never been amended. In order to treat the various forms of obscene material in a consistent manner, the General Assembly may wish to reconcile the different lists of obscene material in this subtitle in substantive legislation.

Defined terms: "Distribute" § 11-201

"Knowingly" § 11-201

"Matter" § 11-201

"Person" § 1-101

11-203. SALE OR DISPLAY OF OBSCENE ITEM TO MINOR.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DISTRIBUTE" INCLUDES TO RENT.

(3) "ILLICIT SEX" MEANS:

(I) HUMAN GENITALS IN A STATE OF SEXUAL STIMULATION OR AROUSAL;

(II) ACTS OF HUMAN MASTURBATION, SEXUAL INTERCOURSE, OR SODOMY; OR

(III) FONDLING OR OTHER EROTIC TOUCHING OF HUMAN GENITALS.

(4) "ITEM" MEANS A:

(I) STILL PICTURE OR PHOTOGRAPH;

(II) BOOK, POCKET BOOK, PAMPHLET, OR MAGAZINE;

(III) VIDEODISC, VIDEOTAPE, FILM, OR COMPUTER DISC; OR

(IV) RECORDED TELEPHONE MESSAGE.

(5) "OBSCENE" MEANS:

(I) THAT THE AVERAGE ADULT APPLYING CONTEMPORARY COMMUNITY STANDARDS WOULD FIND THAT THE WORK, TAKEN AS A WHOLE, APPEALS TO THE PRURIENT INTEREST;

(II) THAT THE WORK DEPICTS SEXUAL CONDUCT SPECIFIED IN SUBSECTION (B) OF THIS SECTION IN A WAY THAT IS PATENTLY OFFENSIVE TO PREVAILING STANDARDS IN THE ADULT COMMUNITY AS A WHOLE WITH RESPECT TO WHAT IS SUITABLE MATERIAL; AND

(III) THAT THE WORK, TAKEN AS A WHOLE, LACKS SERIOUS ARTISTIC, EDUCATIONAL, LITERARY, POLITICAL, OR SCIENTIFIC VALUE.

(6) "PARTIALLY NUDE FIGURE" MEANS A FIGURE WITH:

(I) LESS THAN COMPLETELY AND OPAQUELY COVERED HUMAN GENITALS, PUBIC REGION, BUTTOCKS, OR FEMALE BREAST BELOW A POINT IMMEDIATELY ABOVE THE TOP OF THE AREOLA; OR

(II) HUMAN MALE GENITALS IN A DISCERNIBLY TURGID STATE, EVEN IF COMPLETELY AND OPAQUELY COVERED.

(B) PROHIBITED.

(1) A PERSON MAY NOT WILLFULLY OR KNOWINGLY DISPLAY OR EXHIBIT TO A MINOR AN ITEM:

(I) THE COVER OR CONTENT OF WHICH IS PRINCIPALLY MADE UP OF AN OBSCENE DESCRIPTION OR DEPICTION OF ILLICIT SEX; OR

(II) THAT CONSISTS OF AN OBSCENE PICTURE OF A NUDE OR PARTIALLY NUDE FIGURE.

(2) A PERSON MAY NOT WILLFULLY OR KNOWINGLY ENGAGE IN THE BUSINESS OF DISPLAYING, EXHIBITING, SELLING, SHOWING, ADVERTISING FOR SALE, OR DISTRIBUTING TO A MINOR AN ITEM:

(I) THE COVER OR CONTENT OF WHICH IS PRINCIPALLY MADE UP OF AN OBSCENE DESCRIPTION OR DEPICTION OF ILLICIT SEX; OR

(II) THAT CONSISTS OF AN OBSCENE PICTURE OF A NUDE OR PARTIALLY NUDE FIGURE.

(3) IF A NEWSSTAND OR OTHER PLACE OF BUSINESS IS FREQUENTED BY MINORS, THE OWNER, OPERATOR, FRANCHISEE, MANAGER, OR AN EMPLOYEE WITH MANAGERIAL RESPONSIBILITY MAY NOT OPENLY AND KNOWINGLY DISPLAY AT THE PLACE OF BUSINESS AN ITEM WHOSE SALE, DISPLAY, EXHIBITION, SHOWING, OR ADVERTISING IS PROHIBITED BY PARAGRAPH (2) OF THIS SUBSECTION.

(C) EXCEPTION.

THE PROVISION OF SERVICES OR FACILITIES BY A TELEPHONE COMPANY UNDER A TARIFF APPROVED BY THE PUBLIC SERVICE COMMISSION IS NOT A VIOLATION OF SUBSECTION (B) OF THIS SECTION RELATING TO RECORDED TELEPHONE MESSAGES.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 3 YEARS 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, §§ 419 and 424.

In subsection (a)(6) of this section, the term "partially nude figure" is substituted for the former term "nude and partially denuded figures" for accuracy and clarity. By definition, nude figures cannot be covered or clothed.

In subsection (b) of this section, the references to "a minor" are substituted for the former reference to "any person under the age of 18 years".

Also in subsection (b) of this section, the reference to the defined term "item" is substituted for the former reference to "any still picture ... or recorded telephone messages" for consistency and brevity.

In subsection (b)(3) of this section, the reference to "the place of business" is substituted for the former reference to "the newsstand or other place of business" for brevity.

In subsection (d) of this section, the former phrase "unless otherwise provided" is deleted because there are no alternative penalties provided for a violation of this section.

As to the penalty provided in subsection (d) of this section, *see* General Revisor's Note to subtitle.

In subsection (d)(1) of this section, the qualification "for a first violation" is added for clarity.

Defined terms: "Knowingly" § 11-201

"Person" § 1-101

11-204. OBSCENE PERFORMANCE IN CERTAIN COUNTIES.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES ONLY IN ANNE ARUNDEL, CHARLES, HOWARD, SOMERSET, WICOMICO, AND WORCESTER COUNTIES.

(B) PROHIBITED.

(1) A PERSON MAY NOT PREPARE, GIVE, DIRECT, PRESENT, PERFORM OR PARTICIPATE IN AN OBSCENE PERFORMANCE, EXHIBITION, DRAMA, PLAY, SHOW, DANCING EXHIBITION, TABLEAU, OR OTHER ENTERTAINMENT IN WHICH INDIVIDUALS PERFORM OR PARTICIPATE LIVE IN AN OBSCENE MANNER IN THE PRESENCE OF INDIVIDUALS WHO HAVE PAID ANY KIND OF CONSIDERATION TO OBSERVE THE EXHIBITION OR PERFORMANCE.

(2) AN OWNER, LESSEE, OR MANAGER OF A BUILDING, GARDEN, PLACE, ROOM, STRUCTURE, OR THEATER MAY NOT KNOWINGLY ALLOW OR ASSENT TO THE USE OF THE PREMISES FOR THE TYPES OF EXHIBITIONS PROHIBITED BY PARAGRAPH (1) OF THIS SUBSECTION.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 3 YEARS 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, §§ 418B and 424.

In subsection (b)(1) of this section, the former reference to a person "who as actor, dancer ... or in any other capacity" performs specified acts is deleted in light of the absolute prohibition against the acts without regard to the title of the person.

In subsection (b)(2) of this section, the phrase, "allow or assent to the use of the premises for the types of exhibitions prohibited by paragraph (1) of this subsection", is substituted for the former reference to "permits the same ... for any such purpose" for clarity and brevity.

In subsection (c) of this section, the former phrase "unless otherwise provided" is deleted because there are no alternative penalties provided for a violation of this section.

As to the penalty provided in subsection (c) of this section, *see* General Revisor's Note to subtitle.

In subsection (c)(1) of this section, the qualification "for a first violation" is added for clarity.

Defined terms: "Knowingly" § 11-201

"Person" § 1-101

11-205. OBSCENE MATTER -- ADVERTISING.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY:

(1) WRITE OR CREATE ADVERTISING OR OTHERWISE PROMOTE THE SALE OR DISTRIBUTION OF MATTER THE PERSON REPRESENTS OR HOLDS OUT TO BE OBSCENE; OR

(2) SOLICIT THE PUBLICATION OF ADVERTISING THAT PROMOTES THE SALE OR DISTRIBUTION OF MATTER THE PERSON REPRESENTS OR HOLDS OUT TO BE OBSCENE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 3 YEARS 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, §§ 421 and 424.

In subsection (b) of this section, the former phrase, "unless otherwise provided", is deleted because there are no alternative penalties provided for a violation of this section.

As to the penalty provided in subsection (b) of this section, *see* General Revisor's Note to subtitle.

In subsection (b)(1) of this section, the qualification "for a first violation" is added for clarity.

Defined terms: "Knowingly" § 11-201

"Matter" § 11-201

"Person" § 1-101

11-206. SAME -- REQUIRING ACCEPTANCE.

(A) PROHIBITED.

(1) A PERSON MAY NOT KNOWINGLY REQUIRE A PURCHASER OR CONSIGNEE TO RECEIVE OBSCENE MATTER AS A CONDITION TO A SALE, ALLOCATION, CONSIGNMENT, OR DELIVERY FOR RESALE OF A PAPER, MAGAZINE, BOOK, PERIODICAL, PUBLICATION, OR OTHER MERCHANDISE.

(2) IN RESPONSE TO A PERSON'S RETURN OF OR FAILURE TO ACCEPT OBSCENE MATTER, A PERSON MAY NOT KNOWINGLY:

(I) DENY OR REVOKE A FRANCHISE;

(II) THREATEN TO DENY OR REVOKE A FRANCHISE; OR

(III) IMPOSE A FINANCIAL OR OTHER PENALTY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 3 YEARS 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, §§ 422 and 424.

In subsection (b) of this section, the former phrase, "unless otherwise provided", is deleted because there are no alternative penalties provided for a violation of this section.

As to the penalty provided in subsection (b) of this section, *see* General Revisor's Note to subtitle.

In subsection (b)(1) of this section, the qualification "for a first violation" is added for clarity.

Defined terms: "Knowingly" § 11-201

"Matter" § 11-201

"Person" § 1-101

11-207. CHILD PORNOGRAPHY.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) CAUSE, INDUCE, SOLICIT, OR KNOWINGLY ALLOW A MINOR TO ENGAGE AS A SUBJECT IN THE PRODUCTION OF OBSCENE MATTER OR A VISUAL REPRESENTATION OR PERFORMANCE THAT DEPICTS A MINOR ENGAGED AS A SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT;

(2) PHOTOGRAPH OR FILM A MINOR ENGAGING IN AN OBSCENE ACT, SADOMASOCHISTIC ABUSE, OR SEXUAL CONDUCT;

(3) USE A COMPUTER TO DEPICT OR DESCRIBE A MINOR ENGAGING IN AN OBSCENE ACT, SADOMASOCHISTIC ABUSE, OR SEXUAL CONDUCT;

(4) KNOWINGLY PROMOTE, DISTRIBUTE OR POSSESS WITH THE INTENT TO DISTRIBUTE ANY MATTER, VISUAL REPRESENTATION, OR PERFORMANCE THAT DEPICTS A MINOR ENGAGED AS A SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT; OR

(5) USE A COMPUTER TO KNOWINGLY COMPILE, ENTER, TRANSMIT, MAKE, PRINT, PUBLISH, REPRODUCE, CAUSE, ALLOW, BUY, SELL, RECEIVE, EXCHANGE, OR DISSEMINATE ANY NOTICE, STATEMENT, ADVERTISEMENT, OR MINOR'S NAME, TELEPHONE NUMBER, PLACE OF RESIDENCE, PHYSICAL CHARACTERISTICS, OR OTHER DESCRIPTIVE OR IDENTIFYING INFORMATION FOR THE PURPOSE OF ENGAGING IN, FACILITATING, ENCOURAGING, OFFERING, OR SOLICITING UNLAWFUL SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT OF OR WITH A MINOR.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT FOR 10 YEARS OR A FINE NOT EXCEEDING $25,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING $50,000 OR BOTH.

(C) EVIDENCE.

(1) (I) THIS PARAGRAPH APPLIES ONLY IF THE MINOR'S IDENTITY IS UNKNOWN OR THE MINOR IS OUTSIDE THE JURISDICTION OF THE STATE.

(II) IN AN ACTION BROUGHT UNDER THIS SECTION, THE STATE IS NOT REQUIRED TO IDENTIFY OR PRODUCE TESTIMONY FROM THE MINOR WHO IS DEPICTED IN THE OBSCENE MATTER OR IN ANY VISUAL REPRESENTATION OR

PERFORMANCE THAT DEPICTS THE MINOR ENGAGED AS A SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT.

(2) THE TRIER OF FACT MAY DETERMINE WHETHER AN INDIVIDUAL WHO IS DEPICTED IN AN OBSCENE MATTER, OR ANY VISUAL REPRESENTATION OR PERFORMANCE AS THE SUBJECT IN SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT, WAS A MINOR BY:

(I) OBSERVATION OF THE MATTER DEPICTING THE INDIVIDUAL;

(II) ORAL TESTIMONY BY A WITNESS TO THE PRODUCTION OF THE MATTER, REPRESENTATION, OR PERFORMANCE;

(III) EXPERT MEDICAL TESTIMONY; OR

(IV) ANY OTHER METHOD AUTHORIZED BY AN APPLICABLE PROVISION OF LAW OR RULE OF EVIDENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 419A(b) through (g).

In subsection (a)(3) of this section, the phrase "use a computer" is substituted for the former reference "by means of a computer" for clarity.

In subsection (b) of this section, the former references to "the discretion of the court" are deleted as implicit in setting maximum penalties.

In subsection (b)(1) of this section, the qualification "for a first violation" is added for clarity.

Also in subsection (b)(1) of this section, the reference to being "subject to imprisonment" is substituted for the former phrase "shall be imprisoned" to reflect that the term of imprisonment for a first violation of this section is discretionary, in the same manner as the discretionary imprisonment for a subsequent violation under subsection (b)(2) of this section. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 4-5 (May 21, 2001). The Criminal Law Article Review Committee calls this substitution to the attention of the General Assembly.

In subsection (c)(1)(ii) of this section, the reference to the "State" is substituted for the former reference to the "State's Attorney" for clarity and consistency within this article.

In subsection (c)(2) of this section, the reference to the "trier of fact" is substituted for the former reference to the "court or jury" for clarity.

In subsection (c)(2)(ii) of this section, the reference to a "representation, or performance" is added for consistency within this section.

Former Art. 27, § 419A(a), which defined "minor", is revised in § 1-101 of

this article.

Defined terms: "Distribute" § 11-201

"Knowingly" § 11-201

"Matter" § 11-201

"Minor" § 1-101

"Person" § 1-101

"Sadomasochistic abuse" § 11-201

"Sexual conduct" § 11-201

11-208. POSSESSION OF VISUAL REPRESENTATION OF CHILD UNDER 16 ENGAGED IN CERTAIN SEXUAL ACTS.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY POSSESS A FILM, VIDEOTAPE, PHOTOGRAPH, OR OTHER VISUAL REPRESENTATION DEPICTING AN INDIVIDUAL UNDER THE AGE OF 16 YEARS:

(1) ENGAGED AS A SUBJECT OF SADOMASOCHISTIC ABUSE;

(2) ENGAGED IN SEXUAL CONDUCT; OR

(3) IN A STATE OF SEXUAL EXCITEMENT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $2,500 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(C) EXEMPTION.

NOTHING IN THIS SECTION MAY BE CONSTRUED TO PROHIBIT A PARENT FROM POSSESSING VISUAL REPRESENTATIONS OF THE PARENT'S OWN CHILD IN THE NUDE UNLESS THE VISUAL REPRESENTATIONS DEPICT THE CHILD ENGAGED:

(1) AS A SUBJECT OF SADOMASOCHISTIC ABUSE; OR

(2) IN SEXUAL CONDUCT AND IN A STATE OF SEXUAL EXCITEMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 419B.

In subsection (b) of this section, the references to a "violation" are substituted for the former references to an "offense" for consistency within

this article. *See* General Revisor's Note to article.

In subsection (b)(2) of this section, the reference to "each" violation is substituted for the former reference to "a second or" subsequent offense for consistency within this article.

Defined terms: "Knowingly" § 11-201

"Person" § 1-101

"Sadomasochistic abuse" § 11-201

"Sexual conduct" § 11-201

"Sexual excitement" § 11-201

11-209. HIRING MINOR FOR PROHIBITED PURPOSE.

(A) PROHIBITED.

A PERSON MAY NOT HIRE, EMPLOY, OR USE AN INDIVIDUAL, IF THE PERSON KNOWS, AND POSSESSES FACTS UNDER WHICH THE PERSON SHOULD REASONABLY KNOW, THAT THE INDIVIDUAL IS A MINOR, TO DO OR ASSIST IN DOING AN ACT DESCRIBED IN § 11-203 OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 3 YEARS 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, §§ 420 and 424.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a) of this section, the reference to a person who "knows, *and* possesses facts under which the person should reasonably know, that the individual is a minor" requires both actual knowledge and a reasonable basis for knowledge that an employee is a minor. The General Assembly may wish to consider whether requiring actual knowledge "or" a reasonable basis for knowledge is more appropriate.

In subsection (b) of this section, the former phrase "unless otherwise provided" is deleted because there are no alternative penalties provided for a violation of this section.

As to the penalty provided in subsection (b) of this section, *see* General Revisor's Note to subtitle.

In subsection (b)(1) of this section, the qualification "for a first violation" is added for clarity.

Defined terms: "Minor" § 1-101

"Person" § 1-101

11-210. EXEMPTION FROM SUBTITLE.

(A) BONA FIDE JUSTIFICATION.

(1) A PERSON HAVING A BONA FIDE SCIENTIFIC, EDUCATIONAL, GOVERNMENTAL, ARTISTIC, NEWS, OR OTHER SIMILAR JUSTIFICATION FOR POSSESSING OR DISTRIBUTING PROHIBITED MATTER IS NOT SUBJECT TO THE PROHIBITIONS AND PENALTIES IMPOSED BY THIS SUBTITLE.

(2) A DISTRIBUTION MADE IN ACCORDANCE WITH A BONA FIDE SCIENTIFIC, EDUCATIONAL, GOVERNMENTAL, ARTISTIC, NEWS, OR OTHER SIMILAR JUSTIFICATION IS NOT SUBJECT TO THE PROHIBITIONS AND PENALTIES IMPOSED BY THIS SUBTITLE.

(B) EXCEPTION TO JUSTIFICATION.

A JUSTIFICATION IS NOT BONA FIDE UNDER THIS SECTION IF A REASONABLE PERSON WOULD FIND THAT A DOMINANT PURPOSE OF THE DEPICTION OF AN INDIVIDUAL UNDER THE AGE OF 16 YEARS ENGAGING IN SEXUAL CONDUCT IS TO AROUSE OR GRATIFY SEXUAL DESIRE IN EITHER THE VIOLATOR, THE INDIVIDUAL UNDER THE AGE OF 16 YEARS, OR THE VIEWER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 423.

In subsection (a) of this section, the phrase "is not subject" is substituted for the former reference to "shall not extend" for consistency within this article.

In subsection (b) of this section, the reference to a "violator" is substituted for the former reference to a "perpetrator" for consistency within this article.

Defined terms: "Matter" § 11-201

"Person" § 1-101

"Sexual conduct" § 11-201

11-211. DESTRUCTION OF OBSCENE MATTER UNDER COURT ORDER.

WHEN THE CONVICTION OF A PERSON FOR A VIOLATION OF THIS SUBTITLE BECOMES FINAL, THE COURT MAY ORDER THE DESTRUCTION OF ANY MATTER OR ADVERTISEMENT THAT WAS THE BASIS OF THE PERSON'S CONVICTION AND THAT REMAINS IN THE POSSESSION OR UNDER THE CONTROL OF THE COURT, THE STATE, OR A LAW ENFORCEMENT UNIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 425.

The former phrase "[u]pon the conviction of the accused" is deleted in light of the reference to a conviction "becom[ing] final".

The reference to "a violation of this subtitle" is added for clarity.

The reference to the "State" is substituted for the former reference to the "State's Attorney" for clarity and consistency within this article.

The reference to a law enforcement "unit" is substituted for the former reference to a law enforcement "agency" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "Matter" § 11-201

"Person" § 1-101

GENERAL REVISOR'S NOTE TO SUBTITLE

The former Obscene Matter subtitle contained a general penalty provision, former Art. 27, § 424, that applied to all violations of the subtitle that did not have a separate penalty provision. As each crime without its own penalty provision is separately punishable, the former penalty is repeated in each section to which the penalty applies for clarity.

SUBTITLE 3. PROSTITUTION AND RELATED CRIMES.

11-301. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 426(a).

No changes are made.

(B) ASSIGNATION.

"ASSIGNATION" MEANS THE MAKING OF AN APPOINTMENT OR ENGAGEMENT FOR PROSTITUTION OR ANY ACT IN FURTHERANCE OF THE APPOINTMENT OR ENGAGEMENT.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 426(b).

The only changes are in style.

(C) PROSTITUTION.

"PROSTITUTION" MEANS THE PERFORMANCE OF A SEXUAL ACT, SEXUAL CONTACT, OR VAGINAL INTERCOURSE FOR HIRE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 426(c).

No changes are made.

(D) SEXUAL ACT.

"SEXUAL ACT" HAS THE MEANING STATED IN § 3-301 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 426(d), as it defined "sexual act".

(E) SEXUAL CONTACT.

"SEXUAL CONTACT" HAS THE MEANING STATED IN § 3-301 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 426(d), as it defined "sexual contact".

(F) SOLICIT.

"SOLICIT" MEANS URGING, ADVISING, INDUCING, ENCOURAGING, REQUESTING, OR COMMANDING ANOTHER.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 426(e).

The former reference to another "person" is deleted for consistency within this article.

No other changes are made.

(G) VAGINAL INTERCOURSE.

"VAGINAL INTERCOURSE" HAS THE MEANING STATED IN § 3-301 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 426(d), as it defined "vaginal intercourse".

11-302. EFFECT OF SUBTITLE ON OTHER LAWS.

A PERSON CHARGED WITH A CRIME UNDER THIS SUBTITLE MAY ALSO BE PROSECUTED AND SENTENCED FOR VIOLATING ANY OTHER APPLICABLE LAW.

REVISOR'S NOTE: This section formerly was Art. 27, § 427.

No changes are made.

Defined term: "Person" § 1-101

11-303. PANDERING.

(A) PROHIBITED -- IN GENERAL.

A PERSON MAY NOT KNOWINGLY:

(1) TAKE OR CAUSE ANOTHER TO BE TAKEN TO ANY PLACE FOR PROSTITUTION;

(2) PLACE, CAUSE TO BE PLACED, OR HARBOR ANOTHER IN ANY PLACE FOR PROSTITUTION;

(3) PERSUADE OR ENCOURAGE BY THREAT OR PROMISE ANOTHER TO BE TAKEN TO OR PLACED IN ANY PLACE FOR PROSTITUTION;

(4) UNLAWFULLY TAKE OR DETAIN ANOTHER WITH THE INTENT TO USE FORCE, THREAT, OR PERSUASION TO COMPEL THE OTHER TO MARRY THE PERSON OR A THIRD PERSON OR PERFORM A SEXUAL ACT, SEXUAL CONTACT, OR VAGINAL INTERCOURSE; OR

(5) RECEIVE CONSIDERATION TO PROCURE FOR OR PLACE IN A HOUSE OF PROSTITUTION OR ELSEWHERE ANOTHER WITH THE INTENT OF CAUSING THE OTHER TO ENGAGE IN PROSTITUTION OR ASSIGNATION.

(B) SAME -- CONSENT OF PARENT OR GUARDIAN.

A PARENT, GUARDIAN, OR PERSON WHO HAS PERMANENT OR TEMPORARY CARE OR CUSTODY OR RESPONSIBILITY FOR SUPERVISION OF ANOTHER MAY NOT CONSENT TO THE TAKING OR DETENTION OF THE OTHER FOR PROSTITUTION.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF PANDERING AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(D) STATUTE OF LIMITATIONS AND IN BANC REVIEW.

A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.

(E) VENUE.

A PERSON WHO VIOLATES THIS SECTION MAY BE CHARGED, TRIED, AND SENTENCED IN ANY COUNTY IN OR THROUGH WHICH THE PERSON TRANSPORTED OR ATTEMPTED TO TRANSPORT THE OTHER.

REVISOR'S NOTE: This section formerly was Art. 27, § 428.

Throughout this section, the references to another "person" and the other "person" are deleted for consistency within this article.

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

No other changes are made.

Defined terms: "Assignation" § 11-301

"Person" § 1-101

"Prostitution" § 11-301

"Sexual act" § 11-301

"Sexual contact" § 11-301

"Vaginal intercourse" § 11-301

11-304. RECEIVING EARNINGS OF PROSTITUTE.

(A) PROHIBITED.

A PERSON MAY NOT RECEIVE OR ACQUIRE MONEY OR PROCEEDS FROM THE EARNINGS OF A PERSON ENGAGED IN PROSTITUTION WITH THE INTENT TO:

(1) PROMOTE A CRIME UNDER THIS SUBTITLE;

(2) PROFIT FROM A CRIME UNDER THIS SUBTITLE; OR

(3) CONCEAL OR DISGUISE THE NATURE, LOCATION, SOURCE, OWNERSHIP, OR CONTROL OF MONEY OR PROCEEDS OF A CRIME UNDER THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING $10,000 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 formerly was Art. 27, § 429.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

No other changes are made.

Defined terms: "Person" § 1-101

"Prostitution" § 11-301

11-305. ABDUCTION OF CHILD UNDER 16.

(A) PROHIBITED.

FOR PURPOSES OF PROSTITUTION OR COMMITTING A CRIME UNDER TITLE 3, SUBTITLE 3 OF THIS ARTICLE, A PERSON MAY NOT:

(1) PERSUADE OR ENTICE OR AID IN THE PERSUASION OR ENTICEMENT OF AN INDIVIDUAL UNDER THE AGE OF 16 YEARS FROM THE INDIVIDUAL'S HOME OR FROM THE CUSTODY OF THE INDIVIDUAL'S PARENT OR GUARDIAN; OR

(2) KNOWINGLY SECRETE OR HARBOR OR AID IN THE SECRETING OR HARBORING OF AN INDIVIDUAL UNDER THE AGE OF 16 YEARS WHO HAS BEEN PERSUADED OR ENTICED IN THE MANNER DESCRIBED IN ITEM (1) OF THIS SUBSECTION.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 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 formerly was Art. 27, § 430.

In subsection (a) of this section, the reference to "Title 3, Subtitle 3 of this article" is substituted for the former reference to "the sexual offenses subheading of this article" to reflect the reorganization of material on rape and other sexual crimes in this article.

Also in subsection (a) of this section, the references to "an individual" and "the individual's" are substituted for the former references to "a person" and "the person's" because only a human being, and not the other entities included in the defined term "person", may be persuaded or enticed.

In subsection (c) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

No other changes are made.

Defined terms: "Person" § 1-101

"Prostitution" § 11-301

11-306. HOUSE OF PROSTITUTION.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY:

(1) ENGAGE IN PROSTITUTION OR ASSIGNATION BY ANY MEANS;

(2) KEEP, SET UP, OCCUPY, MAINTAIN, OR OPERATE A BUILDING, STRUCTURE, OR CONVEYANCE FOR PROSTITUTION OR ASSIGNATION;

(3) ALLOW A BUILDING, STRUCTURE, OR CONVEYANCE OWNED OR UNDER THE PERSON'S CONTROL TO BE USED FOR PROSTITUTION OR ASSIGNATION;

(4) ALLOW OR AGREE TO ALLOW A PERSON INTO A BUILDING, STRUCTURE, OR CONVEYANCE FOR PROSTITUTION OR ASSIGNATION; OR

(5) PROCURE OR SOLICIT OR OFFER TO PROCURE OR SOLICIT FOR PROSTITUTION OR ASSIGNATION.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section formerly was Art. 27, § 431.

No changes are made.

Defined terms: "Assignation" § 11-301

"Person" § 1-101

"Prostitution" § 11-301

TITLE 12. GAMING -- STATEWIDE PROVISIONS.

SUBTITLE 1. GENERAL PROVISIONS.

12-101. 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, § 261E(a)(1).

The reference to this "subtitle" is substituted for the former reference to

this "section", which referred only to Art. 27, § 261E. Although this subtitle is derived, in part, from provisions outside of former Art. 27, § 261E, substituting the reference to this "subtitle" does not constitute a substantive change because the terms used in the newly covered sections are used as defined in this section.

(B) CANDIDATE.

"CANDIDATE" HAS THE MEANING STATED IN ARTICLE 33, § 1-101 OF THE CODE.

REVISOR'S NOTE: This section is new language added for clarity and consistency with usage in Article 33 of the Code.

(C) CREDIT.

(1) "CREDIT" MEANS PAYMENT BY A CREDIT CARD OR PROMISSORY NOTE.

(2) "CREDIT" INCLUDES SELLING OR PLEDGING PERSONAL PROPERTY IN EXCHANGE FOR CASH OR TOKENS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 261E(a)(2).

(D) GAMING DEVICE.

(1) "GAMING DEVICE" MEANS:

(I) A GAMING TABLE, EXCEPT A BILLIARD TABLE, AT WHICH A GAME OF CHANCE IS PLAYED FOR MONEY OR ANY OTHER THING OR CONSIDERATION OF VALUE; OR

(II) A GAME OR DEVICE AT WHICH MONEY OR ANY OTHER THING OR CONSIDERATION OF VALUE IS BET, WAGERED, OR GAMBLED.

(2) "GAMING DEVICE" INCLUDES A PADDLE WHEEL, WHEEL OF FORTUNE, CHANCE BOOK, AND BINGO.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, §§ 238, 244, and 261E(a)(3).

In the introductory language of paragraph (1) of this subsection, the term "[g]aming device" is substituted for the former term "gaming table" in light of former Art. 27, § 244, which deemed a gaming table to be "[a]ll games, devices and contrivances at which money or any other thing shall be bet or wagered ...".

In paragraph (1)(i) and (ii) of this subsection, the reference to "consideration of value" is added for consistency with § 12-102 of this subtitle.

In paragraph (1)(i) of this subsection, the word "table" is substituted for the former specific references to a "faro table, E. O. table, equality, or any other kind of gaming table" for brevity and in light of the comprehensive reference to any table "at which a game of chance is played".

In paragraph (1)(ii) of this subsection, the former reference to "contrivances" is deleted in light of the references to a "game" and a "device".

Also in paragraph (1)(ii) of this subsection, the word "gambled" is added for consistency with § 12-102 of this subtitle.

Also in paragraph (1)(ii) of this subsection, the former reference to a gaming table "within the meaning of §§ 237, 238, 239, 241 and 242" is deleted in light of subsection (a) of this section.

Also in paragraph (1)(ii) of this subsection, the former specific reference to a "paddle wheel, wheel of fortune, chance book, [or] bingo" is deleted as included in the comprehensive reference to a "game or device at which money or any other thing or consideration of value is bet, wagered, or gambled".

(E) GAMING EVENT.

"GAMING EVENT" MEANS:

(1) A BINGO GAME;

(2) A CARNIVAL;

(3) A BAZAAR;

(4) A RAFFLE;

(5) A BENEFIT PERFORMANCE; OR

(6) ANY OTHER EVENT AT WHICH A GAMING DEVICE IS OPERATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 261E(a)(4).

(F) ORGANIZATION.

"ORGANIZATION" INCLUDES:

(1) A FRATERNAL, RELIGIOUS, CIVIC, PATRIOTIC, EDUCATIONAL, OR CHARITABLE ORGANIZATION;

(2) A VOLUNTEER FIRE COMPANY, RESCUE SQUAD, OR AUXILIARY UNIT;

(3) A VETERANS' ORGANIZATION OR CLUB;

(4) A BONA FIDE NONPROFIT ORGANIZATION THAT IS RAISING MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE; OR

(5) ANY ORGANIZATION THAT IS AUTHORIZED TO CONDUCT A GAMING EVENT UNDER SUBTITLE 1 OR 2 OF THIS TITLE OR TITLE 13 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 261E(a)(5).

In item (1) of this subsection, the former reference to a "corporation" is deleted as included in the reference to an "organization" for consistency within this article.

In item (5) of this subsection, the reference to "Subtitle 1 or 2 or Title 13 of this article" is substituted for the former erroneous reference to "this subtitle" to reflect the reorganization of material derived from the former "Gaming" subheading of Article 27.

(G) POLITICAL COMMITTEE.

"POLITICAL COMMITTEE" HAS THE MEANING STATED IN ARTICLE 33, § 1-101 OF THE CODE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 261D(a), as it related to political committees.

In this subsection, the former reference to a "bona fide" political committee is deleted as surplusage.

(H) TOKEN.

"TOKEN" MEANS A POKER CHIP, BINGO CHIP, OR OTHER DEVICE COMMONLY USED INSTEAD OF MONEY IN THE PLAYING OF A GAMING DEVICE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 261E(a)(6).

In this section, the term "money" is substituted for the former term "cash" for consistency with § 12-102 of this subtitle.

12-102. BETTING, WAGERING, GAMBLING, ETC.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) BET, WAGER, OR GAMBLE;

(2) MAKE OR SELL A BOOK OR POOL ON THE RESULT OF A RACE, CONTEST, OR CONTINGENCY;

(3) ESTABLISH, KEEP, RENT, USE, OR OCCUPY, OR KNOWINGLY ALLOW TO BE ESTABLISHED, KEPT, RENTED, USED, OR OCCUPIED, ALL OR A PART OF A BUILDING, VESSEL, OR PLACE, ON LAND OR WATER, WITHIN THE STATE, FOR THE PURPOSE OF:

(I) BETTING, WAGERING, OR GAMBLING; OR

(II) MAKING, SELLING, OR BUYING BOOKS OR POOLS ON THE RESULT OF A RACE, CONTEST, OR CONTINGENCY; OR

(4) RECEIVE, BECOME THE DEPOSITORY OF, RECORD, REGISTER, OR FORWARD, OR PROPOSE, AGREE, OR PRETEND TO FORWARD, MONEY OR ANY OTHER THING OR CONSIDERATION OF VALUE, TO BE BET, WAGERED, OR GAMBLED ON THE RESULT OF A RACE, CONTEST, OR CONTINGENCY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 6 MONTHS AND NOT EXCEEDING 1 YEAR OR A FINE OF NOT LESS THAN $200 AND NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 240.

In the introductory language of subsection (a) of this section, the former reference to "persons, or association of persons, or ... any corporation within the State of Maryland" is deleted in light of Art. 1, § 8, which provides that the singular includes the plural, except where the construction would be unreasonable, and Art. 1, § 15 and § 1-101 of this article, which provides that the term "person" includes a corporation and other specified entities.

In subsection (a)(1) of this section, the former phrase "in any manner, or by any means," is deleted as surplusage.

In subsection (a)(2) of this section, the former phrase "any trotting, pacing or running race of horses or other beasts," is deleted as surplusage.

Also in subsection (a)(2) of this section, the former reference to a race, contest, or contingency "of any kind" is deleted as surplusage.

In subsection (a)(3) of this section, the word "established" is added for consistency with the word "establish" in that subsection and with § 12-105 of this subtitle.

Also in subsection (a)(3) of this section, the former reference to a "house" is deleted in light of the reference to a "building".

Also in subsection (a)(3) of this section, the former reference to "grounds" is

deleted in light of the reference to a "place".

In subsection (a)(3)(i) of this section, the former phrases "in any manner, or by any means," and "by any means or devices whatsoever" are deleted as surplusage.

In subsection (a)(4) of this section, the word "agree" is substituted for the former word "argue" to correct a publishing error by the Michie Company, which occurred in the publication of the 1992 Replacement Volume of Article 27.

Also in subsection (a)(4) of this section, the reference to "propos[ing]" to forward is substituted for the former reference to "purpos[ing]" to forward for clarity.

Also in subsection (a)(4) of this section, the former references to "bet" and "wager", used as nouns, are deleted for consistency with § 12-101(d)(1) and (2) of this subtitle.

Also in subsection (a)(4) of this section, the former reference to money bet "in any manner" is deleted as surplusage.

In subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the range of penalties set forth in that subsection.

The Criminal Law Article Review Committee notes, for consideration of the General Assembly, that the specific reference to establishing a place for making, selling, or "buying" books or pools contained in subsection (a)(3)(ii) of this section is not reflected in the specific prohibition against "making or selling" books or pools in subsection (a)(2) of this section, although it is covered by the general prohibition against "bet[ting], wager[ing], or gambl[ing]" in subsection (a)(1) of this section. The General Assembly may wish to add a specific prohibition against "buying" books or pools in subsection (a)(2) of this section, in order to ensure that the outright prohibitions against books and pools in subsection (a)(2) of this section reflect the prohibitions against establishing a place for books and pools in subsection (a)(3)(ii) of this section.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that in subsection (b) of this section, the former reference to "one half of said fine to go to the informer", enacted by Ch. 285, Acts of 1890, is deleted in light of Art. 38, § 3, enacted by Ch. 37, Acts of 1931, which provides that no portion of any fine, penalty, or forfeiture shall be paid to any informer.

Defined term: "Person" § 1-101

12-103. PLAYING CERTAIN GAMES.

(A) PROHIBITED.

FOR MONEY OR ANY OTHER THING OR CONSIDERATION OF VALUE, A PERSON MAY NOT PLAY:

(1) THE GAME CALLED "THIMBLES";

(2) THE GAME CALLED "LITTLE JOKER";

(3) DICE OR THE GAME COMMONLY CALLED "CRAP"; OR

(4) ANY OTHER GAMING DEVICE OR FRAUDULENT TRICK.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 6 MONTHS AND NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $100 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 245.

In the introductory language of subsection (a) of this section, the phrase "or consideration of value" is added for consistency with § 12-102 of this subtitle.

In subsection (a)(4) of this section, the term "gaming device" is substituted for the former term "device" for consistency with § 12-101(d) of this subtitle.

In subsection (b) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (b) of this section, the reference to a sentence to "imprisonment" is substituted for the former reference to a sentence to being "imprisoned ... in the Maryland House of Correction" for consistency within this article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* CS § 9-103.

Also in subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the range of penalties set forth in that subsection.

Defined terms: "Gaming device" § 12-101

"Person" § 1-101

12-104. GAMING DEVICE, OR BUILDING, VESSEL, OR PLACE FOR GAMBLING.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) KEEP A GAMING DEVICE, OR ALL OR A PART OF A BUILDING, VESSEL, OR PLACE, ON LAND OR WATER WITHIN THE STATE FOR THE PURPOSE OF GAMBLING;

(2) OWN, RENT, OR OCCUPY ALL OR A PART OF A BUILDING, VESSEL, OR PLACE AND KNOWINGLY ALLOW A GAMING DEVICE TO BE KEPT IN THE BUILDING, VESSEL, OR PLACE;

(3) LEASE OR RENT ALL OR A PART OF A BUILDING, VESSEL, OR PLACE TO BE USED FOR THE PURPOSE OF GAMBLING;

(4) DEAL AT A GAMING DEVICE OR IN A BUILDING, VESSEL, OR PLACE FOR GAMBLING;

(5) MANAGE A GAMING DEVICE OR A BUILDING, VESSEL, OR PLACE FOR GAMBLING; OR

(6) HAVE AN INTEREST IN A GAMING DEVICE OR THE PROFITS OF A GAMING DEVICE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 6 MONTHS AND NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 237, 239, 241, and 242.

In this section, the defined term "gaming device" is substituted for the former term "gaming table". *See* § 12-101(d) of this subtitle.

In subsection (a)(1) of this section, the phrase "within the State" is added for consistency with §§ 12-102(a)(3) and 12-105(a)(1) of this subtitle.

Also in subsection (a)(1) of this section, the term "building" is substituted for the former term "house" for consistency with § 12-102(a) of this subtitle.

Also in subsection (a)(1) of this section, the phrase "all or a part of a building, vessel, or place" is added for consistency with § 12-102(a) of this subtitle.

In subsection (a)(2) of this section, the former reference to a "house" is deleted in light of the reference to a "building" and for consistency with subsection (a)(1) of this section and § 12-102(a) of this subtitle.

In subsection (a)(3) of this section, the phrase "all or a part of a building, vessel, or place" is added for consistency with item (a)(1) of this section and § 12-102(a)(3) of this subtitle.

In subsection (a)(4) and (5) of this section, the phrase "building, vessel, or place" is substituted for the former phrase "other place" for consistency with subsection (a)(1) of this section and § 12-102(a) of this subtitle.

In subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b) of this section, the former reference to "one half to go to the informer", enacted by Ch. 285, Acts of 1890, is deleted in light of Art. 38, § 3, enacted by Ch. 37, Acts of 1931, which provides that no portion of any fine, penalty, or forfeiture shall be paid to any informer.

Defined terms: "Gaming device" § 12-101

"Person" § 1-101

12-105. GAMBLING ON VESSEL OR BUILDING OR OTHER STRUCTURE ON OR OVER WATER WITHIN THE STATE.

(A) CONSTRUCTION OF SECTION.

THIS SECTION:

(1) APPLIES NOTWITHSTANDING THE ISSUANCE OF A LICENSE OR PERMIT THROUGH OR BY A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION OF THE STATE; AND

(2) DOES NOT AUTHORIZE AN ACT THAT IS OTHERWISE PROHIBITED BY LAW.

(B) PROHIBITED -- GAMING DEVICE ON OR OVER WATERS OF THE STATE.

A PERSON MAY NOT BET, WAGER, OR GAMBLE OR KEEP, CONDUCT, MAINTAIN, OR OPERATE A GAMING DEVICE ON:

(1) A VESSEL OR A PART OF A VESSEL ON WATER WITHIN THE STATE, EXCEPT AS PROVIDED IN § 6-209 OF THE TRANSPORTATION ARTICLE; OR

(2) ALL OR A PART OF A BUILDING OR OTHER STRUCTURE THAT IS BUILT ON OR OVER WATER WITHIN THE STATE, IF THE BUILDING OR OTHER STRUCTURE CANNOT BE ENTERED FROM THE SHORE OF THE STATE BY A PERSON ON FOOT.

(C) SAME -- KEEPING VESSEL OR STRUCTURE FOR GAMING DEVICE.

TO CONDUCT, MAINTAIN, OR OPERATE A GAMING DEVICE, A PERSON MAY NOT ESTABLISH, KEEP, RENT, USE, OR OCCUPY, OR KNOWINGLY ALLOW TO BE ESTABLISHED, KEPT, RENTED, USED, OR OCCUPIED:

(1) A VESSEL ON WATER WITHIN THE STATE; OR

(2) A BUILDING OR OTHER STRUCTURE THAT IS BUILT ON OR OVER WATER WITHIN THE STATE, IF THE BUILDING OR OTHER STRUCTURE CANNOT BE ENTERED FROM THE SHORE OF THE STATE BY A PERSON ON FOOT.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE OF NOT LESS THAN $200 AND NOT EXCEEDING $1,000 OR BOTH FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 246A.

In the introductory language of subsections (b) and (c) and in subsection (d) of this section, the former phrase "firm, association or corporation" is deleted in light of Art. 1, § 15 and Title 1 of this article, which provide that the term "person" includes a corporation and other specified entities.

In the introductory language of subsection (b) of this section, the defined term "gaming device" is substituted for the former phrase "game of chance, gaming table or coin-operated gambling machine or device" for brevity in light of the definition of "gaming device" in § 12-101(d) of this subtitle. Similarly, in subsections (b) and (c) of this section, the defined term "gaming device" is substituted for the former term "gaming table". *See* § 12-101(d) of this subtitle.

In subsection (b)(1) of this section, the former phrase "except as provided in § 6-209 of the Transportation Article" is revised to apply only to the prohibition on gambling on a vessel on waters within the State because TR § 6-209 allows gambling under specified circumstances only on a vessel.

Also in subsection (b)(1) of this section, the reference to "a part of a vessel" is added for consistency with § 12-102(a)(3) of this subtitle.

In subsection (b)(2) of this section, the former references to a "pier" and a "wharf" are deleted in light of the reference to "other structure".

Also in subsection (b)(2) of this section, the reference to "part of a building" is added for consistency with § 12-102(a)(3) of this subtitle.

In subsection (d) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined terms: "County" § 1-101

"Gaming device" § 12-101

"Person" § 1-101

12-106. RAFFLES.

(A) CHARITABLE ORGANIZATION.

(1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, SUBTITLE 2 OF THIS TITLE, OR TITLE 13 OF THIS ARTICLE AND EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A BONA FIDE CHARITABLE ORGANIZATION IN THIS STATE MAY CONDUCT A RAFFLE FOR THE EXCLUSIVE BENEFIT OF THE CHARITABLE ORGANIZATION IF THE PRIZE AWARDED IS REAL PROPERTY:

(I) TO WHICH THE CHARITABLE ORGANIZATION HOLDS TITLE; OR

(II) FOR WHICH THE CHARITABLE ORGANIZATION HAS THE ABILITY TO CONVEY TITLE.

(2) A CHARITABLE ORGANIZATION MAY NOT CONDUCT MORE THAN TWO RAFFLES OF REAL PROPERTY IN A CALENDAR YEAR.

(3) THE SECRETARY OF STATE MAY ADOPT REGULATIONS GOVERNING A RAFFLE OF REAL PROPERTY BY A CHARITABLE ORGANIZATION UNDER THIS SUBSECTION.

(B) POLITICAL COMMITTEE OR CANDIDATE FOR PUBLIC OFFICE.

(1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE AND EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A POLITICAL COMMITTEE OR CANDIDATE FOR PUBLIC OFFICE MAY CONDUCT A RAFFLE IF THE PRIZES AWARDED ARE MONEY OR MERCHANDISE.

(2) (I) THE COST OF A RAFFLE TICKET UNDER THIS SUBSECTION MAY NOT EXCEED $5.

(II) AN INDIVIDUAL MAY NOT PURCHASE MORE THAN $50 WORTH OF TICKETS.

(3) THIS SUBSECTION DOES NOT RELIEVE A POLITICAL COMMITTEE OR CANDIDATE FROM THE REPORTING AND RECORD KEEPING REQUIREMENTS UNDER ARTICLE 33 OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 236 and 261D.

In subsection (a)(1) of this section, the phrase "[n]otwithstanding any other provision of this subtitle, Subtitle 2 of this title, or Title 13 of this article" is substituted for the former phrase "[t]his subtitle may not be construed to

make it unlawful" to clarify that the other provisions of this subtitle, Subtitle 2 of this title, and Title 13 of this article do not prohibit a raffle authorized under subsection (a)(1) of this section.

In subsection (a)(1)(i) and (ii) and (2) of this section, the term "charitable organization" is substituted for the former term "organization" for consistency with the introductory language of subsection (a)(1) of this section and to distinguish between a charitable organization and an "organization" defined in § 12-101(f) of this subtitle.

In subsection (b)(1) of this section, the former phrase "bona fide" is deleted as surplusage.

Also in subsection (b)(1) of this section, the reference to "money" is substituted for the former reference to "cash" for consistency within this title.

Also in subsection (b)(1) of this section, the former phrase "as defined in Article 33, § 1-101 of the Code", which referred to the term "political committee", is deleted in light of the definition of "political committee" in § 12-101(g) of this subtitle.

Defined terms: "Candidate" § 12-101

"Organization" § 12-101

"Political committee" § 12-101

12-107. PARI-MUTUEL BETTING.

(A) CONSTRUCTION OF SECTION.

(1) THE PROHIBITION IN SUBSECTION (B) OF THIS SECTION APPLIES NOTWITHSTANDING A LICENSE OR PERMIT GRANTED THROUGH OR BY A COUNTY, MUNICIPAL CORPORATION, OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

(2) THIS SECTION DOES NOT APPLY TO:

(I) PARI-MUTUEL BETTING CONDUCTED UNDER THE MARYLAND HORSE RACING ACT;

(II) BINGO, CARNIVALS, RAFFLES, BAZAARS, OR SIMILAR GAMES OF ENTERTAINMENT; OR

(III) MECHANICAL OR ELECTRICAL DEVICES, COMMONLY KNOWN AS SLOT MACHINES, THAT ARE AUTHORIZED IN THE STATE AND THAT REQUIRE THE INSERTION OF A COIN OR TOKEN.

(B) PROHIBITED.

A PERSON MAY NOT CONDUCT OR OPERATE WITH PARI-MUTUEL BETTING, OR WITH ANY SIMILAR FORM OF BETTING, WAGERING, OR GAMBLING:

(1) THE GAME, CONTEST, OR EVENT COMMONLY KNOWN AS "JAI ALAI"; OR

(2) ANY OTHER GAME, CONTEST, OR EVENT.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF NOT LESS THAN $200 AND NOT EXCEEDING $1,000 FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264A.

In subsection (a)(2) of this section, the defined term "gaming device" is substituted for the former term "device" for consistency with § 12-101(c) of this subtitle.

Also in subsection (a)(2) of this section, the former reference to being "legalized" is deleted in light of the reference to being "authorized in the State".

In subsections (b) and (c) of this section, the former phrase "firm, association or corporation" is deleted in light of Art. 1, § 15 and Title 1 of this article, which provide that the defined term "person" includes a corporation and other specified entities.

In subsection (b) of this section, the term "gambling" is added for consistency with § 12-102(a) of this subtitle.

In subsection (b)(2) of this section, the former reference to any "similar" game is deleted as unnecessary in light of the comprehensive reference to any "other game".

Defined terms: "County" § 1-101

"Person" § 1-101

"Token" § 12-101

12-108. GAMING EVENT -- ACCEPTANCE OF CREDIT.

(A) PROHIBITED.

AN ORGANIZATION THAT OPERATES A GAMING EVENT AUTHORIZED UNDER THIS SUBTITLE, SUBTITLE 2 OF THIS TITLE, OR TITLE 13 OF THIS ARTICLE MAY NOT ACCEPT CREDIT FROM A PERSON TO ALLOW THAT PERSON TO PLAY A GAMING DEVICE AT THE GAMING EVENT.

(B) USE OF TOKEN ALLOWED.

SUBSECTION (A) OF THIS SECTION DOES NOT PROHIBIT AN ORGANIZATION FROM ACCEPTING A TOKEN INSTEAD OF MONEY FROM A PERSON WHO HAS PAID THE ORGANIZATION MONEY FOR THE USE OF THE TOKEN.

(C) PENALTY.

AN ORGANIZATION THAT VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000 OR LOSS OF PRIVILEGES TO CONDUCT A GAMING EVENT NOT EXCEEDING 60 DAYS OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 261E(b), (c), and (d).

In subsection (a) of this section, the reference to "this subtitle, Subtitle 2 of this title, or Title 13 of this article" is substituted for the former erroneous reference to "this subtitle" to reflect the reorganization of material derived from the former "Gaming" subheading of Article 27.

In subsection (b) of this section, the references to "money" are substituted for the former references to "cash" for consistency within this title.

Defined terms: "Credit" § 12-101

"Gaming device" § 12-101

"Gaming event" § 12-101

"Organization" § 12-101

"Person" § 1-101

"Token" § 12-101

12-109. PREARRANGEMENT OR PREDETERMINATION OF HORSE RACE RESULTS.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY, KNOWINGLY, AND UNLAWFULLY CAUSE OR ATTEMPT TO CAUSE THE PREARRANGEMENT OR PREDETERMINATION OF THE RESULTS OF A HORSE RACE.

(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.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 240A.

Defined term: "Person" § 1-101

12-110. RECOVERY OF GAMBLING LOSS.

(A) IN GENERAL.

A PERSON WHO LOSES MONEY AT A GAMING DEVICE THAT IS PROHIBITED BY THIS SUBTITLE, SUBTITLE 2 OF THIS TITLE, OR TITLE 13 OF THIS ARTICLE:

(1) MAY RECOVER THE MONEY AS IF IT WERE A COMMON DEBT; AND

(2) IS A COMPETENT WITNESS TO PROVE THE LOSS.

(B) LIMITATION.

NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A PERSON MAY NOT RECOVER MONEY OR ANY OTHER THING THAT THE PERSON WON BY BETTING AT A GAMING DEVICE PROHIBITED BY THIS SUBTITLE, SUBTITLE 2 OF THIS TITLE, OR TITLE 13 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 243.

In subsections (a) and (b) of this section, the references to a gaming device that is "prohibited by this subtitle, Subtitle 2 of this title, or Title 13 of this article" are added for clarity and to make explicit that civil recovery of a gambling loss is allowed under this section only when the gambling that produced the loss was illegal. *See Bender v. Arundel Arena, Inc.*, 248 Md. 181, 236 A.2d 7 (1967).

In subsection (a) of this section, the defined term "gaming device" is substituted for the former term "gaming table". *See* § 12-101(c) of this subtitle.

Defined terms: "Gaming device" § 12-101

"Person" § 1-101

12-111. DUTY OF LAW ENFORCEMENT OFFICER.

IF A LAW ENFORCEMENT OFFICER HAS A REASON TO SUSPECT A GAMING DEVICE IS KEPT UNLAWFULLY AT A PLACE, THE LAW ENFORCEMENT OFFICER SHALL:

(1) VISIT THE PLACE; AND

(2) CHARGE ALL PERSONS WHO VIOLATE A LAW THAT PROHIBITS GAMBLING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 263.

In the introductory language of this section, the reference to a "law enforcement officer" is substituted for the former reference to "[a]ll constables and police officers" for clarity and consistency within this article.

Also in the introductory language of this section, the defined term "gaming

device" is substituted for the former term "gaming table". *See* § 12-101(c) of this subtitle.

Also in the introductory language of this section, the term "unlawfully" is added for clarity to make explicit that the duty to visit a place where a gaming device is kept applies to a place where a gaming device is kept unlawfully.

Defined terms: "Gaming device" § 12-101

"Person" § 1-101

12-112. CHARGING DOCUMENT FOR GAMING.

(A) CONTENTS.

(1) AN INDICTMENT FOR VIOLATING THE PROHIBITION AGAINST GAMING IS SUFFICIENT IF IT STATES THAT THE DEFENDANT KEPT A GAMING DEVICE.

(2) THE INDICTMENT NEED NOT STATE THE PARTICULAR KIND OF GAMING OR GAMING DEVICE INVOLVED IN THE ALLEGED VIOLATION.

(B) BILL OF PARTICULARS.

A DEFENDANT, ON TIMELY REQUEST, MAY OBTAIN A BILL OF PARTICULARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 610, as it related to gaming and gaming devices.

In subsection (a)(1) and (2) of this section, the defined term "gaming device" is substituted for the former term "gaming table". *See* § 12-101(c) of this subtitle.

In subsection (a)(1) of this section, the former phrase "as the case may be" is deleted as unnecessary.

In subsection (a)(2) of this section, the reference to a kind of gaming or gaming device "involved in the alleged violation" is added for clarity.

In subsection (b) of this section, the reference to a "timely request" is added for consistency within this article and with Md. Rule 4-241, which governs the request for a bill of particulars in the circuit court.

Also in subsection (b) of this section, the former inaccurate reference to an "application to the State's Attorney" is deleted in light of the requirement to file a request for a bill of particulars with the circuit court, rather than the State's Attorney, in a criminal cause that is in the circuit court. *See* Md. Rule 4-241.

Also in subsection (b) of this section, the former reference to the offense

intended to be proved "under such indictment" is deleted as unnecessary.

Defined term: "Gaming device" § 12-101

12-113. CONSTRUCTION OF TITLE.

A COURT SHALL CONSTRUE LIBERALLY THIS TITLE RELATING TO GAMBLING AND BETTING TO PREVENT THE ACTIVITIES PROHIBITED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 246.

The reference to "this title" is substituted for the former reference to "the preceding sections" in light of the construction that this section applies to all statutes to prevent gambling, including those enacted after passage of this section. *Gaither v. Cate*, 156 Md. 254 (1929); *State v. Crescent Cities Jaycees Found., Inc.*, 330 Md. 460 (1993).

The reference to "activities prohibited" is substituted for the former reference to "mischiefs intended to be provided against" for brevity.

SUBTITLE 2. LOTTERIES.

12-201. "LOTTERY DEVICE" DEFINED.

IN THIS SUBTITLE, "LOTTERY DEVICE" MEANS A POLICY, CERTIFICATE, OR OTHER THING BY WHICH A PERSON PROMISES OR GUARANTEES THAT A NUMBER, CHARACTER, TICKET, OR CERTIFICATE WILL, WHEN AN EVENT OR CONTINGENCY OCCURS, ENTITLE THE PURCHASER OR HOLDER TO RECEIVE MONEY, PROPERTY, OR EVIDENCE OF DEBT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 356, 359, 360, and 362, as they related to the characteristics of a lottery device.

The reference to an "other thing" is substituted for the former references to "anything", "other device", and "any other thing" for brevity and clarity.

The former references to "the vendor" are deleted as included in the reference to "a person".

The former references to a "particular" number, character, ticket, or certificate are deleted as surplusage.

The reference to "when an event or contingency occurs" is substituted for the former reference to "in any event, or on the happening of a contingency" for brevity.

The former references to a contingency "in the nature of a lottery" are deleted as surplusage.

Defined term: "Person" § 1-101

12-202. SCOPE OF SUBTITLE.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS SUBTITLE APPLIES TO ALL LOTTERIES, INCLUDING THOSE AUTHORIZED BY ANY OTHER STATE OR FOREIGN COUNTRY.

(B) EXCEPTION.

THIS SUBTITLE DOES NOT APPLY TO THE STATE LOTTERY ESTABLISHED UNDER TITLE 9, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 371A and the first clause of § 367.

In subsection (a) of this section, the reference to "this subtitle" is substituted for the former reference to "[t]he preceding sections" to reflect the reorganization of material derived from former Art. 27, §§ 356 through 371A, which comprised the former "Lotteries" subheading of Article 27. Similarly, in subsection (b) of this section, the reference to this "subtitle" is substituted for the former reference to this "subheading" to the same effect.

Also in subsection (a) of this section, the former reference to any other "district or territory" is deleted as included in the defined term "state". *See* § 1-101 of this article.

In subsection (b) of this section, the former references to provisions "relating to lotteries" and to the State lottery "system" are deleted as surplusage.

Defined term: "State" § 1-101

12-203. SALES AND DRAW OF LOTTERY DEVICES.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) HOLD A LOTTERY IN THIS STATE; OR

(2) SELL A LOTTERY DEVICE IN THE STATE FOR A LOTTERY DRAWN IN THIS STATE OR ELSEWHERE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION SHALL BE SENTENCED TO IMPRISONMENT FOR NOT LESS THAN 3

MONTHS AND NOT EXCEEDING 12 MONTHS OR A FINE OF NOT LESS THAN $200 AND NOT EXCEEDING $1,000 OR BOTH FOR EACH VIOLATION.

(C) CIVIL RECOVERY.

IN ADDITION TO THE PENALTY PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, A PERSON WHO GIVES MONEY OR ANY OTHER THING TO PURCHASE OR OBTAIN A LOTTERY DEVICE, FOR EACH LOTTERY DEVICE PURCHASED OR OBTAINED, MAY RECOVER $50 FROM:

(1) THE PERSON TO WHOM THE MONEY OR OTHER THING WAS GIVEN; OR

(2) ANY PERSON WHO AIDED OR ABETTED THAT PERSON.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 356, 357, 358, 359, and the second clause of 367.

In subsection (a)(1) of this section, the reference to "hold[ing]" a lottery is substituted for the former reference to "draw[ing]" a lottery to eliminate an archaic construction.

In subsection (a)(2) of this section and throughout this subtitle, the references to the defined term "lottery device" are substituted for the former references to a "lottery ticket", "policies, certificates or anything by which the vendor or other person promises or guarantees that any particular number, character, ticket or certificate shall in any event or on the happening of contingency entitle the purchaser or holder to receive money, property or evidence of debt", and a "contrivance" for brevity.

In subsection (b) of this section, the former reference to a person's "aiders and abettors" is deleted because the distinctions among principals and accessories before the fact have been abrogated. *See* General Revisor's Note to article and CP § 4-204.

Also in subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of minimum and maximum penalties.

In subsection (c) of this section, the defined term "lottery device" is substituted for the former phrase "certificate, or any other device, by which the vendor promises that he or any other person will pay or deliver to the purchaser any money, property or evidence of debt, on the happening of any contingency in the nature of a lottery" for brevity.

Also in subsection (c) of this section, the reference to a "lottery device purchased or obtained" is substituted for the former phrase "every lottery ticket, certificate or other device in the nature thereof so purchased or obtained by him" for brevity.

Defined terms: "Lottery device" § 12-201

"Person" § 1-101

12-204. LOCATION OF SALES OR BARTER OF LOTTERY DEVICES.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) KEEP A HOUSE, OFFICE, OR OTHER PLACE FOR THE PURPOSE OF SELLING OR BARTERING A LOTTERY DEVICE IN VIOLATION OF § 12-203 OF THIS SUBTITLE; OR

(2) ALLOW A HOUSE OR OFFICE THAT THE PERSON OWNS TO BE USED FOR THE PURPOSE OF SELLING OR BARTERING A LOTTERY DEVICE IN VIOLATION OF § 12-203 OF THIS SUBTITLE.

(B) PRESUMPTION.

A PERSON WHO KNOWS THAT THE PERSON'S HOUSE OR OFFICE IS BEING USED FOR THE PURPOSE OF SELLING OR BARTERING A LOTTERY DEVICE IN VIOLATION OF § 12-203 OF THIS SUBTITLE IS DEEMED TO BE ALLOWING THE HOUSE OR OFFICE TO BE USED FOR THOSE PURPOSES.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 360 and 361.

In subsection (a) of this section, the former references to being liable or subject to "indictment" for keeping or allowing a house or office to be used for selling or bartering lottery tickets or devices are deleted as implicit in the prohibition on conducting these activities and on conviction, being subject to imprisonment and fine. The former references are construed to mean simply that a person "may be charged" with violating this section, rather than requiring an "indictment", as opposed to any other form of criminal charging document to be used to charge the person. The Criminal Law Article Review Committee brings this deletion to the attention of the General Assembly.

In subsection (a)(1) of this section, the former reference to a "policy, certificate or any other thing by which the vendor or other person promises or guarantees that any particular number, character, ticket, or certificate shall, in any event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt" is deleted as included in the defined term "lottery device".

In subsection (a)(2) of this section, the reference to "bartering" is substituted for the former reference to "any of the things in the nature thereof mentioned in § 360 of this article" for brevity.

In subsection (c) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (c) of this section, the former phrases "in the discretion of the court" are deleted as implicit in the establishment of maximum penalties.

Defined terms: "Lottery device" § 12-201

"Person" § 1-101

12-205. POSSESSION OF LOTTERY DEVICES AND RECORDS.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A PERSON WHO POSSESSES:

(1) AN ITEM THAT IS PROHIBITED UNDER THIS SECTION THAT WAS OBTAINED TO PROCURE OR FURNISH EVIDENCE OF A VIOLATION OF THIS SUBTITLE; OR

(2) A LOTTERY TICKET OR SLIP ISSUED BY THIS STATE OR ANOTHER GOVERNMENT.

(B) PROHIBITED.

A PERSON MAY NOT:

(1) BRING A LOTTERY DEVICE INTO THE STATE; OR

(2) POSSESS A BOOK, LIST, SLIP, OR RECORD OF:

(I) THE NUMBERS DRAWN IN A LOTTERY IN THIS STATE OR ANOTHER STATE OR COUNTRY;

(II) A LOTTERY DEVICE; OR

(III) MONEY RECEIVED OR TO BE RECEIVED FROM THE SALE OF A LOTTERY DEVICE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 362.

In subsection (b) of this section, the former references to a "lottery ticket" and a "policy, certificate, or any other thing by which the vendor or other person promises or guarantees that any particular number, character, ticket, or certificate shall, in any event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt" are deleted as included within the defined term "lottery device".

Also in subsection (b) of this section, the reference to "another state or country" is substituted for the former reference to "elsewhere" for clarity and consistency with § 12-202(a) of this subtitle.

In subsection (c) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (c) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined terms: "Lottery device" § 12-201

"Person" § 1-101

"State" § 1-101

12-206. PUBLICATION OF ACCOUNTS OF LOTTERIES AND LOTTERY PRIZES.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A LOTTERY CONDUCTED BY A GOVERNMENT.

(B) PROHIBITED.

A PERSON MAY NOT PRINT, WRITE, OR PUBLISH AN ACCOUNT OF A LOTTERY THAT DESCRIBES:

(1) WHEN OR WHERE THE LOTTERY IS TO BE DRAWN;

(2) ANY PRIZE AVAILABLE IN THE LOTTERY;

(3) THE PRICE OF A LOTTERY TICKET OR SHARE OF A LOTTERY TICKET; OR

(4) WHERE A LOTTERY TICKET MAY BE OBTAINED.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 60 DAYS OR A FINE NOT EXCEEDING $100 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 363.

In subsection (a) of this section, the phrase "does not apply" is substituted for the former phrase "may not be construed or interpreted as being applicable" for brevity.

In subsection (b) of this section, the former reference to a person's "in any way aiding or assisting in the same" is deleted because the distinctions among principals and accessories before the fact have been abrogated. *See* General Revisor's Note to article and CP § 4-204.

Also in subsection (b) of this section, the former reference to "the prizes therein, or any of them" is deleted as included in the reference to "any prize available in the lottery" for clarity.

In subsection (c) of this section, the former phrase "at the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined term: "Person" § 1-101

12-207. LOTTERY INSURANCE.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) INSURE OR RECEIVE CONSIDERATION FOR INSURING FOR OR AGAINST THE DRAWING OF A LOTTERY TICKET OR PART OF A LOTTERY TICKET;

(2) RECEIVE MONEY, PROPERTY, OR EVIDENCE OF DEBT IN CONSIDERATION OF AN AGREEMENT TO REPAY OR DELIVER THE MONEY, PROPERTY, OR EVIDENCE OF DEBT, IF A LOTTERY TICKET OR A PART OF A LOTTERY TICKET IS DRAWN OR NOT DRAWN ON A PARTICULAR DAY OR IN A PARTICULAR ORDER;

(3) IF CONTINGENT ON THE RESULTS OF A LOTTERY, AND WHETHER OR NOT CONSIDERATION IS PAID, PROMISE OR AGREE TO:

(I) PAY OR DELIVER MONEY, PROPERTY, OR EVIDENCE OF DEBT; OR

(II) REFUSE TO DO ANYTHING FOR THE BENEFIT OF ANOTHER; OR

(4) PUBLISH A NOTICE OF AN INTENT TO PERFORM OR NOTICE OF A PROPOSAL TO PERFORM ITEMS (1) THROUGH (3) OF THIS SUBSECTION.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF NOT LESS THAN 3 MONTHS AND NOT EXCEEDING 6 MONTHS OR A FINE OF NOT LESS THAN $100 AND NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 364.

In subsection (a)(1) and (2) of this section, the former references to a "policy or certificate" are deleted as included in the reference to a "lottery ticket".

In subsection (a)(2) of this section, the former phrase "shall prove fortunate or unfortunate" is deleted as included in the phrase "is drawn or not drawn".

In subsection (a)(4) of this section, the reference to "a notice of an intent to perform or a notice of a proposal to perform items (1) through (3) of this subsection" is substituted for the former reference to a "notice or proposal for the purposes aforesaid" for clarity.

In subsection (b) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined term: "Person" § 1-101

12-208. CONSTRUCTION OF LOTTERY PROVISIONS.

A COURT SHALL INTERPRET §§ 12-201 THROUGH 12-207 OF THIS SUBTITLE LIBERALLY TO TREAT AS A LOTTERY TICKET ANY TICKET, PART OF A TICKET, OR LOTTERY DEVICE BY WHICH MONEY IS PAID OR ANOTHER ITEM IS DELIVERED WHEN, IN THE NATURE OF A LOTTERY, AN EVENT OR CONTINGENCY OCCURS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 368.

The reference "[a] court shall interpret" is substituted for the former reference "[t]he courts shall construe the foregoing provisions" for brevity.

The defined term "lottery device" is substituted for the former reference "certificates, or any other device" for clarity.

The phrase "when, in the nature of a lottery, an event or contingency occurs" is substituted for the former reference "on the happening of any event or contingency, in the nature of a lottery" for clarity.

Defined term: "Lottery device" § 12-201

12-209. CONVEYANCE VOID.

A GRANT, BARGAIN, OR TRANSFER OF REAL ESTATE, GOODS, A RIGHT OF ACTION, OR PERSONAL PROPERTY IS VOID IF IT OCCURS WHILE ENGAGING IN, OR AIDING OR ASSISTING IN A LOTTERY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 365.

The former phrase "and of no effect" is deleted as included in the word "void".

The reference to "engaging in" a lottery is substituted for the former reference to being "in pursuance of" a lottery for clarity.

The former reference to a "sale [or] conveyance" of real estate is deleted as included in the reference to "transfer" of real estate.

The former reference to "chattels" is deleted as included in the reference to "personal property".

12-210. SENTENCING -- REPEAT LOTTERY VIOLATION.

(A) CONSTRUCTION OF SECTION.

ANY RECOVERY OF A PENALTY FOR A VIOLATION OF ANY OF THE PROVISIONS OF THIS SUBTITLE RELATING TO A LOTTERY, WHETHER BY INDICTMENT OR ACTION OF DEBT, OR BEFORE A JUSTICE OF THE PEACE BEFORE JULY 5, 1971, OR BEFORE ANY COURT OF COMPETENT JURISDICTION, IS CONSIDERED A FIRST CONVICTION UNDER THIS SECTION.

(B) ENHANCED PENALTY.

A PERSON CONVICTED A SECOND OR SUBSEQUENT TIME OF A VIOLATION OF ANY OF THE PROVISIONS OF THIS SUBTITLE RELATING TO A LOTTERY IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS 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, § 366.

In this section, the references to a violation of this "subtitle" relating to a lottery are substituted for the former references to a violation of this "article" relating to lotteries to reflect the reorganization of all material relating to lotteries in this subtitle.

Also in this section, the references to a violation "relating to [a] lotter[ies]" are retained in light of § 12-212 of this subtitle, relating to gift enterprises.

In subsection (a) of this section, the reference to "July 5, 1971" is substituted for the former reference to "the first Monday of July, 1971" for clarity.

Defined term: "Person" § 1-101

12-211. CHARGING DOCUMENT FOR LOTTERY INDICTMENT.

(A) CONTENTS.

(1) AN INDICTMENT FOR VIOLATING THE PROHIBITION AGAINST THE DRAWING OF LOTTERIES OR THE SELLING OF LOTTERY DEVICES IS SUFFICIENT IF IT STATES THAT THE DEFENDANT DREW A LOTTERY OR SOLD A LOTTERY DEVICE.

(2) THE INDICTMENT NEED NOT STATE THE PARTICULAR KIND OF LOTTERY SCHEME INVOLVED IN THE ALLEGED VIOLATION.

(B) BILL OF PARTICULARS.

THE DEFENDANT, ON TIMELY REQUEST, IS ENTITLED TO A BILL OF PARTICULARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 610, as it related to lotteries.

In subsection (a)(1) of this section, the defined term "lottery device" is substituted for the former reference to a "lottery ticket" for consistency within this subtitle.

Also in subsection (a)(1) of this section, the former phrase "as the case may be" is deleted as unnecessary.

In subsection (a)(2) of this section, the reference to a kind of lottery scheme "involved in the alleged violation" is added for clarity.

In subsection (b) of this section, the reference to a "timely request" is added for consistency within this article and with Md. Rule 4-241, which governs the request for a bill of particulars in the circuit court.

Also in subsection (b) of this section, the former inaccurate reference to an

"application to the State's Attorney" is deleted in light of the requirement to file a request for a bill of particulars with the circuit court, rather than the State's Attorney, in a criminal cause that is in the circuit court. *See* Md. Rule 4-241.

Also in subsection (b) of this section, the former reference to the offense intended to be proved "under such indictment" is deleted as unnecessary.

Defined term: "Lottery device" § 12-201

12-212. BARTER, SALE, OR TRADE OF GIFT ENTERPRISE.

(A) PROHIBITED.

A PERSON MAY NOT DIRECTLY OR INDIRECTLY BARTER, SELL, OR TRADE OR OFFER BY PUBLICATION OR IN ANY OTHER MANNER TO BARTER, SELL, OR TRADE GOODS OR MERCHANDISE, IN A PACKAGE OR IN BULK, IN EXCHANGE FOR A SCHEME OR DEVICE CONSTITUTING A GIFT ENTERPRISE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION SHALL BE SENTENCED TO A FINE OF NOT LESS THAN $50 FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 369 and 370.

In subsection (a) of this section, the former phrase "by agent or otherwise" is deleted as included in the phrase "directly or indirectly".

Also in subsection (a) of this section, the former reference to "wares" is deleted as included in the reference to "goods or merchandise".

Also in subsection (a) of this section, the former phrase "of any description" is deleted as surplusage.

Also in subsection (a) of this section, the phrase "in exchange for" a scheme or device is substituted for the former phrase "holding out as an inducement for any such" scheme or device for brevity.

Also in subsection (a) of this section, the former reference to an enterprise "of any kind or character whatsoever" is deleted as surplusage.

In subsection (b) of this section, the former archaic reference to a "body corporate" is deleted as included in the defined term "person".

Also in subsection (b) of this section, the former reference to conviction "thereof before any court of competent jurisdiction in this State" is deleted as implicit.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b) of this section, no maximum penalty is provided.

Defined term: "Person" § 1-101

SUBTITLE 3. SLOT MACHINES.

12-301. "SLOT MACHINE" DEFINED.

IN THIS SUBTITLE:

(1) "SLOT MACHINE" MEANS A MACHINE, APPARATUS, OR DEVICE THAT:

(I) OPERATES OR CAN BE MADE TO OPERATE BY INSERTING, DEPOSITING, OR PLACING WITH ANOTHER PERSON MONEY, A TOKEN, OR ANOTHER OBJECT; AND

(II) THROUGH THE ELEMENT OF CHANCE OR ANY OTHER OUTCOME UNPREDICTABLE BY THE USER, AWARDS THE USER:

1. MONEY, A TOKEN, OR OTHER OBJECT THAT REPRESENTS OR THAT CAN BE CONVERTED INTO MONEY; OR

2. THE RIGHT TO RECEIVE MONEY, A TOKEN, OR ANOTHER OBJECT THAT REPRESENTS AND CAN BE CONVERTED INTO MONEY; AND

(2) "SLOT MACHINE" INCLUDES:

(I) A MACHINE, APPARATUS, OR DEVICE DESCRIBED IN ITEM (1) OF THIS SECTION THAT ALSO SELLS, DELIVERS, OR AWARDS MERCHANDISE, MONEY, OR SOME OTHER TANGIBLE THING OF VALUE; AND

(II) A PINBALL MACHINE OR CONSOLE MACHINE THAT PAYS OFF IN MERCHANDISE.

REVISOR'S NOTE: This section is new language derived without substantive change from the introductory paragraph of former Art. 27, § 264B, as it defined a slot machine.

The introductory language of this section is revised in standard language used to introduce a definition section.

Throughout this section, the term "money" is substituted for the former terms "coin" and "piece of money" for brevity and consistency within this article.

The former reference to a machine "that is adapted for use in such a way" is deleted as surplusage.

In item (1)(ii)1 of this section, the phrase "that represents or that can be

converted into money" is substituted for the former phrase "representative of and convertible into money" to reflect the construction of the latter phrase of former Art. 27, § 264B by the Court of Appeals in *Clerk of Circuit Court for Calvert County v. Chesapeake Beach Park, Inc.*, 251 Md. 657 (1968).

In item (1)(ii)2 of this section, the reference to an object "that represents" money is substituted for the former reference to an object that is "representative of" money for clarity.

Also in item (1)(ii)2 of this section, the reference to an object that "can be converted" into money is substituted for the former reference to an object "convertible" into money for clarity.

In item (2)(i) of this section, the reference to "awards" is substituted for the former reference to a "present" for clarity.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in item (2)(ii) of this section, the reference to a "pinball machine or console machine that pays off in merchandise" is added to reflect the holdings of the Court of Appeals in *Clerk of Circuit Court for Calvert County v. Chesapeake Beach Park, Inc.*, 251 Md. 657 (1968) and in *Board of County Commissioners of Charles County et al. v. Conner t/a Southern Trails Reno*, 251 Md. 670 (1968), that such devices are slot machines prohibited under former Art. 27, § 264B.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that the Court of Appeals, in *Clerk of the Circuit Court for Calvert County v. Chesapeake Beach Park, Inc.*, 251 Md. 657 (1968) and in *State v. One Hundred Fifty-Eight Gaming Devices*, 304 Md. 404 (1985), held that a machine that pays off only in free plays that are not redeemable for any other item, is not a slot machine. On the other hand, the Court, in *One Hundred Fifty-Eight Gaming Devices*, held that a machine that involves an element of chance and is equipped with odds mechanisms or a meter for recording the number of free plays released, "established indicia of a gambling device", is an illegal slot machine. The General Assembly may wish to consider substantive legislation to clarify this section in light of these decisions.

Defined term: "Person" § 1-101

12-302. POSSESSION OR OPERATION OF SLOT MACHINE.

(A) PROHIBITED.

EXCEPT AS ALLOWED UNDER §§ 12-304 THROUGH 12-306 OF THIS SUBTITLE, A PERSON MAY NOT LOCATE, POSSESS, KEEP, OR OPERATE A SLOT MACHINE IN THE STATE AS AN OWNER, LESSOR, LESSEE, LICENSOR, LICENSEE, OR IN ANY OTHER CAPACITY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE OF $1,000 OR BOTH FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264B I and III.

In this section, the defined term "person" is substituted for the former references to a "person, firm or corporation" and "firm, person or corporation". *See* § 1-101 of this article.

In subsection (a) of this section, the former reference to "maintain[ing]" a slot machine is deleted as included in the reference to "keep[ing]" a slot machine.

Defined terms: "Person" § 1-101

"Slot machines" § 12-301

12-303. ANTIQUE SLOT MACHINE -- DEFENSE.

(A) "ANTIQUE SLOT MACHINE" DEFINED.

IN THIS SECTION, "ANTIQUE SLOT MACHINE" MEANS A SLOT MACHINE THAT WAS MANUFACTURED AT LEAST 25 YEARS BEFORE THE DATE ON WHICH THE MACHINE IS SEIZED.

(B) IN GENERAL.

A PERSON MAY NOT BE CONVICTED UNDER § 12-302 OF THIS SUBTITLE IF THE PERSON SHOWS BY A PREPONDERANCE OF THE EVIDENCE THAT THE SLOT MACHINE:

(1) IS AN ANTIQUE SLOT MACHINE; AND

(2) WAS NOT OPERATED FOR GAMBLING PURPOSES WHILE IN THE PERSON'S POSSESSION.

(C) DESTRUCTION OR ALTERATION PROHIBITED PENDING DETERMINATION OF STATUS.

IF THE DEFENSE IS OFFERED THAT A SEIZED SLOT MACHINE IS AN ANTIQUE SLOT MACHINE, THE SLOT MACHINE MAY NOT BE DESTROYED OR OTHERWISE ALTERED UNTIL AFTER A FINAL JUDICIAL DETERMINATION, INCLUDING REVIEW ON APPEAL, THAT THE DEFENSE DOES NOT APPLY.

(D) RETURN OF SLOT MACHINE DETERMINED TO BE ANTIQUE.

IF THE DEFENSE APPLIES, THE PERSON WHO SEIZED THE SLOT MACHINE SHALL RETURN THE SLOT MACHINE IN ACCORDANCE WITH APPLICABLE PROVISIONS OF LAW FOR THE RETURN OF PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264B V.

In subsection (b) of this section, the phrase "[a] person may not be convicted" is substituted for the former phrase "[i]t shall be a defense to any prosecution" for brevity.

Also in subsection (b) of this section, the references to a "person" are substituted for the former references to a "defendant" for consistency within this article.

In subsection (c) of this section, the reference to "a final judicial determination" is substituted for the former reference to "a final court determination including review upon appeal, if any" for brevity.

Defined terms: "Person" § 1-101

"Slot machine" § 12-301

12-304. EXCEPTION -- ELIGIBLE ORGANIZATION IN SPECIFIED COUNTIES.

(A) "ELIGIBLE ORGANIZATION" DEFINED.

IN THIS SECTION, "ELIGIBLE ORGANIZATION" MEANS A NONPROFIT ORGANIZATION THAT:

(1) HAS BEEN LOCATED IN A COUNTY LISTED IN SUBSECTION (B) OF THIS SECTION FOR AT LEAST 5 YEARS BEFORE THE ORGANIZATION APPLIES FOR A LICENSE UNDER SUBSECTION (E) OF THIS SECTION; AND

(2) IS A BONA FIDE:

(I) FRATERNAL ORGANIZATION;

(II) RELIGIOUS ORGANIZATION; OR

(III) WAR VETERANS' ORGANIZATION.

(B) SCOPE OF SECTION.

THIS SECTION APPLIES IN:

(1) CAROLINE COUNTY;

(2) CECIL COUNTY;

(3) DORCHESTER COUNTY;

(4) KENT COUNTY;

(5) QUEEN ANNE'S COUNTY;

(6) SOMERSET COUNTY;

(7) TALBOT COUNTY; AND

(8) WICOMICO COUNTY.

(C) OWNERSHIP AND OPERATION BY ELIGIBLE ORGANIZATION ALLOWED.

(1) IN THIS SUBSECTION, A CONSOLE OR SET OF AFFIXED SLOT MACHINES IS NOT AN INDIVIDUAL SLOT MACHINE.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, AN ELIGIBLE ORGANIZATION MAY OWN AND OPERATE A SLOT MACHINE IF THE ELIGIBLE ORGANIZATION:

(I) OBTAINS A LICENSE UNDER SUBSECTION (E) OF THIS SECTION FOR EACH SLOT MACHINE;

(II) OWNS EACH SLOT MACHINE THAT THE ELIGIBLE ORGANIZATION OPERATES;

(III) OWNS NOT MORE THAN FIVE SLOT MACHINES;

(IV) LOCATES AND OPERATES ITS SLOT MACHINES AT ITS PRINCIPAL MEETING HALL IN THE COUNTY IN WHICH THE ELIGIBLE ORGANIZATION IS LOCATED;

(V) DOES NOT LOCATE OR OPERATE ITS SLOT MACHINES IN A PRIVATE COMMERCIAL FACILITY;

(VI) USES:

1. AT LEAST ONE HALF OF THE PROCEEDS FROM ITS SLOT MACHINES FOR THE BENEFIT OF A CHARITY; AND

2. THE REMAINDER OF THE PROCEEDS FROM ITS SLOT MACHINES TO FURTHER THE PURPOSES OF THE ELIGIBLE ORGANIZATION;

(VII) DOES NOT USE ANY OF THE PROCEEDS OF THE SLOT MACHINE FOR THE FINANCIAL BENEFIT OF AN INDIVIDUAL; AND

(VIII) REPORTS ANNUALLY UNDER AFFIDAVIT TO THE STATE COMPTROLLER:

1. THE INCOME OF EACH SLOT MACHINE; AND

2. THE DISPOSITION OF THE INCOME FROM EACH SLOT MACHINE.

(D) REQUIREMENTS FOR ELIGIBLE USE AND OPERATION.

AN ELIGIBLE ORGANIZATION MAY NOT USE OR OPERATE A SLOT MACHINE UNLESS:

(1) THE SLOT MACHINE IS EQUIPPED WITH A TAMPERPROOF METER OR COUNTER THAT ACCURATELY RECORDS GROSS RECEIPTS; AND

(2) THE ELIGIBLE ORGANIZATION KEEPS AN ACCURATE RECORD OF THE GROSS RECEIPTS AND PAYOFFS OF THE SLOT MACHINE.

(E) LICENSE REQUIRED.

(1) BEFORE AN ELIGIBLE ORGANIZATION MAY OPERATE A SLOT MACHINE UNDER THIS SECTION, THE ELIGIBLE ORGANIZATION SHALL OBTAIN A LICENSE FOR THE SLOT MACHINE FROM THE SHERIFF OF THE COUNTY IN WHICH THE ELIGIBLE ORGANIZATION PLANS TO LOCATE THE SLOT MACHINE.

(2) (I) THE COUNTY SHALL:

1. CHARGE AN ANNUAL FEE OF $50 FOR EACH LICENSE FOR A MACHINE; AND

2. ISSUE A LICENSE STICKER TO THE APPLICANT.

(II) THE APPLICANT SHALL PLACE THE STICKER ON THE SLOT MACHINE.

(III) THE PROCEEDS OF THE ANNUAL FEE SHALL BE TRANSFERRED TO THE GENERAL FUND OF THE COUNTY.

(3) IN THE APPLICATION TO THE SHERIFF FOR A LICENSE, ONE OF THE PRINCIPAL OFFICERS OF THE ELIGIBLE ORGANIZATION SHALL CERTIFY UNDER AFFIDAVIT THAT THE ORGANIZATION:

(I) IS AN ELIGIBLE ORGANIZATION; AND

(II) WILL COMPLY WITH THIS SECTION.

(F) MISREPRESENTATION -- PENALTY.

(1) A PRINCIPAL OFFICER OF THE ELIGIBLE ORGANIZATION MAY NOT INTENTIONALLY MISREPRESENT A STATEMENT OF FACT ON THE APPLICATION.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF PERJURY AND ON CONVICTION IS SUBJECT TO THE PENALTY PROVIDED UNDER TITLE 9, SUBTITLE 1 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264B VI.

In subsection (c)(1) of this section, the former phrase "a console or set of affixed slot machines is not an individual slot machine" is revised to apply to the entire subsection for clarity.

In subsection (d)(2) of this section, the reference to "keep[ing]" is substituted for the former reference to "tak[ing] and maintain[ing]" for clarity and brevity.

In subsection (e)(3) of this section, the former reference to "the issuance of the license" is deleted as included in the reference to an application.

Defined terms: "County" § 1-101

"Person" § 1-101

"Slot machine" § 12-301

12-305. SAME -- DISTRIBUTOR.

(A) IN GENERAL.

A PERSON MAY TAKE DELIVERY OF, POSSESS, OR TRANSPORT A SLOT MACHINE TO DEMONSTRATE OR SELL THE SLOT MACHINE TO A PROSPECTIVE CUSTOMER WHO IS ALLOWED TO PURCHASE A SLOT MACHINE IF THE PERSON:

(1) OPERATES WITH OR UNDER A DISTRIBUTORSHIP CONTRACT WITH A MANUFACTURER OF SLOT MACHINES;

(2) IS REGISTERED WITH THE UNITED STATES DEPARTMENT OF JUSTICE AS A DISTRIBUTOR OF SLOT MACHINES; AND

(3) HAS PROVIDED THE SECRETARY OF THE STATE POLICE WITH A COPY OF THE PERSON'S CURRENT FEDERAL REGISTRATION.

(B) VIOLATION -- PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE OF $1,000 OR BOTH FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264B III and VII.

In the introductory language of subsection (a) of this section, the reference to "a prospective customer who is allowed" to purchase a slot machine is substituted for the former reference to "an entity lawfully permitted" to buy slot machines for clarity.

Defined terms: "Person" § 1-101

"Slot machine" § 12-301

12-306. SAME -- CERTAIN COUNTIES AND MUNICIPAL CORPORATIONS.

(A) "PREMISES" DEFINED.

IN THIS SECTION, "PREMISES" MEANS AN IMPROVED OR UNIMPROVED PARCEL OR TRACT OF LAND THAT IS OWNED BY:

(1) A PERSON; OR

(2) PERSONS ASSOCIATED IN A JOINT OR COMMON VENTURE.

(B) REGISTRATION AND STORAGE.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IN A COUNTY OR MUNICIPAL CORPORATION WHERE, BEFORE JULY 1, 1963, COUNTY OR MUNICIPAL OFFICIALS LICENSED SLOT MACHINES FOR OPERATION, A PERSON MAY NOT, AS AN OWNER, LESSOR, LESSEE, LICENSOR, LICENSEE, OR IN ANY OTHER CAPACITY, KEEP OR OPERATE A SLOT MACHINE FOR ANY PURPOSE IN ANY PLACE OF BUSINESS OR BUILDING OR ON ANY PREMISES.

(2) BEFORE DISPOSING OF A SLOT MACHINE, THE COUNTY COMMISSIONERS OR COUNTY EXECUTIVE OF A COUNTY WHERE A SLOT MACHINE IS LOCATED MAY REQUIRE THE SLOT MACHINE TO BE:

(I) REGISTERED IN A MANNER APPROPRIATE TO THE OFFICE OF COUNTY EXECUTIVE OR COUNTY COMMISSIONERS; AND

(II) SEALED AGAINST USE, STORED, AND KEPT UNDER THE SUPERVISION AND CONTROL OF THE COUNTY COMMISSIONERS OR COUNTY EXECUTIVE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264B II(B).

In subsection (b)(1) of this section, the phrase "county or municipal officials" is substituted for the former reference to "county commissioners or municipal authorities thereof" for brevity and consistency.

Also in subsection (b)(1) of this section, the former references to "possess" and "maintain" are deleted as included in the reference to "keep".

In subsection (b)(2) of this section, the word "require" is substituted for the former word "cause" for clarity.

In subsection (b)(2)(ii) of this section, the former reference to "possessed" is deleted as included in the reference to "kept".

Former Art. 27, § 264B II (A) which gradually phased out authorized slot machines in certain counties and municipal corporations between July 1, 1963 and June 30, 1968, is deleted as obsolete.

Defined terms: "County" § 1-101

"Person" § 1-101

"Slot machine" § 12-301

12-307. CHANGE OF LOCATION OF SLOT MACHINE.

(A) IN GENERAL.

BECAUSE OF AN ACT OF GOD, OR CONDEMNATION OR ABANDONMENT OF THE PRIMARY BUSINESS BY THE OWNER OF A BUSINESS OPERATING ON THE PREMISES, A PERSON MAY:

(1) REMOVE A SLOT MACHINE FROM ANY PREMISES ON WHICH A SLOT MACHINE IS ALLOWED TO OPERATE UNDER LAW; AND

(2) TRANSFER THE SLOT MACHINE TO ANOTHER PREMISES WITHIN THE SAME COUNTY.

(B) RESTRICTION.

A PERSON WHO TRANSFERS A SLOT MACHINE FROM ONE PREMISES TO ANOTHER MAY NOT INCREASE THE TOTAL NUMBER OF MACHINES ALLOWED BY LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264C.

In subsection (a) of this section, the former phrase "as defined in § 264B of this article" is deleted as surplusage.

Also in subsection (a) of this section, the former phrase "in accordance with any existing public general or public local law" is deleted as included within the reference "under law".

Defined terms: "County" § 1-101

"Person" § 1-101

"Slot machine" § 12-301

GENERAL REVISOR'S NOTE TO SUBTITLE

Former Art. 27, § 264B IV, which prohibited the charging of a license fee in certain counties until the date that a slot machine was removed, is deleted as obsolete.

TITLE 13. SAME -- LOCAL PROVISIONS.

SUBTITLE 1. GENERAL PROVISIONS.

13-101. SCOPE OF TITLE.

ACTIVITIES CONDUCTED UNDER THIS TITLE ARE ALLOWED NOTWITHSTANDING THE PROVISIONS OF TITLE 12, SUBTITLES 1 AND 2 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language added to state explicitly that which was only implicit in the former law, that the gambling activities included in this subtitle are allowed, notwithstanding the general prohibitions against gambling revised in Title 12 of this article. This title and the general provisions of Title 12, Subtitles 1 and 2 of this article are both derived from the former "Gaming" subheading of Article 27.

SUBTITLE 2. GAMING EVENTS -- CERTAIN COUNTIES.

13-201. DEFINITIONS.

(A) IN GENERAL.

IN 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) "GAMING EVENT".

"GAMING EVENT" MEANS A CARNIVAL, BAZAAR, OR RAFFLE.

REVISOR'S NOTE: This subsection is new language added to avoid repetition.

It is based on the former references to a "carnival, bazaar, or raffle" in former Art. 27, § 255(b)(1).

(C) "QUALIFIED ORGANIZATION".

"QUALIFIED ORGANIZATION" MEANS A:

(1) VOLUNTEER FIRE COMPANY; OR

(2) A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) CIVIC ORGANIZATION;

(IV) WAR VETERANS' ORGANIZATION; OR

(V) CHARITABLE ORGANIZATION.

REVISOR'S NOTE: This subsection is new language added to avoid repetition. It is based on the former references to a "volunteer fire company or bona fide fraternal, civic, war veterans', religious or charitable organization or corporation" in former Art. 27, § 255(b)(1).

The former reference to a "corporation" is deleted as included in the references to an "organization".

13-202. APPLICATION OF SUBTITLE.

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, THIS SUBTITLE APPLIES IN THE FOLLOWING COUNTIES:

(1) ALLEGANY COUNTY;

(2) ANNE ARUNDEL COUNTY;

(3) BALTIMORE COUNTY;

(4) CALVERT COUNTY;

(5) CAROLINE COUNTY;

(6) CARROLL COUNTY;

(7) DORCHESTER COUNTY;

(8) FREDERICK COUNTY;

(9) GARRETT COUNTY;

(10) HOWARD COUNTY;

(11) PRINCE GEORGE'S COUNTY;

(12) ST. MARY'S COUNTY;

(13) SOMERSET COUNTY;

(14) TALBOT COUNTY; AND

(15) WASHINGTON COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(a).

The reference to "this subtitle" is substituted for the former reference to "this section", although this subtitle does not revise all of former Art. 27, §

255. The revision of this title separates local gaming provisions that apply in several counties from those that apply only in one county. This subtitle includes all the general provisions on local gaming events that were in former Art. 27, § 255. The other subtitles of this title include the remainder of former Art. 27, § 255, as well as provisions derived from other material on local gaming events.

The limitation "[e]xcept as otherwise provided in this title" is added to reflect the recodification of other, more specific material relating to individual counties derived from other provisions of former Art. 27, § 255 in other subtitles of this title, along with more specific material relating to individual counties derived from other provisions of the former "Gaming" subheading of Article 27. As a general rule of statutory construction, in the case of conflicting provisions, the more specific provision prevails over the more general provision. *See, e.g.*, *Dejarnette v. Fed'l Kemper Ins. Co.*, 299 Md. 708 (1984); *Zellinger v. CDC Dev't Corp.*, 281 Md. 614 (1977).

Defined term: "County" § 1-101

13-203. GAMING EVENT WITHOUT PERSONAL BENEFIT -- ALLOWED.

THIS TITLE AND TITLE 12 OF THIS ARTICLE DO NOT PROHIBIT A QUALIFIED ORGANIZATION FROM CONDUCTING A GAMING EVENT FOR THE EXCLUSIVE BENEFIT OF A QUALIFIED ORGANIZATION IF AN INDIVIDUAL OR GROUP OF INDIVIDUALS DOES NOT:

(1) BENEFIT FINANCIALLY FROM THE GAMING EVENT UNDER THIS SUBTITLE; OR

(2) RECEIVE ANY OF THE PROCEEDS FROM THE GAMING EVENT UNDER THIS SUBTITLE FOR PERSONAL USE OR BENEFIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(b)(1).

The reference to "[t]his title and Title 12 of this article" is substituted for the former reference to "this subtitle [sic]". Although Titles 12 and 13 of this article contain material derived, in part, from outside the former "Gaming" subheading of Article 27, the only other material contained in these titles is derived from the former "Slot Machines" subheading of Article 27. The organizations that may own and operate a slot machine in specified counties are specifically set forth in Title 12, Subtitle 3 of this article and this section does not expand the class of qualified organizations that may own or operate a slot machine in any local jurisdiction. Therefore, no substantive change is made.

The references to a gaming event held "under this subtitle" are added for clarity.

In item (2) of this subsection, the former reference to being "paid" proceeds

is deleted as included in the reference to "receiv[ing] proceeds".

Defined terms: "Gaming event" § 13-201

"Qualified organization" § 13-201

13-204. PRIZES AND GAMING DEVICES ALLOWED.

A QUALIFIED ORGANIZATION MAY AWARD A PRIZE IN MONEY OR IN MERCHANDISE AT A GAMING EVENT USING ANY GAMING DEVICE, INCLUDING:

(1) A PADDLE WHEEL;

(2) A WHEEL OF FORTUNE;

(3) A CHANCE BOOK; OR

(4) BINGO.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(b)(2).

The reference to "money" is substituted for the former reference to "cash" for consistency within this article.

The reference to a prize awarded "at a gaming event" is added for clarity.

The former reference to a gaming device "commonly designated as" a paddle wheel, wheel of fortune, chance book, or bingo is deleted in light of the comprehensive reference to "any gaming device".

Defined terms: "Gaming event" § 13-201

"Qualified organization" § 13-201

13-205. MANAGEMENT OF GAMING EVENT.

A QUALIFIED ORGANIZATION THAT CONDUCTS A GAMING EVENT UNDER THIS SUBTITLE SHALL MANAGE THE GAMING EVENT PERSONALLY THROUGH ITS MEMBERS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(b)(3).

The reference to a qualified organization that "conducts" a gaming event is added for consistency within this subtitle.

The reference to a gaming event "under this subtitle" is added for clarity.

Defined terms: "Gaming event" § 13-201

"Qualified organization" § 13-201

SUBTITLE 3. ALLEGANY COUNTY.

13-301. APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN ALLEGANY COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(a)(1).

The reference to "Subtitle 2 of this title" is substituted for the former reference to "this section" to reflect the reorganization of the general provisions on gaming events in specified counties contained in former Art. 27, § 255.

SUBTITLE 4. ANNE ARUNDEL COUNTY.

13-401. 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, § 255(h)(1)(i).

The reference to this "subtitle" is substituted for the former reference to this "subsection", although this subtitle is derived, in part, from material outside former Art. 27, § 255(h). Because the one term "casino event" that is both derived from that former subsection and is defined in this section is used only in material derived from former Art. 27, § 255(h), no substantive change results.

(B) CASINO EVENT.

(1) "CASINO EVENT" MEANS ANY EVENT THAT INVOLVES A CARD GAME, DICE GAME, OR ROULETTE GAME.

(2) "CASINO EVENT" DOES NOT INCLUDE A CARD GAME OR DICE GAME THAT IS PLAYED FOR TOKENS FOR WHICH NO CASH PRIZE IS OFFERED OR AWARDED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255(h)(1)(iii).

(C) GAMING EVENT.

"GAMING EVENT" MEANS A CARNIVAL, BAZAAR, RAFFLE, OR OTHER ORGANIZED GAMING EVENT.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "carnival, bazaar, raffle, or other organized gaming event" and for consistency within this title.

13-402. SCOPE AND APPLICATION OF SUBTITLE.

(A) SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN ANNE ARUNDEL COUNTY.

(B) APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN ANNE ARUNDEL COUNTY.

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, § 255(a)(2).

13-403. GAMING EVENTS.

(A) "QUALIFIED MEMBER" DEFINED.

"QUALIFIED MEMBER" MEANS A PERSON WHO:

(1) OBTAINED A MEMBERSHIP IN AN ORGANIZATION IN ACCORDANCE WITH THE CHARTER AND BYLAWS OF THE ORGANIZATION; AND

(2) HAS BEEN A MEMBER FOR AT LEAST 12 MONTHS IMMEDIATELY BEFORE THE GAMING EVENT.

(B) IN GENERAL.

A GAMING DEVICE THAT IS USED AT A GAMING EVENT SHALL BE OPERATED:

(1) BY QUALIFIED MEMBERS OF THE ORGANIZATION OR QUALIFIED MEMBERS OF OTHER ORGANIZATIONS ALLOWED TO OPERATE GAMING DEVICES UNDER THIS SECTION; AND

(2) WITHOUT THE ASSISTANCE OF PROFESSIONAL GAMING DEVICE OPERATORS.

(C) COMPENSATION PROHIBITED.

(1) A PERSON MAY NOT RECEIVE COMPENSATION FROM AN ORGANIZATION FOR MANAGING OR OPERATING A GAMING DEVICE AT A GAMING EVENT.

(2) ANOTHER ORGANIZATION THAT OPERATES A GAMING DEVICE UNDER THIS SUBTITLE MAY RECEIVE COMPENSATION FROM AN ORGANIZATION FOR MANAGING OR OPERATING A GAMING DEVICE AT A GAMING EVENT.

(D) ACCOUNTING REQUIRED.

EACH ORGANIZATION CONDUCTING A GAMING EVENT SHALL SUBMIT TO THE DEPARTMENT OF INSPECTIONS AND PERMITS, IN A MANNER DETERMINED BY THE COUNTY, A REPORT UNDER OATH FOR EACH GAMING EVENT THAT PROVIDES:

(1) AN ACCOUNTING OF ALL FUNDS RECEIVED; AND

(2) A LISTING OF THE NAMES, ADDRESSES, AGES, AND DATES OF MEMBERSHIP OF EACH INDIVIDUAL WHO MANAGED OR OPERATED A GAMING DEVICE AT THE GAMING EVENT, INCLUDING A STATEMENT THAT THE INDIVIDUAL IS A QUALIFIED MEMBER OF THE ORGANIZATION.

(E) SCOPE OF SECTION.

THIS SECTION MAY NOT BE CONSTRUED TO:

(1) LIMIT OR RESTRICT THE AUTHORITY OF THE COUNTY TO REGULATE, LICENSE, AND DESIGNATE THE TYPE OF AMUSEMENT OR GAMING DEVICES THAT MAY BE OPERATED IN THE COUNTY; OR

(2) AMEND OR APPLY TO THE LAWS PERTAINING TO RAFFLES IN THE COUNTY UNDER § 13-405 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(h)(1)(ii) and (2).

In subsection (b) of this section, the former phrase "[t]his subsection applies only in Anne Arundel County" is deleted in light of § 13-402(a) of this subtitle to the same effect.

In subsection (e) of this section, the former reference to "casino events" is deleted as obsolete. *See* Revisor's Note to § 13-404 of this subtitle.

Defined terms: "Gaming event" § 13-401

"Person" § 1-101

13-404. CASINO EVENTS -- PROHIBITED.

A PERSON MAY NOT CONDUCT A CASINO EVENT IN THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(h)(4).

Former Art. 27, § 255(h)(3), which established the requirements for an eligible organization to operate a casino night in Anne Arundel County before October 1, 1997, is deleted as obsolete.

Defined terms: "Casino event" § 13-401

"Person" § 1-101

13-405. RAFFLES.

(A) IN GENERAL.

A BONA FIDE FRATERNAL, CIVIC, WAR VETERANS', OR CHARITABLE ORGANIZATION, OR A VOLUNTEER FIRE COMPANY MAY CONDUCT A RAFFLE IN THE COUNTY FOR THE BENEFIT OF CHARITY IF:

(1) THE RAFFLE IS CONDUCTED TO FURTHER THE PURPOSES OF THE ORGANIZATION; AND

(2) NO INDIVIDUAL OR GROUP OF INDIVIDUALS FINANCIALLY BENEFITS FROM THE HOLDING OF THE RAFFLE OR RECEIVES ANY OF THE PROCEEDS FROM THE RAFFLE FOR PERSONAL USE.

(B) AWARD OF PRIZES.

PRIZES MAY BE AWARDED BY THE USE OF PADDLE WHEELS, WHEELS OF FORTUNE, OR CHANCE BOOKS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 248.

Subsection (a) of this section is restated as an affirmative grant of authority to certain qualified organizations to conduct raffles for specified purposes for clarity.

In subsection (a) of this section, the former limitation "[n]othing in this subtitle [sic] shall be construed to make it unlawful" is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

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

Also in subsection (a) of this section, the former reference to "hold[ing]" a raffle is deleted as included in the reference to "conduct[ing]" a raffle.

Also in subsection (a) of this section, the former reference to "be[ing] paid" any of the proceeds is deleted as included in the reference to "receiv[ing]" any of the proceeds.

13-406. POLITICAL FUNDRAISERS -- PADDLE WHEELS.

(A) IN GENERAL.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A POLITICAL COMMITTEE, AS DEFINED IN ARTICLE 33, § 1-101 OF THE CODE, MAY CONDUCT A FUNDRAISER AT WHICH PRIZES OF MERCHANDISE OR MONEY ARE AWARDED IN A GAME OR SPIN USING A PADDLE WHEEL OR WHEEL OF FORTUNE.

(B) PRIZES.

A POLITICAL COMMITTEE MAY AWARD A MERCHANDISE OR MONEY PRIZE UNDER THIS SECTION THAT DOES NOT EXCEED THE AMOUNT OTHERWISE ALLOWED FOR A PRIZE IN THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 261C-1(b) and, as it related to political fundraisers in Anne Arundel County, (a).

In subsection (a) of this section, the former reference to a "bona fide" organization is deleted as surplusage.

Also in subsection (a) of this section, the reference to a "political committee, as defined in Article 33, § 1-101 of the Code" is substituted for the former reference to a "politically partisan organization or political committee as defined in Article 33 of the Code" for consistency with Article 33.

13-407. BINGO.

(A) "BINGO" DEFINED.

IN THIS SECTION, "BINGO" INCLUDES THE GAME OF INSTANT BINGO.

(B) QUALIFIED ORGANIZATIONS AUTHORIZED.

A BONA FIDE RELIGIOUS, FRATERNAL, OR CHARITABLE ORGANIZATION, OR A VOLUNTEER FIRE COMPANY OPERATING IN A COMMUNITY THAT DOES NOT HAVE A PAID FIRE DEPARTMENT, MAY CONDUCT BINGO IN THE COUNTY:

(1) FOR THE BENEFIT OF CHARITY IN THE COUNTY; OR

(2) TO FURTHER THE PURPOSES OF THE ORGANIZATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 247(c) and, as it related to bingo in Anne Arundel County, (a).

Subsection (b) of this section is restated as an affirmative grant of authority to certain qualified organizations to operate bingo for specified purposes for clarity.

In subsection (b) of this section, the former limitation "[n]othing in this subtitle [sic] shall be construed to make it unlawful" is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

Also in subsection (b) of this section, the former references to "corporations" are deleted as included in the references to an

"organization".

Also in subsection (b) of this section, the former reference to "operat[ing]" bingo is deleted as included in the reference to "conduct[ing]" bingo.

13-408. UNAUTHORIZED GAMING EVENT.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY OPERATE OR ATTEMPT TO OPERATE A GAMING EVENT IN THE COUNTY IN VIOLATION OF § 13-403 OR § 13-404 OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(h)(5).

In subsection (a) of this section, the reference to "§ 13-403 or § 13-404 of this subtitle" is substituted for the former reference to "this subsection" to reflect the reorganization of material derived from former Art. 27, § 255(h).

Also in subsection (a) of this section, the former reference to an "association, or corporation" is deleted as included in the defined term "person". *See* § 1-101 of this article.

Defined terms: "Gaming event" § 13-401

"Person" § 1-101

SUBTITLE 5. BALTIMORE CITY.

13-501. DEFINITIONS.

(A) IN GENERAL.

IN 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) COMMISSIONER.

"COMMISSIONER" MEANS THE BALTIMORE CITY POLICE COMMISSIONER.

REVISOR'S NOTE: This subsection is new language added for brevity in repeated references to the Baltimore City Police Commissioner.

(C) GAMING EVENT.

"GAMING EVENT" MEANS A CARNIVAL, BAZAAR, OR RAFFLE.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "carnival, bazaar, or raffle" and for consistency within this title.

(D) RAFFLE.

"RAFFLE" MEANS ONE OR MORE DRAWINGS FROM A SINGLE SERIES OF CHANCES SOLD FROM CHANCE BOOKS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 257(a)(4).

Because the term "raffle" defined in this subsection is used only in the revision of material in which it originally appeared, its application to the entire subtitle does not constitute a substantive change.

The reference to chances sold "from" chance books is substituted for the former reference to chances sold "by means of" chance books for brevity and clarity.

13-502. SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN BALTIMORE CITY.

REVISOR'S NOTE: This section is new language added to clarify the scope of the subtitle.

13-503. QUALIFIED ORGANIZATIONS.

(A) PERMIT REQUIRED.

BEFORE AN ORGANIZATION LISTED IN SUBSECTION (B) OF THIS SECTION MAY OPERATE A GAMING EVENT, THE ORGANIZATION SHALL OBTAIN A PERMIT FROM THE COMMISSIONER.

(B) QUALIFICATIONS.

(1) AN ORGANIZATION THAT MEETS THE CONDITIONS OF PARAGRAPH (2) OF THIS SUBSECTION MAY CONDUCT A GAMING EVENT FOR THE BENEFIT OF ANY OF THE FOLLOWING LISTED ORGANIZATIONS IF THE ORGANIZATION IS A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) CIVIC ORGANIZATION;

(IV) VETERANS' HOSPITAL;

(V) AMATEUR ATHLETIC ORGANIZATION IN WHICH ALL PLAYING MEMBERS ARE UNDER THE AGE OF 18 YEARS; OR

(VI) CHARITABLE ORGANIZATION.

(2) AN ORGANIZATION CONDUCTING A GAMING EVENT SHALL:

(I) BE LOCATED IN BALTIMORE CITY; AND

(II) SPEND A MAJORITY OF THE ORGANIZATION'S FUNDS IN BALTIMORE CITY FOR:

1. FRATERNAL PURPOSES;

2. CIVIC PURPOSES;

3. PURPOSES RELATED TO A VETERANS' HOSPITAL;

4. PURPOSES RELATED TO AMATEUR ATHLETICS; OR

5. CHARITABLE PURPOSES.

(C) APPLICATION.

(1) BEFORE THE COMMISSIONER MAY ISSUE A PERMIT, THE COMMISSIONER SHALL REVIEW THE CHARACTER OF THE ORGANIZATION APPLYING FOR THE PERMIT TO ASCERTAIN THAT THE ORGANIZATION MEETS THE REQUIREMENTS OF §§ 13-503 THROUGH 13-505 OF THIS SUBTITLE.

(2) THE COMMISSIONER SHALL MAKE ANY APPLICATION FOR A PERMIT AND THE ACTION TAKEN BY THE COMMISSIONER ON THAT APPLICATION A MATTER OF PUBLIC RECORD.

(D) PERMIT.

(1) THE PERMIT SHALL STATE THAT THE GAMING EVENT SHALL BE MANAGED AND OPERATED PERSONALLY ONLY BY MEMBERS OF THE ORGANIZATION OBTAINING THE PERMIT.

(2) THE PERMIT IS NOT TRANSFERABLE.

(E) LIMITATIONS.

AN ORGANIZATION CONDUCTING A GAMING EVENT IN BALTIMORE CITY MAY NOT ALLOW AN INDIVIDUAL OR GROUP OF INDIVIDUALS TO:

(1) BENEFIT FINANCIALLY FROM THE GAMING EVENT; OR

(2) RECEIVE ANY OF THE PROCEEDS OF THE GAMING EVENT FOR PERSONAL USE OR BENEFIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 257(a)(1), (5), and (6) and (b).

Subsection (b) of this section is restated as an affirmative grant of authority to certain qualified organizations to operate a gaming event for clarity.

In subsection (b) of this section, the former limitation "[n]othing in this subtitle [sic] shall be construed to make it unlawful" is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

In subsection (b)(1)(vi) of this section, the former reference to a charitable "corporation" is deleted as included in the reference to a charitable "organization".

In subsection (c)(2) of this section, the reference to "[t]he commissioner" is added as implicit in the requirement that the application and the action taken by the commissioner on the application be made public.

In subsection (e) of this section, the former phrase "or be paid" is deleted as included in the reference to "receiv[ing]" proceeds.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that although subsection (b)(1)(i) of this section allows a "religious" organization to conduct a gaming event, the proceeds may be spent only on purposes, listed in subsection (b)(2)(ii) of this section, that do not explicitly include "religious" purposes.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that in subsection (e) of this section, the scope of liability of an individual or organization that improperly receives proceeds of a gaming event is unclear.

Defined terms: "Commissioner" § 13-501

"Gaming event" § 13-501

13-504. PRIZES PERMITTED -- PADDLE WHEELS AND FILMED HORSE RACING.

AN ORGANIZATION CONDUCTING A GAMING EVENT MAY AWARD A PRIZE OF MONEY OR MERCHANDISE TO ANY INDIVIDUAL IN ANY AMOUNT IN ONE GAME OR SPIN USING:

(1) A PADDLE WHEEL OR WHEEL OF FORTUNE; OR

(2) A FILM OF A HORSE RACE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 257(a)(2).

In this section and throughout this subtitle, the references to a prize of "money" are substituted for the former references to a "cash" prize for consistency within this article.

The reference to an "organization" is added for clarity in light of the authority to perform the actions authorized under this section.

Defined term: "Gaming event" § 13-501

13-505. RAFFLES.

(A) LIMITATION ON PRIZES.

A PERMIT HOLDER MAY AWARD PRIZES IN MERCHANDISE AND MONEY IN A RAFFLE IN ANY AMOUNT.

(B) LIMITATION ON NUMBER.

A PERMIT HOLDER MAY NOT CONDUCT MORE THAN 12 RAFFLES IN A CALENDAR YEAR.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 257(a)(3).

In subsection (a) of this section, the reference to a "permit holder" is added to clarify the object of the authorization.

In subsection (b) of this section, the reference to a "permit holder" is substituted for the former reference to an "organization" for clarity.

Defined term: "Raffle" § 13-501

13-506. POLITICAL FUNDRAISERS.

(A) IN GENERAL.

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS TITLE OR TITLE 12 OF THIS ARTICLE, A POLITICAL COMMITTEE AS DEFINED IN ARTICLE 33, § 1-101 OF THE CODE MAY CONDUCT A FUNDRAISER AT WHICH PRIZES OF MERCHANDISE OR MONEY ARE AWARDED IN A GAME OR SPIN USING A PADDLE WHEEL OR WHEEL OF FORTUNE.

(B) PRIZES.

A POLITICAL COMMITTEE MAY AWARD A PRIZE OF MERCHANDISE OR MONEY AT A FUNDRAISER THAT DOES NOT EXCEED THE AMOUNT OTHERWISE ALLOWED FOR A PRIZE IN BALTIMORE CITY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 261C.

In subsection (a) of this section, the reference to a "political committee" is

substituted for the former reference to a "politically partisan organization" for consistency with current usage in Article 33 of the Code. Similarly, in subsection (b) of this section, the reference to a "political committee" is added for clarity.

Also in subsection (a) of this section, the former reference to a "bona fide" political organization is deleted as surplusage.

Also in subsection (a) of this section, the former phrase "by such devices commonly known as" is deleted as surplusage.

Also in subsection (a) of this section, the reference to "this title or Title 12 of this article" is substituted for the former reference to this "article" to reflect the reorganization of material relating to gambling and gaming derived from former Article 27 in this revision.

13-507. BINGO -- IN GENERAL.

(A) SCOPE OF SECTION AND § 13-509.

THIS SECTION AND § 13-509 OF THIS SUBTITLE ALSO APPLY TO GAMES OF INSTANT BINGO.

(B) PERMIT REQUIRED.

BEFORE AN ORGANIZATION LISTED IN SUBSECTION (C) OR (D) OF THIS SECTION MAY CONDUCT BINGO IN BALTIMORE CITY, THE ORGANIZATION SHALL OBTAIN A PERMIT TO DO SO FROM THE COMMISSIONER.

(C) QUALIFIED ORGANIZATIONS.

AN ORGANIZATION THAT MEETS THE CONDITIONS OF SUBSECTION (H)(1) OF THIS SECTION MAY CONDUCT BINGO IN BALTIMORE CITY IF THE ORGANIZATION IS A BONA FIDE:

(1) RELIGIOUS ORGANIZATION;

(2) FRATERNAL ORGANIZATION;

(3) PATRIOTIC ORGANIZATION;

(4) EDUCATIONAL ORGANIZATION; OR

(5) CHARITABLE ORGANIZATION.

(D) SAME -- ALTERNATIVE QUALIFICATIONS.

AN ORGANIZATION THAT MEETS THE CONDITIONS OF SUBSECTION (H)(2) OF THIS SECTION MAY CONDUCT BINGO IN BALTIMORE CITY IF THE ORGANIZATION IS:

(1) DEVOTED EXCLUSIVELY TO RELIGIOUS, CHARITABLE, OR EDUCATIONAL PURPOSES;

(2) A SERVICE ORGANIZATION;

(3) A FRATERNAL ORGANIZATION; OR

(4) A VETERANS' ORGANIZATION.

(E) APPLICATION.

(1) BEFORE THE COMMISSIONER MAY ISSUE A PERMIT, THE COMMISSIONER SHALL REVIEW THE CHARACTER OF THE ORGANIZATION APPLYING FOR THE PERMIT TO ASCERTAIN THAT THE ORGANIZATION MEETS THE REQUIREMENTS OF THIS SECTION.

(2) THE ORGANIZATION APPLYING FOR THE PERMIT SHALL PAY THE PERMIT FEE SET IN SUBSECTION (G) OF THIS SECTION.

(3) AN APPLICATION FOR A PERMIT AND THE ACTION TAKEN BY THE COMMISSIONER ON THAT APPLICATION ARE PUBLIC RECORDS.

(F) PERMIT.

THE COMMISSIONER MAY ISSUE A PERMIT FOR:

(1) 1 DAY; OR

(2) A PERIOD EXCEEDING 1 DAY AND NOT EXCEEDING 12 MONTHS.

(G) PERMIT FEES.

EXCEPT AS ALLOWED UNDER SUBSECTION (H)(1) OF THIS SECTION, THE COMMISSIONER SHALL COLLECT FROM EACH PERMIT HOLDER, TO COVER THE COSTS OF ADMINISTERING THE BALTIMORE CITY BINGO LAWS, A PERMIT FEE NOT EXCEEDING:

(1) $10 FOR EACH DAY ON WHICH BINGO MAY BE CONDUCTED;

(2) $750 FOR A 3-MONTH PERIOD; OR

(3) $3,000 FOR A 12-MONTH PERIOD.

(H) SPECIAL ANNUAL PERMIT.

(1) THE COMMISSIONER MAY COLLECT A SPECIAL ANNUAL PERMIT FEE OF $5 FOR A NONPROFIT ORGANIZATION OR NONPROFIT CORPORATION TO CONDUCT, OVER 1 YEAR, A NUMBER OF BINGO GAMES FOR WHICH, FOR EACH GAME:

(I) THE VALUE OF ANY PRIZE OF MERCHANDISE OR MONEY IS NOT MORE THAN $5; AND

(II) NOT MORE THAN 100 INDIVIDUALS PLAY.

(2) THE COMMISSIONER MAY REVOKE A SPECIAL ANNUAL PERMIT FOR CAUSE.

(I) LIMITATIONS.

(1) AN ORGANIZATION CONDUCTING BINGO IN BALTIMORE CITY UNDER SUBSECTION (C) OF THIS SECTION:

(I) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, MAY NOT OFFER OR AWARD, IN ANY GAME:

1. A MONEY PRIZE OF MORE THAN $45; OR

2. A PRIZE OF MERCHANDISE WORTH MORE THAN $45; AND

(II) AFTER REIMBURSING ANY COSTS INCURRED IN CONDUCTING BINGO FOR PERSONNEL, SUPPLIES, EQUIPMENT, AND OTHER EXPENSES, SHALL USE THE ENTIRE PROCEEDS FOR:

1. CHARITABLE PURPOSES; OR

2. TO FURTHER THE PURPOSES OF AN ORGANIZATION LISTED IN SUBSECTION (C) OF THIS SECTION.

(2) AN ORGANIZATION CONDUCTING BINGO IN BALTIMORE CITY UNDER SUBSECTION (D) OF THIS SECTION:

(I) MAY NOT USE THE NET PROCEEDS TO BENEFIT A STOCKHOLDER OR MEMBER OF THE ORGANIZATION;

(II) AFTER REIMBURSING ANY COSTS INCURRED IN CONDUCTING BINGO FOR PERSONNEL, SUPPLIES, EQUIPMENT, AND OTHER EXPENSES, SHALL USE THE NET PROCEEDS:

1. SOLELY FOR CHARITABLE PURPOSES; OR

2. TO FURTHER THE PURPOSES OF AN ORGANIZATION LISTED IN SUBSECTION (D) OF THIS SECTION; AND

(III) SHALL LIMIT PRIZES OF MONEY OR MERCHANDISE TO A VALUE NOT EXCEEDING:

1. $4,000 FOR THE TOTAL OF ALL PRIZES;

2. $75 FOR THE TOTAL OF ALL DOOR PRIZES;

3. $45 FOR EACH OF NOT MORE THAN FIVE EARLY BIRD GAMES;

4. $75 FOR EACH OF NOT MORE THAN 19 REGULAR GAMES;

5. $150 FOR THE STARTING PRIZE OF ONE REGULAR GAME WITH A JACKPOT, WITH NIGHTLY INCREASES NOT EXCEEDING $75 AND A CONSOLATION PRIZE NOT EXCEEDING $75;

6. $150 FOR EACH OF NOT MORE THAN FOUR REGULAR SPECIAL GAMES;

7. 50% OF THE PROCEEDS FOR EACH OF NOT MORE THAN FOUR SPLIT-THE-POT GAMES;

8. 100% OF THE PROCEEDS FOR NOT MORE THAN ONE WINNER-TAKE-ALL GAME;

9. $3,000 FOR A JACKPOT GAME WHICH STARTS AT 50 NUMBERS AND ADDS ONE NUMBER EVERY SECOND NIGHT;

10. IF THE JACKPOT IS NOT WON, $375 FOR A CONSOLATION PRIZE FOR ANY JACKPOT GAME;

11. $300 FOR THE FIRST JACKPOT GAME IN A BUILDUP JACKPOT GAME WHICH STARTS AT $300 AND 50 NUMBERS AND ADDS ONE NUMBER AND $75 EACH NIGHT; AND

12. IF THE JACKPOT IS NOT WON, $225 FOR THE CONSOLATION PRIZE FOR ANY BUILDUP JACKPOT GAME.

(3) A BINGO PERMIT HOLDER ISSUED A PERMIT UNDER EITHER SUBSECTION (C) OR (D) OF THIS SECTION MAY NOT CONDUCT BINGO:

(I) IN A RESTAURANT OR TAVERN WHERE ALCOHOLIC BEVERAGES ARE SOLD;

(II) IN A PERMANENT PLACE OF AMUSEMENT OR ENTERTAINMENT; OR

(III) ON SUNDAY, EXCEPT BY A BONA FIDE RELIGIOUS ORGANIZATION THAT CONDUCTS BINGO ON PROPERTY OWNED OR LEASED BY THE ORGANIZATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 260(a), (b), and (c)(2) and the first through sixth sentences of (1).

Throughout this section, the former references to a "corporation" are deleted as included in the references to an "organization".

In subsection (a) of this section, the reference to "[t]his section and § 13-509 of this subtitle" is substituted for the former reference to "this section" to reflect the reorganization of material relating to bingo in this

revision.

In subsections (c) and (d) of this section, the former references to "operat[ing]" are deleted as included in the reference "conduct[ing]".

In subsection (h)(1)(ii) of this section, the reference to "individuals play[ing]" is substituted for the former reference to "participants" for clarity, since arguably the individuals conducting the bingo game also participate in the game in some capacity.

In subsection (i)(2) of this section, the reference to "net proceeds" is substituted for the former references to "net earnings" and "entire proceeds, excluding costs incurred for" for clarity, brevity, and consistency.

In subsection (i)(2)(iii) of this section, the reference to "a value not exceeding" a specified amount is added for clarity, since prizes of merchandise may be awarded.

In subsection (i)(3)(i) of this section, the word "regular", which formerly modified the phrase "restaurant or tavern", is deleted as surplusage.

Defined term: "Commissioner" § 13-501

13-508. SAME -- SOCIAL CLUB.

NOTWITHSTANDING § 13-507 OF THIS SUBTITLE, AN ORGANIZATION MAY CONDUCT BINGO IF:

(1) THE MEMBERSHIP OF THE ORGANIZATION CONSISTS ONLY OF INDIVIDUALS WHO ARE AT LEAST 60 YEARS OLD;

(2) THE ORGANIZATION WAS FORMED PRIMARILY FOR SOCIAL PURPOSES;

(3) ALL PROCEEDS OF THE GAMES OF BINGO ARE USED ONLY TO FURTHER THE PURPOSES OF THE ORGANIZATION; AND

(4) THE ORGANIZATION COMPLIES WITH THE PERMIT PROCEDURES AND CONDITIONS IMPOSED UNDER § 13-507 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 260A.

In item (3) of this section, the word "all" is substituted for the former phrase "the entire".

The second sentence of former Art. 27, § 260A(b), which provided that nothing in the provisions of the former "Gaming" subheading of Article 27 may be construed to defeat the intent of former § 260A, is deleted as surplusage.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that this section raises constitutional concerns under the federal and State constitutions regarding equal protection, in that it establishes a class of organizations based on the age of membership. The rational basis for this classification is unclear.

13-509. SAME -- REGULATIONS.

THE COMMISSIONER MAY ADOPT REGULATIONS REASONABLY NECESSARY TO ADMINISTER § 13-507 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from the seventh sentence of former Art. 27, § 260(c)(1).

Defined term: "Commissioner" § 13-501

13-510. UNAUTHORIZED BAZAAR OR RAFFLE.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY CONDUCT OR ATTEMPT TO CONDUCT A BAZAAR OR RAFFLE IN VIOLATION OF §§ 13-503 THROUGH 13-505 OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 257(c).

In subsection (a) of this section, the reference to "conduct[ing]" a bazaar or raffle is substituted for the former reference to "operat[ing]" for consistency within this subtitle.

In subsection (b) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined terms: "Person" § 1-101

"Raffle" § 13-501

SUBTITLE 6. BALTIMORE COUNTY.

13-601. "GAMING EVENT" DEFINED.

IN THIS SUBTITLE, "GAMING EVENT" MEANS A CARNIVAL, BAZAAR, OR RAFFLE.

REVISOR'S NOTE: This section is new language added to avoid repetition of the phrase "carnival, bazaar, or raffle" and for consistency within this title.

13-602. SCOPE AND APPLICATION OF SUBTITLE.

(A) SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN BALTIMORE COUNTY.

(B) APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN BALTIMORE COUNTY TO:

(1) EXCEPT AS PROVIDED IN § 13-606 OF THIS SUBTITLE, BINGO;

(2) INSTANT BINGO;

(3) A BONA FIDE AMATEUR ATHLETIC ORGANIZATION IN WHICH ALL PLAYING MEMBERS ARE UNDER THE AGE OF 18 YEARS;

(4) A BONA FIDE VETERANS' HOSPITAL; AND

(5) A BONA FIDE VETERANS' ORGANIZATION.

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, § 255(f)(2) and (3) and (a)(3).

Former Art. 27, § 252(m), which provided for the regulation of instant bingo in Baltimore County, is deleted in light of the reorganization of material in this revision.

13-603. GAMING EVENTS AND CASINO EVENTS -- IN GENERAL.

(A) PERMIT REQUIRED.

BEFORE AN ORGANIZATION LISTED IN SUBSECTION (B) OF THIS SECTION MAY OPERATE A GAMING EVENT OR CASINO EVENT, THE ORGANIZATION SHALL OBTAIN A PERMIT FROM THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT.

(B) QUALIFIED ORGANIZATIONS.

(1) AN ORGANIZATION THAT MEETS THE CONDITIONS OF PARAGRAPH (2) OF THIS SUBSECTION MAY CONDUCT A GAMING EVENT OR CASINO EVENT IF THE ORGANIZATION IS A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) CIVIC ORGANIZATION, INCLUDING:

1. A HUNTING ORGANIZATION;

2. A SOCIAL ORGANIZATION; OR

3. A SPORTING ORGANIZATION;

(IV) VOLUNTEER FIRE ORGANIZATION;

(V) VETERANS' ORGANIZATION;

(VI) VETERANS' HOSPITAL;

(VII) AMATEUR ATHLETIC ORGANIZATION; OR

(VIII) CHARITABLE ORGANIZATION.

(2) AN ORGANIZATION THAT CONDUCTS A GAMING EVENT OR CASINO EVENT UNDER THIS SECTION SHALL SPEND A MAJORITY OF THE NET PROCEEDS FROM THE GAMING EVENT OR CASINO EVENT FOR THE FOLLOWING IN THE COUNTY:

(I) PURPOSES THAT BENEFIT RELIGIOUS PURPOSES;

(II) FRATERNAL PURPOSES;

(III) CIVIC PURPOSES;

(IV) VOLUNTEER FIRE OPERATIONS;

(V) PURPOSES THAT BENEFIT VETERANS;

(VI) PURPOSES THAT BENEFIT A VETERANS' HOSPITAL;

(VII) PURPOSES RELATED TO AMATEUR ATHLETICS; OR

(VIII) CHARITABLE PURPOSES.

(C) PERMIT TERMS.

(1) A PERMIT TO CONDUCT A GAMING EVENT OR CASINO EVENT SHALL PROVIDE THAT ONLY THE MEMBERS OF THE PERMIT HOLDER MAY MANAGE THE GAMING EVENT OR CASINO EVENT.

(2) A PERMIT IS NOT TRANSFERABLE.

(D) CONDITIONS AND LIMITATIONS.

(1) AN ORGANIZATION THAT OBTAINS A PERMIT MAY AWARD A PRIZE OF MONEY OR MERCHANDISE USING:

(I) A PADDLE WHEEL;

(II) A WHEEL OF FORTUNE;

(III) A CHANCE BOOK;

(IV) BINGO; OR

(V) ANY OTHER GAMING DEVICE EXCEPT:

1. A CARD GAME;

2. A DICE GAME; OR

3. ROULETTE.

(2) EXCEPT AS PROVIDED IN § 13-605 OF THIS SUBTITLE, A PERSON MAY NOT:

(I) OPERATE A CARD GAME, A DICE GAME, OR ROULETTE; OR

(II) CONDUCT A CASINO EVENT.

(3) AN ORGANIZATION THAT OBTAINS A PERMIT SHALL ENSURE THAT:

(I) AN INDIVIDUAL OR GROUP OF INDIVIDUALS DOES NOT BENEFIT FINANCIALLY FROM THE HOLDING OF THE GAMING EVENT;

(II) AN INDIVIDUAL OR GROUP OF INDIVIDUALS DOES NOT RECEIVE ANY OF THE PROCEEDS OF THE GAMING EVENT FOR PERSONAL USE OR BENEFIT; AND

(III) THE GAMING EVENT IS MANAGED PERSONALLY BY THE MEMBERS OF THE PERMIT HOLDER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(b)(3), (f)(1), (4), and (5)(i) and the second sentence of (b)(1) as it related to limits and conditions of permits.

In subsection (a) of this section, the phrase "from the Department of Permits and Development Management" is added to indicate the source of the permit.

In subsections (b) and (d) of this section, the former references to a

"corporation" are deleted as included in the comprehensive references to an "organization".

In subsection (b)(2) of this section, the reference to "conduct[ing]" an event is substituted for the former reference to "operating" for consistency throughout this subtitle.

In subsection (c) of this section, the former reference to "personally" managing an event is deleted as implicit in the restriction to operations by the listed individuals.

In subsection (d)(1) and (2) of this section, the former references to "Baltimore County" are deleted in light of the scope provision of § 13-602(a) of this subtitle.

In subsection (d)(1) of this section, the reference to "money" is substituted for the former reference to "cash" for consistency within this article.

Also in subsection (d)(1) of this section, the former phrase "notwithstanding the provisions of subsection (b) of this section" is deleted as included in the reference to the application of "Subtitle 2 of this title" in § 13-602(b) of this subtitle.

Also in subsection (d)(1) of this section, the former reference to "paragraph (4) of this subsection" is deleted in light of the reorganization of material in this revision.

Also in subsection (d)(1) of this section, the former reference to events "commonly designated" as casino events is deleted as surplusage.

In subsection (d)(2) of this section, the reference to a "person" is added to indicate who must comply with the prohibition.

Also in subsection (d)(2) of this section, the reference to a "casino event" is substituted for the former reference to "casino nights" for consistency within this subtitle.

Defined terms: "Gaming event" § 13-601

"Person" § 1-101

13-604. CASINO EVENTS.

(A) QUALIFICATIONS.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, AN ORGANIZATION MAY CONDUCT ONE CASINO EVENT THAT INCLUDES A CARD GAME OR ROULETTE DURING EACH CALENDAR YEAR IF THE ORGANIZATION IS A BONA FIDE:

(1) RELIGIOUS ORGANIZATION;

(2) FRATERNAL ORGANIZATION;

(3) CIVIC ORGANIZATION, INCLUDING:

(I) A HUNTING ORGANIZATION;

(II) A SOCIAL ORGANIZATION; OR

(III) A SPORTING ORGANIZATION;

(4) VOLUNTEER FIRE COMPANY;

(5) WAR VETERANS' ORGANIZATION; OR

(6) CHARITABLE ORGANIZATION.

(B) CONDITIONS AND LIMITATIONS.

(1) A PERMIT HOLDER FOR A CASINO EVENT THAT INCLUDES A CARD GAME OR ROULETTE SHALL ENSURE THAT:

(I) THE EVENT IS CONDUCTED IN ACCORDANCE WITH § 13-603(D)(3) OF THIS SUBTITLE;

(II) A PARENT, SUBSIDIARY, OR AFFILIATE OF THE ORGANIZATION SPONSORING THE EVENT HAS NOT SPONSORED A CASINO EVENT WITHIN THE PRECEDING 12 MONTHS; AND

(III) THE CASINO EVENT IS CONDUCTED BETWEEN 4 P.M. AND 1 A.M.

(2) A PERSON THAT HOLDS A CASINO EVENT THAT INCLUDES A CARD GAME OR ROULETTE MAY NOT:

(I) OFFER OR AWARD A MONEY PRIZE TO A PLAYER OF THE CARD GAME OR ROULETTE GAME;

(II) ALLOW A PLAYER TO BET MORE THAN $10 IN ANY ONE GAME;

(III) EXCHANGE TOKENS USED IN WAGERING FOR AN ITEM OF MERCHANDISE THAT IS WORTH MORE THAN $1,000; OR

(IV) EXCHANGE MERCHANDISE THAT WAS RECEIVED FOR TOKENS THAT WERE USED IN WAGERING FOR:

1. MONEY; OR

2. AN ITEM OF MERCHANDISE HAVING A VALUE THAT IS DIFFERENT FROM THE FAIR RETAIL MARKET VALUE OF THE ITEM OF MERCHANDISE THAT WAS RECEIVED FOR THE TOKENS.

(3) (I) WITHIN 60 DAYS AFTER HOLDING A CASINO EVENT THAT INCLUDES A CARD GAME OR ROULETTE, THE HOLDER OF THE PERMIT FOR THE EVENT SHALL SUBMIT TO THE DEPARTMENT OF PERMITS AND DEVELOPMENT

MANAGEMENT A FINANCIAL REPORT THAT LISTS THE RECEIPTS AND EXPENDITURES FOR THE CASINO EVENT.

(II) BEFORE THE PERMIT HOLDER SUBMITS THE REPORT TO THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT, THE PERMIT HOLDER SHALL SUBMIT THE REPORT TO THE COUNTY POLICE DEPARTMENT FOR REVIEW.

(C) REGULATIONS.

THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT MAY ADOPT REGULATIONS TO GOVERN:

(1) THE ISSUING OF A PERMIT TO CONDUCT A CASINO EVENT; AND

(2) THE CONDUCT AND MANAGEMENT OF A CASINO EVENT IN A MANNER DESIGNED TO PREVENT FRAUD AND PROTECT THE PUBLIC.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(f)(1) and (5)(ii) and (iii).

In subsection (b)(1)(ii) of this section, the former reference to a "corporation" is deleted as included in the reference to an "organization".

In subsection (b)(2) of this section, the restriction on allowing "a player to bet more than $10 in any one game" is substituted for the former phrase "[n]o game exceeds a $10 limit" for clarity.

In subsection (b)(2)(i) of this section, the reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this article.

In subsections (b)(3) and (c) of this section and throughout this subtitle, the references to the "Department of Permits and Development Management" are substituted for the former references to the "County Department of Permits and Licenses" to reflect the abolition of the former Baltimore County Department of Permits and Licenses and the transfer of its functions to the Baltimore County Department of Permits and Development Management. *See* County Bill No. 69-95, effective July 1, 1995.

In subsection (b)(3)(ii) of this section, the former reference to review of the report "by the county police department" is deleted as implicit in the submission of the report to the county police department.

Defined term: "Person" § 1-101

13-605. POLITICAL FUNDRAISERS -- PADDLE WHEELS.

(A) IN GENERAL.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A POLITICAL COMMITTEE, AS DEFINED IN ARTICLE 33, § 1-101 OF THE CODE, MAY CONDUCT A FUNDRAISER AT WHICH PRIZES OF MONEY OR MERCHANDISE ARE AWARDED IN A GAME OR SPIN USING A PADDLE WHEEL OR WHEEL OF FORTUNE.

(B) PRIZES.

A POLITICAL COMMITTEE MAY AWARD A MONEY OR MERCHANDISE PRIZE UNDER THIS SECTION IF THE PRIZE DOES NOT EXCEED THE AMOUNT OTHERWISE ALLOWED FOR A PRIZE IN THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 261C-1(b) and, as it related to political fundraisers in Baltimore County, (a).

In subsection (a) of this section, the reference to a "political committee, as defined in Article 33, § 1-101 of the Code" is substituted for the former reference to a "politically partisan organization or political committee as defined in Article 33 of the Code" for consistency with current usage in Article 33 of the Code.

13-606. BINGO.

(A) LICENSE REQUIRED.

BEFORE AN ORGANIZATION MAY CONDUCT BINGO IN THE COUNTY, THE ORGANIZATION SHALL OBTAIN A BINGO LICENSE FROM THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT.

(B) QUALIFIED ORGANIZATIONS.

AN ORGANIZATION MAY CONDUCT BINGO TO BENEFIT CHARITY IN THE COUNTY OR TO FURTHER ITS PURPOSES IF THE ORGANIZATION IS:

(1) A TAX-SUPPORTED VOLUNTEER FIRE COMPANY OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH A TAX-SUPPORTED VOLUNTEER FIRE COMPANY;

(2) A NATIONALLY CHARTERED VETERANS' ORGANIZATION OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH A NATIONALLY CHARTERED VETERANS' ORGANIZATION;

(3) A BONA FIDE RELIGIOUS GROUP THAT HAS CONDUCTED RELIGIOUS SERVICES AT A FIXED LOCATION IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A BINGO LICENSE;

(4) THE MARYLAND STATE FAIR AND AGRICULTURAL SOCIETY;

(5) A BONA FIDE FRATERNAL ORGANIZATION;

(6) A BONA FIDE PATRIOTIC ORGANIZATION; OR

(7) A BONA FIDE CHARITABLE ORGANIZATION THAT HAS BEEN LOCATED AT A FIXED LOCATION IN THE COUNTY FOR 3 YEARS BEFORE APPLYING FOR A BINGO LICENSE.

(C) APPLICATION.

(1) AN APPLICANT FOR A BINGO LICENSE SHALL APPLY FOR A LICENSE ON THE APPLICATION FORM THAT THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT PROVIDES.

(2) THE APPLICATION SHALL INCLUDE:

(I) THE NAME OF THE APPLICANT;

(II) THE NAME AND ADDRESS OF EACH OFFICER AND DIRECTOR OF THE APPLICANT;

(III) A COMPLETE STATEMENT OF THE PURPOSES OF THE APPLICANT;

(IV) A STATEMENT OF THE PURPOSE FOR WHICH THE PROCEEDS OF THE BINGO OPERATION WILL BE USED;

(V) AN AFFIDAVIT THAT AN AGREEMENT DOES NOT EXIST TO DIVIDE ANY PART OF THE PROCEEDS OF THE BINGO OPERATION WITH ANY OTHER PERSON THAT IS MADE BY:

1. THE PRESIDENT;

2. THE TREASURER;

3. THE CHIEF EXECUTIVE; OR

4. A FISCAL OFFICER;

(VI) AN AFFIDAVIT THAT ONLY THE APPLICANT OR A MEMBER OF THE APPLICANT WILL RECEIVE ANY OF THE PROCEEDS OF THE BINGO OPERATION EXCEPT TO FURTHER THE PURPOSES OF THE APPLICANT ORGANIZATION; AND

(VII) ANY OTHER INFORMATION THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT REQUIRES.

(D) LICENSE.

(1) (I) AN ANNUAL BINGO LICENSE ISSUED BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AUTHORIZES THE LICENSE HOLDER TO CONDUCT BINGO AT THE FIXED LOCATION STATED ON THE LICENSE:

1. AT ANY TIME DURING THE YEAR FOR WHICH THE LICENSE IS ISSUED; BUT

2. NOT MORE OFTEN THAN TWICE EACH WEEK IN THE YEAR FOR WHICH THE LICENSE IS ISSUED.

(II) AN APPLICANT FOR AN ANNUAL LICENSE SHALL PAY THE FEE THAT THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT SETS.

(2) (I) A TEMPORARY LICENSE ISSUED BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AUTHORIZES THE LICENSE HOLDER TO CONDUCT BINGO AT THE FIXED LOCATION STATED ON THE LICENSE FOR NOT MORE THAN 10 DAYS IN THE YEAR FOR WHICH THE LICENSE IS ISSUED.

(II) AN APPLICANT FOR A TEMPORARY LICENSE SHALL PAY THE FEE THAT THE ADMINISTRATIVE OFFICER OF THE COUNTY SETS.

(3) (I) A 1-DAY LICENSE ISSUED BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AUTHORIZES THE LICENSE HOLDER TO CONDUCT BINGO AT A FIXED LOCATION STATED ON THE LICENSE FOR NOT MORE THAN 1 DAY IN THE YEAR FOR WHICH THE LICENSE IS ISSUED.

(II) AN APPLICANT FOR A 1-DAY LICENSE SHALL PAY A FEE THAT THE ADMINISTRATIVE OFFICER OF THE COUNTY SETS.

(III) THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT MAY NOT GRANT AN APPLICANT MORE THAN THREE 1-DAY LICENSES IN ANY CALENDAR YEAR.

(E) CONDITIONS AND LIMITATIONS.

(1) THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT MAY REQUIRE THE HOLDER OF A BINGO LICENSE TO PRODUCE ITS FINANCIAL RECORDS FOR INSPECTION SO THAT THE DEPARTMENT MAY ENSURE THAT THE LICENSE HOLDER AND THE MEMBERS OF THE LICENSE HOLDER HAVE COMPLIED WITH SUBSECTION (C)(2)(V) AND (VI) OF THIS SECTION.

(2) A PERSON MAY NOT CONDUCT BINGO ON SUNDAY.

(F) PROCEEDS OF LICENSE.

THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL DEPOSIT THE FEES PAID FOR BINGO LICENSES ISSUED UNDER THIS SECTION IN THE COUNTY WIDOWS' PENSION FUND.

(G) REVOCATION OF LICENSE.

AFTER A PUBLIC HEARING, THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT MAY REVOKE THE LICENSE OF A LICENSE HOLDER THAT FAILS TO COMPLY WITH THIS SECTION OR THE REGULATIONS THAT THE DEPARTMENT ADOPTS UNDER THIS SECTION.

(H) ADOPTION OF REGULATIONS.

THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT MAY ADOPT REGULATIONS TO GOVERN:

(1) THE CONDUCT OF BINGO;

(2) THE AMOUNTS OF THE PRIZES THAT MAY BE AWARDED IN A GAME OF BINGO;

(3) THE METHOD OF AWARDING PRIZES;

(4) THE HOURS THAT BINGO MAY BE CONDUCTED; AND

(5) ANY OTHER MATTERS RELATED TO THE PROPER CONDUCT OF BINGO.

(I) PENALTIES.

(1) (I) A PERSON MAY NOT DIVERT OR PAY ANY PROCEEDS OF BINGO CONDUCTED UNDER A BINGO LICENSE TO:

1. ANY OTHER PERSON, EXCEPT TO A MEMBER OF THE LICENSE HOLDER; OR

2. ANY OTHER PARTNERSHIP OR CORPORATION, EXCEPT TO FURTHER THE PURPOSES OF THE LICENSE HOLDER.

(II) A PERSON WHO IS NOT A MEMBER OF A LICENSE HOLDER MAY NOT RECEIVE ANY OF THE PROCEEDS OF BINGO CONDUCTED UNDER A BINGO LICENSE EXCEPT TO FURTHER THE PURPOSES OF THE LICENSE HOLDER.

(III) A PERSON MAY NOT VIOLATE A REGULATION THAT THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ADOPTS UNDER SUBSECTION (H) OF THIS SECTION.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 252(a) through (l).

Throughout this section, the references to the "Department of Permits and Development Management" are substituted for the former references to the "County Department of Permits and Licenses" to reflect the abolition of the former Baltimore County Department of Permits and Licenses and the transfer of its functions to the Baltimore County Department of Permits and Development Management. *See* County Bill No. 69-95, effective July 1, 1995.

In the introductory language of subsection (b) of this section, the former reference to "operat[ing]" is deleted as included in the reference to

"conduct[ing]" bingo.

In subsection (b)(7) of this section, the former reference to organizations "which have been in existence" is deleted as included within the reference to an organization that "has been located at a fixed location" for a specified period.

In subsection (c)(2)(iii) of this section, the former reference to "objects" of an organization is deleted as included in the reference to its "purposes".

Also in subsection (c)(2)(iii) of this section, the former reference to a "full" statement is deleted in light of the reference to a "complete" statement.

In subsection (d)(1), (2), and (3)(i) of this section, the reference to "the year for which the license is issued" is added for clarity and consistency.

In subsection (e) of this section, the former reference to the "authorized agents" of the department is deleted as implicit in the reference to the "Department of Permits and Development Management".

In subsection (f) of this section, the reference to the "county Widows' Pension Fund" is substituted for the former reference to the "special fund for surviving spouses and other dependents of the Baltimore County police and fire bureaus, known as the `Widows' Pension Fund'" for brevity.

Also in subsection (f) of this section, the reference to "fees paid for bingo licenses" is substituted for the former reference to "[t]he proceeds from the issuance of the license" for clarity and brevity.

Also in subsection (f) of this section, the reference to "[t]he Department of Permits and Development Management" is added to clarify who has the responsibility for depositing the license fees.

In subsection (h) of this section, the former reference to bingo "in Baltimore County" is deleted in light of § 13-602 of this subtitle.

Also in subsection (h) of this section, the former reference to regulations "as ... [the department] may deem necessary" is deleted as implicit in the authority to adopt regulations.

In subsection (i) of this section, the former references to penalties imposed "in the discretion of the court" are deleted as implicit in the reference to being "subject to imprisonment ... or a fine ... or both".

Defined term: "Person" § 1-101

13-607. UNAUTHORIZED GAMING EVENT OR CASINO EVENT.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY CONDUCT OR ATTEMPT TO CONDUCT A GAMING EVENT OR CASINO EVENT IN VIOLATION OF §§ 13-603 THROUGH 13-605 OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(f)(6).

In subsection (a) of this section, the former reference to "Baltimore County" is deleted in light of § 13-602 of this subtitle.

Also in subsection (a) of this section, the reference to "conduct[ing]" an event is substituted for the former reference to "operat[ing]" an event for consistency within this subtitle.

In subsection (b) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Defined terms: "Gaming event" § 13-601

"Person" § 1-101

SUBTITLE 7. CALVERT COUNTY.

13-701. DEFINITIONS.

(A) IN GENERAL.

IN 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) COMMITTEE.

"COMMITTEE" MEANS THE GAMBLING PERMIT REVIEW COMMITTEE APPOINTED BY THE COUNTY COMMISSIONERS UNDER § 13-704 OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "Gambling Permit Review Committee".

(C) COUNTY COMMISSIONERS.

"COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF CALVERT COUNTY.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "Board of County Commissioners of Calvert County".

(D) GAMING EVENT.

"GAMING EVENT" INCLUDES A CARNIVAL AND A BAZAAR.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "carnival, bazaar, or other gaming event".

13-702. SCOPE AND APPLICATION OF SUBTITLE.

(A) SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN CALVERT COUNTY.

(B) APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN CALVERT COUNTY.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify the scope of the subtitle.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 255(a)(4).

13-703. GAMING EVENTS.

(A) PERMIT REQUIRED.

BEFORE AN ORGANIZATION MAY CONDUCT A GAMING EVENT, THE ORGANIZATION SHALL OBTAIN A PERMIT FROM THE COUNTY COMMISSIONERS.

(B) QUALIFIED ORGANIZATIONS.

AN ORGANIZATION MAY CONDUCT A GAMING EVENT IN THE COUNTY IF THE ORGANIZATION IS:

(1) A VOLUNTEER FIRE COMPANY; OR

(2) A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) CIVIC ORGANIZATION;

(IV) WAR VETERANS' ORGANIZATION; OR

(V) CHARITABLE ORGANIZATION.

(C) PERMIT.

(1) THE PERMIT SHALL STATE:

(I) THE NATURE OF ANY GAMING DEVICE TO BE OPERATED AT THE GAMING EVENT; AND

(II) THE FREQUENCY WITH WHICH THE GAMING EVENT WILL BE CONDUCTED.

(2) THE COUNTY COMMISSIONERS MAY CHARGE A REASONABLE FEE FOR A PERMIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(i)(1) and (7).

In subsection (a) of this section, the reference to an "organization" is added for clarity.

In the introductory language of subsection (b) of this section, the former word "hold" is deleted as redundant of the word "conduct".

In subsection (b)(2) of this section, the former references to a "corporation" are deleted as included in the references to an "organization".

In subsection (c)(2) of this section, the former phrase "for the issuance of" is deleted as surplusage.

Defined terms: "County commissioners" § 13-701

"Gaming event" § 13-701

13-704. GAMBLING PERMIT REVIEW COMMITTEE.

(A) IN GENERAL.

(1) THE COUNTY COMMISSIONERS SHALL APPOINT A GAMBLING PERMIT REVIEW COMMITTEE.

(2) THE COMMITTEE CONSISTS OF FIVE REGULAR MEMBERS AND TWO ALTERNATE MEMBERS.

(3) A QUORUM OF THE COMMITTEE CONSISTS OF:

(I) THREE REGULAR MEMBERS; OR

(II) IF FEWER THAN THREE REGULAR MEMBERS ARE PRESENT AT A MEETING, ENOUGH ALTERNATE MEMBERS DESIGNATED BY THE CHAIRPERSON TO ACT AS REGULAR MEMBERS TO CREATE A QUORUM.

(4) AN ALTERNATE MEMBER OF THE COMMITTEE MAY SERVE ONLY AS PROVIDED UNDER PARAGRAPH (3) OF THIS SUBSECTION.

(B) DUTIES.

SUBJECT TO THE APPROVAL OF THE COUNTY COMMISSIONERS, THE COMMITTEE SHALL ADOPT REGULATIONS TO GOVERN GAMBLING ACTIVITIES AND THE ISSUANCE OF PERMITS UNDER § 13-703 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(i)(2) through (6).

In subsection (a)(3)(ii) of this section, the reference to the "chairperson" is substituted for the former reference to the "chairman" because SG § 2-1238 requires the use of words that are neutral as to gender to the extent practicable.

Defined terms: "Committee" § 13-701

"County commissioners" § 13-701

13-705. BINGO -- COMMERCIAL.

(A) INSTANT BINGO.

FOR PURPOSES OF THIS SECTION, A GAME OF INSTANT BINGO CONDUCTED UNDER A CLASS NG BEACH LICENSE IS CONSIDERED TO BE BINGO.

(B) LICENSE REQUIRED.

BEFORE A PERSON MAY CONDUCT BINGO IN THE COUNTY, THE PERSON SHALL OBTAIN A LICENSE FROM THE COUNTY COMMISSIONERS.

(C) QUALIFICATIONS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A PERSON WHO COMPLIES WITH THIS SECTION MAY CONDUCT BINGO IN THE COUNTY.

(D) APPLICATION.

(1) (I) THE COUNTY COMMISSIONERS MAY NOT ISSUE A LICENSE UNLESS THE APPLICATION WAS FILED AT LEAST 30 DAYS BEFORE THE DATE OF ISSUANCE.

(II) AN APPLICANT FOR A LICENSE SHALL:

1. FILE AN APPLICATION ON A FORM THAT THE COUNTY COMMISSIONERS PROVIDE; AND

2. SIGN THE APPLICATION UNDER OATH.

(III) THE APPLICATION SHALL INCLUDE:

1. THE NAME OF THE APPLICANT;

2. THE ADDRESS OF THE APPLICANT;

3. ANY TRADE NAME OF THE APPLICANT;

4. IF THE APPLICANT IS A PARTNERSHIP, THE NAME AND ADDRESS OF EACH PARTNER;

5. IF THE APPLICANT IS A CORPORATION, THE NAME AND ADDRESS OF EACH OFFICER OF THE CORPORATION;

6. IF A RESIDENT AGENT IS REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE NAME AND ADDRESS OF THE APPLICANT'S RESIDENT AGENT;

7. THE NAME AND ADDRESS OF ANY PERSON HAVING A FINANCIAL INTEREST IN THE OPERATION OF THE PROPOSED BINGO; AND

8. THE SIGNATURES OF ALL OF THE INDIVIDUALS LISTED IN ITEMS 1 THROUGH 7 OF THIS SUBPARAGRAPH INDICATING CONSENT TO INDIVIDUAL LIABILITY FOR ANY UNLAWFUL OPERATION OF LICENSED BINGO.

(IV) 1. THE COUNTY COMMISSIONERS MAY REFUSE TO ISSUE A LICENSE BASED ON THE FACTS DISCLOSED ON AN APPLICATION.

2. SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT REQUIRE THE COUNTY COMMISSIONERS TO INVESTIGATE AN APPLICANT'S STATEMENTS ON THE APPLICATION BEFORE ISSUING A LICENSE.

(2) EACH APPLICANT FOR A LICENSE SHALL PRESENT EVIDENCE TO THE COUNTY COMMISSIONERS THAT THE APPLICANT HAS OBTAINED A PUBLIC LIABILITY INSURANCE POLICY THAT:

(I) COVERS THE PERIOD COVERED BY THE PROPOSED LICENSE;

(II) PROVIDES COVERAGE FOR PERSONAL INJURY TO:

1. ANY BINGO PATRON IN AN AMOUNT NOT LESS THAN $100,000; AND

2. MORE THAN ONE BINGO PATRON IN AN AMOUNT NOT LESS THAN $500,000.

(3) (I) EACH NONRESIDENT APPLICANT FOR A LICENSE SHALL DESIGNATE A RESIDENT AGENT.

(II) A RESIDENT AGENT MUST BE:

1. A VOTER IN THE COUNTY;

2. A TAXPAYER OF THE COUNTY; AND

3. AN OWNER OF PROPERTY IN THE COUNTY ASSESSED AT NOT LESS THAN $25,000.

(E) LICENSE.

(1) THE COUNTY COMMISSIONERS MAY ISSUE THE FOLLOWING LICENSES:

(I) A CLASS NA LICENSE, FOR BINGO THAT DOES NOT EXCEED A SEATING OR PLAYER CAPACITY OF 750 INDIVIDUALS;

(II) A CLASS NB LICENSE, FOR BINGO THAT DOES NOT EXCEED A SEATING OR PLAYER CAPACITY OF 500 INDIVIDUALS;

(III) A CLASS NC LICENSE, FOR BINGO THAT DOES NOT EXCEED A SEATING OR PLAYER CAPACITY OF 1,000 INDIVIDUALS;

(IV) A CLASS ND BEACH LICENSE, FOR BINGO THAT:

1. DOES NOT EXCEED A SEATING OR PLAYER CAPACITY OF 500 INDIVIDUALS;

2. MAY BE OPERATED WITHIN THE TOWN LIMITS OF NORTH BEACH OR CHESAPEAKE BEACH; AND

3. MAY BE OPERATED BETWEEN MAY 1 AND SEPTEMBER 30;

(V) A CLASS NE BEACH LICENSE, FOR BINGO THAT:

1. DOES NOT EXCEED A SEATING OR PLAYER CAPACITY OF 1,000 INDIVIDUALS;

2. MAY BE OPERATED WITHIN THE TOWN LIMITS OF NORTH BEACH OR CHESAPEAKE BEACH; AND

3. MAY BE OPERATED BETWEEN MAY 1 AND SEPTEMBER 30;

(VI) A CLASS NF BEACH LICENSE, FOR BINGO THAT:

1. DOES NOT EXCEED A SEATING OR PLAYER CAPACITY OF 500 INDIVIDUALS;

2. MAY BE OPERATED WITHIN THE TOWN LIMITS OF NORTH BEACH OR CHESAPEAKE BEACH; AND

3. MAY BE OPERATED THROUGHOUT THE YEAR; OR

(VII) A CLASS NG BEACH LICENSE, FOR BINGO THAT:

1. DOES NOT HAVE A LIMITATION ON SEATING OR PLAYER CAPACITY;

2. MAY BE OPERATED WITHIN THE TOWN LIMITS OF NORTH BEACH OR CHESAPEAKE BEACH; AND

3. MAY BE OPERATED THROUGHOUT THE YEAR.

(2) THE COUNTY COMMISSIONERS SHALL:

(I) RETAIN A COPY OF EACH LICENSE ISSUED;

(II) ISSUE A COPY OF THE LICENSE TO THE LICENSE HOLDER; AND

(III) FORWARD A COPY OF THE LICENSE TO THE STATE COMPTROLLER.

(3) A LICENSE IS NOT TRANSFERABLE.

(F) FEES.

THE COUNTY COMMISSIONERS SHALL ASSESS THE FOLLOWING ANNUAL LICENSE FEES:

(1) $3,500 FOR A CLASS NA LICENSE;

(2) $3,000 FOR A CLASS NB LICENSE;

(3) $4,000 FOR A CLASS NC LICENSE;

(4) $500 FOR A CLASS ND BEACH LICENSE;

(5) $1,000 FOR A CLASS NE BEACH LICENSE;

(6) $3,000 FOR A CLASS NF BEACH LICENSE; AND

(7) $5,000 FOR A CLASS NG BEACH LICENSE.

(G) LIMITATIONS.

(1) THE COUNTY COMMISSIONERS MAY NOT ISSUE A LICENSE IF THE CONDUCT OF BINGO WOULD:

(I) UNDULY DISTURB THE PEACE OF THE NEIGHBORHOOD IN WHICH THE APPLICANT PROPOSES TO CONDUCT BINGO;

(II) CREATE A NUISANCE; OR

(III) BE DETRIMENTAL TO THE HEALTH OR WELFARE OF THE COMMUNITY.

(2) (I) THE COUNTY COMMISSIONERS MAY NOT ISSUE A LICENSE TO CONDUCT BINGO IN A BUILDING THAT IS NOT PERMANENT AND COVERED BY A ROOF.

(II) THIS PARAGRAPH DOES NOT APPLY TO A PERSON WHO IS NOT REQUIRED TO OBTAIN A LICENSE TO CONDUCT BINGO.

(3) (I) THE FOLLOWING LICENSES MAY NOT ALLOW THE CONDUCT OF BINGO ON SUNDAY:

1. A CLASS NA LICENSE;

2. A CLASS NB LICENSE; OR

3. A CLASS NC LICENSE.

(II) THE FOLLOWING LICENSES MAY NOT ALLOW THE CONDUCT OF BINGO BEFORE 1 P.M. ON SUNDAY:

1. A CLASS ND BEACH LICENSE;

2. A CLASS NE BEACH LICENSE; OR

3. A CLASS NF BEACH LICENSE.

(III) A CLASS NG BEACH LICENSE MAY NOT ALLOW THE CONDUCT OF BINGO BETWEEN 2 A.M. AND 1 P.M. ON SUNDAY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259A(a) and (b)(1), (3) through (8), the first sentence of (2), and the first sentence and the first clause of the second sentence of (11).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that only under a Class NG beach license is instant bingo "considered to be bingo". *See* subsection (a) of this section.

In subsections (b) and (c) of this section, the former references to "operating" and "operate" are deleted as included in the references to "conduct[ing]".

In subsection (d)(1)(ii)1 of this section, the reference to the "county commissioners" is added to clarify who must provide the required form. Similarly, in subsection (g)(1) and (2) of this section, the reference to the "county commissioners" is added to clarify who may not issue licenses for bingo to be conducted under certain conditions.

In subsection (d)(1)(iii)8 of this section, the reference "individuals" is

substituted for the former reference to "persons" because only an individual, and not any other entity included in the defined term "person", has a signature.

Also in subsection (d)(1)(iii)8 of this section, the term "unlawful" is substituted for the former phrase "any violation of the laws" for brevity.

In subsection (d)(1)(iv)2 of this section, the reference to "an applicant's statements" is added to clarify the subject of the county commissioners' investigation.

In subsection (e)(2) of this section, the former reference to preparing a license "in triplicate" is deleted as implicit in the enumeration of three separate required copies of the license: one to the holder, one to the State Comptroller, and one for the records of the county commissioners.

In subsection (g)(1)(i) of this section, the former reference to "quiet" is deleted as included in the reference to "peace".

Defined terms: "County commissioners" § 13-701

"Person" § 1-101

13-706. SAME -- EXEMPT ORGANIZATIONS.

THE FOLLOWING ORGANIZATIONS ARE NOT REQUIRED TO OBTAIN A LICENSE UNDER § 13-705 OF THIS SUBTITLE TO CONDUCT BINGO:

(1) A RELIGIOUS ORGANIZATION;

(2) A PATRIOTIC ORGANIZATION;

(3) AN EDUCATIONAL ORGANIZATION;

(4) A CHARITABLE OR BENEVOLENT ORGANIZATION;

(5) A CIVIC ORGANIZATION;

(6) A VOLUNTEER FIRE COMPANY; OR

(7) ANY OTHER ORGANIZATION THAT IS AUTHORIZED UNDER § 13-703 OF THIS SUBTITLE AND SUBTITLE 2 OF THIS TITLE TO CONDUCT BINGO IN THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259A(b)(10).

The former specific references to the kinds of licenses that may be required are deleted in light of the reference to a "license under § 13-705 of this subtitle".

In item (7) of this section, the reference to an "organization" is substituted for the former reference to an "agency" for clarity.

Also in item (7) of this section, the reference to an organization authorized "under § 13-703 of this subtitle and Subtitle 2 of this title to conduct bingo in the county" is substituted for the former reference to one "authorized by law to operate any such game" for clarity.

13-707. SAME -- PRIZES.

(A) FORM.

A LICENSE HOLDER MAY ISSUE AS A PRIZE OR AWARD TO THE PATRON OF LICENSED BINGO:

(1) MERCHANDISE;

(2) MONEY;

(3) A TOKEN OR TICKET REDEEMABLE FOR MONEY OR MERCHANDISE; OR

(4) ANY OTHER THING OF VALUE.

(B) LIMITATIONS.

(1) EXCEPT AS PROVIDED UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, A LICENSE HOLDER MAY NOT ISSUE FOR ONE GAME A PRIZE OR AWARD WITH A VALUE OF MORE THAN $100.

(2) A HOLDER OF A CLASS NG BEACH LICENSE MAY ISSUE FOR ONE GAME A PRIZE WITH A VALUE OF MORE THAN $100.

(3) A LICENSE HOLDER MAY ISSUE ONCE EACH DAY:

(I) A GRAND PRIZE NOT EXCEEDING $1,500; AND

(II) A GRAND PRIZE NOT EXCEEDING $3,000 IN RETAIL VALUE.

REVISOR'S NOTE: This section is new language derived without substantive change from the second and third sentences of former Art. 27, § 259A(b)(2).

In subsection (a)(2) of this section, the reference to a "money" prize is substituted for the former references to a prize of "coins" or "currency" for consistency within this title.

13-708. SAME -- REVOCATION OF LICENSE.

IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, THE COUNTY COMMISSIONERS MAY REVOKE A BINGO LICENSE FORTHWITH IF:

(1) THE COUNTY COMMISSIONERS DETERMINE AFTER AN INVESTIGATION THAT:

(I) THE LICENSE HOLDER MADE A FALSE STATEMENT IN THE APPLICATION FOR THE LICENSE; OR

(II) THE CONDUCT OF LICENSED BINGO AT THE PREMISES NAMED IN THE LICENSE WOULD:

1. DISTURB THE PEACE OF THE NEIGHBORHOOD;

2. CREATE A NUISANCE; OR

3. BE DETRIMENTAL TO THE MORALS, HEALTH, OR WELFARE OF THE COMMUNITY; OR

(2) THE LICENSE HOLDER IS CONVICTED OF:

(I) VIOLATING §§ 13-705 THROUGH 13-707 OF THIS SUBTITLE; OR

(II) A FELONY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259A(b)(9) and the second clause of the second sentence of (11).

In the introductory language of this section, the phrase "[i]n addition to any other penalty provided by law" is substituted for the former phrase "the applicant shall be subject to all the penalties provided by law" for consistency within this article.

In item (1)(ii)1 of this section, the former reference to "quiet" is deleted as included in the reference to "peace".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that item (1)(ii)3 of this section varies from an analogous provision in § 13-705(g)(1)(iii) of this subtitle. Only in this section may the county commissioners revoke a license for conduct that would be detrimental to the "morals" of the community.

In item (2) of this section, the phrase "convicted of" is substituted for the former phrase "found guilty ... of" for consistency within this article.

Also in item (2) of this section, the former reference to conviction "by a court of competent jurisdiction" is deleted as surplusage.

Defined term: "County commissioners" § 13-701

13-709. ADOPTION OF REGULATIONS.

(A) IN GENERAL.

THE COUNTY COMMISSIONERS MAY ADOPT REGULATIONS TO GOVERN:

(1) THE CONDUCT OR PLAY OF BINGO;

(2) THE ISSUANCE OF BINGO LICENSES;

(3) THE SETTING OF FEES FOR BINGO LICENSES; AND

(4) THE DETERMINATION OF THE ELECTION DISTRICTS AND PRECINCTS IN WHICH BINGO MAY BE CONDUCTED.

(B) UNIFORM APPLICATION.

IN ADOPTING REGULATIONS, THE COUNTY COMMISSIONERS SHALL ENSURE UNIFORM APPLICATION AS TO:

(1) THE DETERMINATION OF THE DISTRICTS AND PRECINCTS IN WHICH BINGO MAY BE CONDUCTED; AND

(2) THE SETTING OF FEES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259A(c) and (d).

Defined term: "County commissioners" § 13-701

SUBTITLE 8. CAROLINE COUNTY.

13-801. APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN CAROLINE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(a)(5).

The reference to "Subtitle 2 of this title" is substituted for the former reference to "this section" to reflect the reorganization of the general provisions on gaming events in specified counties contained in former Art. 27, § 255.

SUBTITLE 9. CARROLL COUNTY.

13-901. DEFINITIONS.

(A) IN GENERAL.

IN 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) COUNTY COMMISSIONERS.

"COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF CARROLL COUNTY.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "Board of County Commissioners of Carroll County" and for consistency within this title.

(C) GAMING EVENT.

"GAMING EVENT" MEANS A CARNIVAL, BAZAAR, RAFFLE, OR OTHER GAME OF ENTERTAINMENT.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "carnival, bazaar, raffle, or other game of entertainment" and for consistency within this title.

13-902. SCOPE AND APPLICATION OF SUBTITLE.

(A) SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN CARROLL COUNTY.

(B) APPLICATION OF SUBTITLE 2.

SUBJECT TO THIS SUBTITLE, SUBTITLE 2 OF THIS TITLE APPLIES IN CARROLL COUNTY.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify the scope of this subtitle.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 255(a)(6) and (b)(4).

In subsection (b) of this section, the reference to "this subtitle" is substituted for the former reference to "§ 258 of this article", although this subtitle is derived in part from material outside former § 258. Because former § 255(b)(4) subjected all gaming in Carroll County to former § 258, including bingo under former § 248A and gaming events under former § 255, no substantive change results.

13-903. GAMING EVENTS -- IN GENERAL.

(A) PERMIT REQUIRED.

BEFORE AN ORGANIZATION MAY CONDUCT A GAMING EVENT, THE ORGANIZATION SHALL OBTAIN A PERMIT FROM THE COUNTY COMMISSIONERS.

(B) QUALIFIED ORGANIZATIONS.

TO CONDUCT BINGO OR A GAMING EVENT AN ORGANIZATION LOCATED IN THE COUNTY MUST BE A BONA FIDE:

(1) RELIGIOUS ORGANIZATION;

(2) FRATERNAL ORGANIZATION;

(3) CIVIC ORGANIZATION;

(4) WAR VETERANS' ORGANIZATION;

(5) HOSPITAL;

(6) AMATEUR ATHLETIC ORGANIZATION;

(7) CHARITABLE ORGANIZATION; OR

(8) VOLUNTEER FIRE COMPANY.

(C) APPLICATION.

(1) BEFORE THE COUNTY COMMISSIONERS ISSUE A PERMIT, THEY SHALL DETERMINE WHETHER THE ORGANIZATION APPLYING FOR THE PERMIT QUALIFIES UNDER THIS SUBTITLE AND THE CONDITIONS OF THIS SUBTITLE ARE MET.

(2) AN APPLICATION FOR A PERMIT AND THE ACTION TAKEN BY THE COUNTY COMMISSIONERS ON THAT APPLICATION ARE PUBLIC RECORDS.

(D) PERMIT.

(1) THE PERMIT SHALL STATE THAT THE GAMING EVENT SHALL BE MANAGED AND OPERATED ONLY BY MEMBERS OF THE ORGANIZATION HOLDING THE PERMIT.

(2) A PERMIT IS NOT TRANSFERABLE.

(E) LIMITATIONS.

(1) A GAMING EVENT CONDUCTED UNDER THIS SECTION SHALL BE CONDUCTED FOR THE BENEFIT OF AN ORGANIZATION LISTED IN SUBSECTION (B) OF THIS SECTION.

(2) AN INDIVIDUAL OR GROUP OF INDIVIDUALS MAY NOT BENEFIT FINANCIALLY, OR RECEIVE PROCEEDS FOR PERSONAL USE OR BENEFIT, FROM A GAMING EVENT CONDUCTED UNDER THIS SECTION.

(3) A PERMIT MAY NOT AUTHORIZE THE OPERATION OF A GAMING EVENT AFTER 1 A.M. ON SUNDAY.

(4) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPHS (II) AND (IV) OF THIS PARAGRAPH, AN ORGANIZATION CONDUCTING A GAMING EVENT MAY AWARD A MONEY PRIZE NOT EXCEEDING $100 OR MERCHANDISE NOT EXCEEDING $100 OF VALUE TO ANY INDIVIDUAL IN ANY ONE GAME.

(II) THE MAXIMUM AMOUNT OF A PRIZE AWARDED IN A RAFFLE IS GOVERNED BY § 13-904(C) OF THIS SUBTITLE.

(III) THE MAXIMUM AMOUNT OF A PRIZE AWARDED IN A PADDLE WHEEL OR WHEEL OF FORTUNE GAME IS GOVERNED BY § 13-905 OF THIS SUBTITLE.

(IV) THE MAXIMUM AMOUNT OF A PRIZE AWARDED IN BINGO IS GOVERNED BY § 13-908 OF THIS SUBTITLE.

REVISOR'S NOTE: Subsections (a) through (e)(4)(i) of this section are new language derived without substantive change from former Art. 27, § 258(c) and (a)(1) and (2)(v).

Subsection (e)(4)(ii) through (iv) of this section is new language added for clarity.

In subsection (b) of this section, the former reference to "hold[ing]" an event is deleted as included in the reference to "conduct[ing]" the event.

In subsection (c) of this section, the reference to "determin[ing] whether the organization applying for the permit qualifies under this subtitle" is substituted for the former reference to "ascertain[ing] the character of the organization on whose behalf the application is made" for clarity.

In subsection (e)(2) of this section, the former reference to "be[ing] paid" is deleted as redundant of the reference to "receiv[ing]".

In subsection (e)(4)(i) of this section, the phrase "[e]xcept as provided in subparagraphs (ii) and (iv) of this paragraph," is added to acknowledge that money prizes exceeding $100 may be awarded to players of special bingo games and to winners of raffles and jackpots.

Defined terms: "County commissioners" § 13-901

"Gaming event" § 13-901

13-904. RAFFLES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "MULTI-DRAWING RAFFLE" MEANS A RAFFLE FOR WHICH THE DRAWINGS ARE HELD ON MORE THAN 1 DAY.

(3) "RAFFLE" MEANS ONE OR MORE DRAWINGS USING A SINGLE SERIES OF CHANCES SOLD IN CHANCE BOOKS OR SIMILAR DEVICES, AT WHICH ONE OR MORE PRIZES ARE AWARDED.

(4) "SINGLE-DRAWING RAFFLE" MEANS A RAFFLE FOR WHICH THE DRAWINGS ARE HELD ON A SINGLE DAY.

(B) CHANCE BOOKS.

AT A GAMING EVENT, THE HOLDER OF A RAFFLE MAY AWARD A PRIZE OF MONEY OR MERCHANDISE USING A CHANCE BOOK.

(C) PRIZES.

(1) A SINGLE-DRAWING RAFFLE MAY HAVE ONLY ONE MAJOR PRIZE.

(2) DURING A YEAR, AN ORGANIZATION LISTED IN § 13-903 OF THIS SUBTITLE MAY HOLD NOT MORE THAN:

(I) ONE SINGLE-DRAWING RAFFLE IN WHICH THE MAJOR PRIZE IS WORTH $2,500 OR MORE; OR

(II) FIVE SINGLE-DRAWING RAFFLES IN WHICH THE MAJOR PRIZE IS WORTH LESS THAN $2,500.

(3) AN ORGANIZATION LISTED IN § 13-903 OF THIS SUBTITLE MAY NOT HOLD:

(I) MORE THAN 30 WEEKLY DRAWINGS IN A MULTI-DRAWING RAFFLE;

(II) MORE THAN TWO MULTI-DRAWING RAFFLES DURING A YEAR; OR

(III) A MULTI-DRAWING RAFFLE IN WHICH THE MAJOR PRIZE IS WORTH MORE THAN $1,100.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 258(a)(2)(i) through (iv).

In subsection (b) of this section, the reference to "the holder of a raffle" is added to clarify who is authorized to award a prize.

Also in subsection (b) of this section, the former reference to a "raffle" is deleted as included in the defined term "gaming event". *See* § 13-901 of this subtitle.

In subsection (c)(2) and (3) of this section, the references to an organization "listed in § 13-903 of this subtitle" are added for clarity.

In subsection (c)(3) of this section, the conjunction "or" is added to the list of prohibited activities for clarity.

Defined term: "Gaming event" § 13-901

13-905. PRIZES -- PADDLE WHEELS AND OTHER GAMING DEVICES.

(A) PADDLE WHEELS OR WHEELS OF FORTUNE.

(1) NOTWITHSTANDING § 13-903 OF THIS SUBTITLE, AN ORGANIZATION LISTED IN § 13-903 OF THIS SUBTITLE THAT OPERATES A PADDLE WHEEL OR WHEEL OF FORTUNE GAME AT A GAMING EVENT MAY NOT AWARD A PRIZE TO A PERSON IN ANY ONE GAME OR SPIN OF THE WHEEL OF:

(I) MONEY THAT EXCEEDS $10; OR

(II) MERCHANDISE WITH A VALUE THAT EXCEEDS $250.

(2) AN ORGANIZATION LISTED IN § 13-903 OF THIS SUBTITLE MAY NOT HOLD MORE THAN 10 DAYS OF PADDLE-WHEEL GAMES IN A CALENDAR YEAR.

(B) OTHER GAMING DEVICES.

AN ORGANIZATION LISTED IN § 13-903 OF THIS SUBTITLE MAY AWARD A PRIZE OF MONEY OR MERCHANDISE USING A GAMING DEVICE OTHER THAN A CARD GAME, DICE GAME, OR ROULETTE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 258(e) and (b)(2).

In subsection (a)(1) of this section, the reference to "§ 13-903 of this subtitle" is substituted for the former reference to "any provision of this section" for accuracy and clarity.

Also in subsection (a)(1) of this section, the former reference to a carnival, bazaar, or raffle "authorized by this section" is deleted in light of the term "gaming event" defined in § 13-901 of this subtitle and the reorganization of material on gaming events derived from former Art. 27, § 258 in this subtitle.

In subsection (a)(1)(ii) of this section, the reference to "merchandise with a value that exceeds" is substituted for the former reference "merchandise totaling up to" for clarity.

In subsections (a)(1)(i) and (b) of this section, the references to a "money" prize are substituted for the former references to a "cash" prize for consistency within this title.

Defined terms: "Gaming event" § 13-901

"Person" § 1-101

13-906. CARD GAMES, DICE GAMES, ROULETTE, AND CASINO NIGHTS -- PROHIBITED.

NOTWITHSTANDING § 13-903 OF THIS SUBTITLE, A PERSON MAY NOT CONDUCT A CARD GAME, DICE GAME, ROULETTE, OR CASINO NIGHT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 258(b)(1).

The former phrase "events commonly known as" is deleted as surplusage.

Defined term: "Person" § 1-101

13-907. BINGO.

(A) PERMIT REQUIRED.

BEFORE AN ORGANIZATION MAY CONDUCT BINGO UNDER THIS SUBTITLE, THE ORGANIZATION SHALL OBTAIN A PERMIT FROM THE COUNTY COMMISSIONERS.

(B) QUALIFIED ORGANIZATIONS.

(1) IN THIS SUBSECTION, "QUALIFIED ORGANIZATION" MEANS A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) PATRIOTIC ORGANIZATION;

(IV) EDUCATIONAL ORGANIZATION;

(V) CHARITABLE ORGANIZATION; OR

(VI) VOLUNTEER FIRE COMPANY.

(2) A QUALIFIED ORGANIZATION LOCATED IN THE COUNTY MAY CONDUCT BINGO IN THE COUNTY TO BENEFIT CHARITY OR TO FURTHER THE PURPOSE OF THE QUALIFIED ORGANIZATION.

(C) PERMIT.

(1) AN APPLICANT FOR A PERMIT SHALL PAY THE FEE THAT THE COUNTY COMMISSIONERS SET.

(2) THE COUNTY COMMISSIONERS SHALL SET THE PERMIT FEE AT A LEVEL SUFFICIENT TO COVER THE COSTS OF ISSUING THE PERMIT.

(D) LIMITATIONS.

(1) ONLY THE HOLDER OF A PERMIT ISSUED UNDER THIS SECTION MAY CONDUCT BINGO AUTHORIZED BY THE PERMIT.

(2) THE HOLDER OF A PERMIT ISSUED UNDER THIS SECTION MAY NOT TRANSFER OR ASSIGN THE RIGHT TO CONDUCT BINGO TO ANOTHER PERSON.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 248A(a) through (c).

In subsections (a) and (b)(1) of this section, the former references to a "corporation" are deleted as included in the references to an "organization". Similarly, in subsection (d) of this section, the former references to a "firm, or corporation" are deleted as included in the defined term "person". *See* § 1-101 of this article.

In subsection (b) of this section, the former reference to "operat[ing]" is deleted in light of the reference to "conduct[ing]". Similarly, in subsections (a) and (d) of this section, the former references to "operate" and "operated" are deleted.

In subsection (d) of this section, the reference to the "holder of a permit issued under this section" is substituted for the former reference to an "organization, corporation or volunteer fire company securing the permit therefor" for brevity.

Defined terms: "County commissioners" § 13-901

"Person" § 1-101

13-908. SAME -- PRIZES.

(A) MONEY PRIZES.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERMIT HOLDER MAY NOT AWARD A MONEY PRIZE GREATER THAN:

(1) $100 TO A PLAYER OF A REGULAR BINGO GAME; OR

(2) $250 TO A PLAYER OF A SPECIAL BINGO GAME, SUCH AS A BUILD-UP OR PROGRESSIVE POT GAME, SPLIT-THE-POT GAME, OR WINNER-TAKE-ALL GAME.

(B) JACKPOTS.

A PERMIT HOLDER MAY AWARD A JACKPOT NOT EXCEEDING $1,000 IF THE JACKPOT IS DIRECTLY CONNECTED WITH THE PLAYING OF BINGO.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 248A(d).

Throughout this section, the references to a "permit holder" are added to clarify who must comply with this section.

In subsection (a) of this section, the reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

In subsection (b) of this section, the former reference to "games" is deleted as surplusage.

13-909. PENALTIES.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY OPERATE OR ATTEMPT TO OPERATE A GAMING EVENT IN VIOLATION OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 258(d).

In subsection (a) of this section, the former references to an "association" and a "corporation" are deleted as included in the reference to the defined term "person". *See* § 1-101 of this article.

Also in subsection (a) of this section, the reference to violating "this subtitle" is substituted for the former references to violating "this section [former Art. 27, § 258]" although this subtitle is derived in part from material outside former § 258. Specifically, the remaining provisions are derived from former Art. 27, § 248A, revised as §§ 13-907 and 13-908 of this subtitle, which governed bingo conducted in Carroll County by certain charitable and similar organizations, and from § 255(a)(6) and (b), which generally covered gaming events in the State. Because former § 255(b), revised as Subtitle 2 of this title, applied in Carroll County, and in particular because former § 255(b)(4) provided that "*any* bazaar, carnival, raffle, or game of bingo" in Carroll County was subject to former § 258 (emphasis added), the penalties of this section apply to a violation of §§ 13-907 and 13-908. Thus, no substantive change results.

In subsection (b) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 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 (1968).

Also in subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined terms: "Gaming event" § 13-901

"Person" § 1-101

SUBTITLE 10. CECIL COUNTY.

13-1001. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

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

(B) BINGO.

"BINGO" INCLUDES INSTANT BINGO.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 261(a).

(C) GAMING EVENT.

"GAMING EVENT" MEANS A CARNIVAL, BAZAAR, RAFFLE, OR OTHER GAME OF ENTERTAINMENT.

REVISOR'S NOTE: This subsection is new language added for consistency within this title.

(D) QUALIFIED ORGANIZATION.

"QUALIFIED ORGANIZATION" MEANS:

(1) A VOLUNTEER FIRE COMPANY; OR

(2) A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) CIVIC ORGANIZATION;

(IV) WAR VETERANS' ORGANIZATION; OR

(V) CHARITABLE ORGANIZATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 261(b), as it related to the types of organization that were allowed to conduct gaming events and bingo in Cecil County.

The former references to a "corporation" are deleted as included in the reference to an "organization".

13-1002. APPLICATION OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN CECIL COUNTY.

REVISOR'S NOTE: This section is new language added to state expressly that which formerly only was implied in former Art. 27, § 261 by the former reference to qualified organizations "in Cecil County".

13-1003. GAMING EVENTS AND BINGO.

A QUALIFIED ORGANIZATION MAY CONDUCT BINGO OR A GAMING EVENT FOR THE EXCLUSIVE BENEFIT OF ANY QUALIFIED ORGANIZATION IF AN INDIVIDUAL OR GROUP OF INDIVIDUALS DOES NOT:

(1) BENEFIT FINANCIALLY; OR

(2) RECEIVE PROCEEDS OF THE BINGO OR GAMING EVENT FOR PERSONAL USE OR BENEFIT.

REVISOR'S NOTE: This section is new language derived without substantive change from the first sentence of former Art. 27, § 261(b).

This section is restated as a qualified permission to conduct a bingo or a gaming event for clarity and consistency within this title.

The former reference to "hold[ing]" a carnival is deleted as included in the reference "conduct[ing]" a gaming event.

The former reference to benefiting financially "from the holding of any ... game of bingo" and the former reference to "games of entertainment" are deleted as implicit in the reference to "conduct[ing] bingo or a gaming event".

In item (2) of this section, the former reference to "be[ing] paid" proceeds is deleted as included in the reference to "receiv[ing]" proceeds.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that this section allows a qualified organization to conduct a gaming event for the exclusive benefit of "any" qualified organization, not only the qualified organization conducting the gaming event.

Defined terms: "Bingo" § 13-1001

"Gaming event" § 13-1001

"Qualified organization" § 13-1001

13-1004. DEVICES FOR AWARDING PRIZES AT CARNIVALS, ETC.

A QUALIFIED ORGANIZATION MAY AWARD A PRIZE OF MONEY OR MERCHANDISE AT BINGO OR A GAMING EVENT THROUGH A PADDLE WHEEL, WHEEL OF FORTUNE, CHANCE BOOK, OR BINGO.

REVISOR'S NOTE: This section is new language derived without substantive change from the first clause of the second sentence of former Art. 27, § 261(b).

The reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

Defined terms: "Bingo" § 13-1001

"Gaming event" § 13-1001

"Qualified organization" § 13-1001

13-1005. MANAGEMENT OF GAMING EVENT OR BINGO.

THE BINGO OR GAMING EVENT SHALL BE MANAGED PERSONALLY BY MEMBERS OF THE QUALIFIED ORGANIZATION CONDUCTING THE EVENT.

REVISOR'S NOTE: This section is new language derived without substantive change from the second clause of the second sentence of former Art. 27, § 261(b).

Defined terms: "Bingo" § 13-1001

"Gaming event" § 13-1001

"Qualified organization" § 13-1001

SUBTITLE 11. CHARLES COUNTY.

13-1101. 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, § 253A(a)(1).

Throughout this subtitle, the references to "this subtitle" are substituted for the former references to "this section" to reflect the reorganization of material derived from former Art. 27, § 253A, relating to gaming in Charles County, in this subtitle.

(B) BOARD.

"BOARD" MEANS THE CHARLES COUNTY GAMING PERMIT REVIEW BOARD.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 253A(a)(2).

No changes are made.

(C) COUNTY COMMISSIONERS.

"COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF CHARLES COUNTY.

REVISOR'S NOTE: This subsection is new language added for consistency with other subtitles in this title.

(D) FUNDRAISING ORGANIZATION.

"FUNDRAISING ORGANIZATION" MEANS AN INCORPORATED OR UNINCORPORATED BONA FIDE:

(1) RELIGIOUS ORGANIZATION;

(2) FRATERNAL ORGANIZATION;

(3) CIVIC ORGANIZATION;

(4) WAR VETERANS' ORGANIZATION;

(5) CHARITABLE ORGANIZATION;

(6) VOLUNTEER FIRE COMPANY;

(7) RESCUE SQUAD; OR

(8) AMBULANCE COMPANY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 253A(a)(4).

(E) GAMING DEVICE.

(1) "GAMING DEVICE" MEANS A MECHANISM FOR PLAYING A GAME OF CHANCE.

(2) "GAMING DEVICE" INCLUDES A PADDLE WHEEL, WHEEL OF FORTUNE, AND CHANCE BOOK.

(3) "GAMING DEVICE" DOES NOT INCLUDE BINGO, A SLOT MACHINE, OR OTHER GAMING DEVICE THAT IS OTHERWISE REGULATED BY STATE LAW.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 253A(a)(5).

(F) GAMING EVENT.

(1) "GAMING EVENT" MEANS AN EVENT INVOLVING A GAME OF CHANCE.

(2) "GAMING EVENT" INCLUDES:

(I) A CARNIVAL;

(II) A BAZAAR; AND

(III) A RAFFLE INVOLVING PRIZES OF CASH OF MORE THAN $1,000 OR MERCHANDISE WITH A CASH EQUIVALENT OF MORE THAN $1,000.

(3) "GAMING EVENT" DOES NOT INCLUDE BINGO.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 253A(a)(6).

(G) GAMING PERMIT.

"GAMING PERMIT" MEANS A PERMIT TO OPERATE A GAMING DEVICE AT A GAMING EVENT THAT THE COUNTY COMMISSIONERS ISSUE UNDER THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 253A(a)(7).

(H) PERSON.

"PERSON" INCLUDES A JOINT INTEREST HELD BY TWO OR MORE PERSONS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 253A(a)(8).

The portion of former Art. 27, § 253A(a)(8) that is not included in the article-wide defined term "person" appears in this subsection. *See* § 1-101 of this article for the balance of the definition.

Defined term: "Person" § 1-101

(I) REPRESENTATIVE.

"REPRESENTATIVE" MEANS A PERSON WHO HAS BEEN A BONA FIDE MEMBER OF A FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION FOR AT LEAST 1 YEAR BEFORE THE DATE OF A GAMING PERMIT APPLICATION BY THE FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 253A(a)(9).

The reference to an application "by the fundraising organization" is added to clarify that a representative may only represent the particular fundraising organization that applies for the gaming permit application for purposes of that application, and not another fundraising organization.

The references to an "educational organization" are added to reflect the exclusive use of representatives of such an organization to manage or conduct bingo under § 13-1110 of this subtitle.

Defined term: "Person" § 1-101

13-1102. SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES TO BINGO AND GAMING EVENTS IN CHARLES COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(a)(3) and (b).

The former term "county", which was defined in Art. 27, § 253A(a)(3) as Charles County, is incorporated into this section to avoid confusion with the general term "county" defined in § 1-101 of this article.

Defined term: "Gaming event" § 13-1101

13-1103. AUTHORITY OF COUNTY COMMISSIONERS.

THE COUNTY COMMISSIONERS MAY:

(1) DESIGNATE THE TYPES OF GAMING DEVICES THAT MAY BE OPERATED IN THE COUNTY;

(2) SET FEES FOR GAMING PERMITS ISSUED UNDER THIS SUBTITLE;

(3) SET SALARIES AND FUNDING FOR THE BOARD AND THE BOARD'S CLERK, LEGAL COUNSEL, AND SUPPORT STAFF;

(4) APPROVE OR DENY GAMING PERMIT APPLICATIONS;

(5) INVESTIGATE PERSONS INVOLVED IN GAMING EVENTS AND EXAMINE RECORDS OF FUNDRAISING ORGANIZATIONS WITH RESPECT TO GAMING EVENTS;

(6) DELEGATE ITS POWERS AND DUTIES UNDER THIS SUBTITLE TO THE BOARD; AND

(7) ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(c).

In item (3) of this section, the reference to "the board's clerk" is added for consistency with § 13-1104(f) of this subtitle.

The former phrase "[i]n addition to any powers conferred by State law" is deleted as implicit in the grant of authority to the county commissioners in this section.

Defined terms: "Board" § 13-1101

"County commissioners" § 13-1101

"Fundraising organization" § 13-1101

"Gaming device" § 13-1101

"Gaming event" § 13-1101

"Gaming permit" § 13-1101

"Person" §§ 1-101, 13-1101

13-1104. GAMING PERMIT REVIEW BOARD.

(A) ESTABLISHED.

THERE IS A CHARLES COUNTY GAMING PERMIT REVIEW BOARD.

(B) MEMBERSHIP.

(1) THE BOARD CONSISTS OF SEVEN MEMBERS.

(2) OF THE SEVEN MEMBERS OF THE BOARD:

(I) ONE SHALL BE A MEMBER OF THE COUNTY SHERIFF'S OFFICE;

(II) ONE SHALL BE A MEMBER OF THE DEPARTMENT OF STATE POLICE;

(III) ONE SHALL BE A MEMBER OF THE CLERGY;

(IV) ONE SHALL BE A MEMBER OF A FUNDRAISING ORGANIZATION IN THE COUNTY;

(V) ONE SHALL BE AN INDIVIDUAL WITH BACKGROUND AND EXPERIENCE IN FINANCE; AND

(VI) TWO SHALL BE MEMBERS AT LARGE.

(3) EACH MEMBER AT LARGE:

(I) SHALL BE A MEMBER OF THE GENERAL PUBLIC;

(II) MAY NOT BE A MEMBER OF A FUNDRAISING ORGANIZATION OR OTHERWISE BE SUBJECT TO REGULATION BY THE BOARD;

(III) MAY NOT, WITHIN 1 YEAR BEFORE APPOINTMENT, HAVE HAD A FINANCIAL INTEREST IN OR HAVE RECEIVED COMPENSATION FROM A PERSON REGULATED BY THE BOARD; AND

(IV) MAY NOT, WHILE A MEMBER OF THE BOARD, HAVE A FINANCIAL INTEREST IN OR RECEIVE COMPENSATION FROM A PERSON REGULATED BY THE BOARD.

(4) EACH MEMBER OF THE BOARD SHALL BE A RESIDENT OF THE COUNTY.

(5) THE BOARD SHALL SELECT A CHAIRPERSON FROM AMONG ITS MEMBERS, TO SERVE THE TERM THAT THE BOARD SETS.

(C) TERM.

(1) THE TERM OF A MEMBER IS 4 YEARS.

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 2002.

(3) AT THE END OF A TERM, A 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.

(D) RECOMMENDATIONS.

THE BOARD MAY RECOMMEND TO THE COUNTY COMMISSIONERS:

(1) THE TYPES OF GAMING DEVICES THAT MAY BE OPERATED IN THE COUNTY;

(2) APPROVAL OR DENIAL OF A GAMING PERMIT; AND

(3) MODIFICATIONS OF THE COUNTY GAMING REGULATIONS AND PROCEDURES.

(E) DUTIES.

THE BOARD SHALL:

(1) REVIEW AT LEAST QUARTERLY GAMING PERMIT APPLICATIONS;

(2) REVIEW GAMING REGULATIONS AND PERMIT PROCEDURES;

(3) KEEP A LIST OF ALL APPROVED LESSORS OF GAMING DEVICES AND PREMISES FOR GAMING EVENTS;

(4) KEEP A RECORD OF THE GAMING PERMITS THAT THE BOARD HAS REVIEWED; AND

(5) UNDERTAKE THE OTHER DUTIES REGARDING GAMING REGULATION THAT THE COUNTY COMMISSIONERS DELEGATE.

(F) SUPPORT AND FUNDING.

AS THE COUNTY COMMISSIONERS CONSIDER APPROPRIATE, THE COUNTY COMMISSIONERS SHALL PROVIDE FOR THE BOARD A CLERK, LEGAL COUNSEL, SUPPLIES, AND FUNDING.

(G) SALARY.

THE COUNTY COMMISSIONERS MAY PAY SALARIES TO THE MEMBERS OF THE BOARD.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(d).

In subsection (b)(5) of this section, the reference to a "chairperson" is substituted for the former reference to a "chairman" because SG § 2-1238 requires the use of words that are neutral as to gender to the extent practicable.

In subsection (c)(2) of this section, the reference to "October 1, 2002" is substituted for the former reference to "July 1, 1989" to reflect the effective date of this article.

In the introductory language of subsection (d) of this section, the former phrase "[i]n addition to any powers set forth elsewhere" is deleted as implicit in the grant of powers to the board under subsection (d) of this section. Similarly, in the introductory language of subsection (e) of this section, the former phrase "[i]n addition to any duties set forth elsewhere" is deleted as implicit in the imposition of duties on the board under subsection (e) of this section.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b)(2)(iii) of this section, the requirement to have a member of the clergy on a body created by State law may violate both the federal and State constitutions. The involvement of religion in a regulatory body appears to violate the First Amendment to the U.S. Constitution. In addition, the requirement may violate Article 37 of the Md. Declaration of Rights, in that it requires a governmental body to have religion as a qualification of office. *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 6-7 (May 21, 2001).

Defined terms: "Board" § 13-1101

"County commissioners" § 13-1101

"Fundraising organization" § 13-1101

"Gaming device" § 13-1101

"Gaming event" § 13-1101

"Gaming permit" § 13-1101

"Person" §§ 1-101, 13-1101

13-1105. BINGO AND GAMING EVENTS GENERALLY PROHIBITED.

EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A PERSON MAY NOT CONDUCT BINGO OR A GAMING EVENT IN THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(e).

Defined terms: "Gaming event" § 13-1101

"Person" §§ 1-101, 13-1101

13-1106. GAMING EVENT -- IN GENERAL.

(A) QUALIFIED ORGANIZATION.

A GAMING EVENT MAY BE CONDUCTED ONLY BY A FUNDRAISING ORGANIZATION THAT HAS BEEN LOCATED IN THE COUNTY FOR AT LEAST 5 YEARS BEFORE APPLYING FOR A GAMING PERMIT.

(B) GAMING PERMIT REQUIRED.

A FUNDRAISING ORGANIZATION SHALL OBTAIN A GAMING PERMIT FOR EACH GAMING EVENT THAT THE FUNDRAISING ORGANIZATION CONDUCTS.

(C) APPLICATION SUBMISSION.

(1) AT LEAST 30 DAYS BEFORE THE FIRST DAY OF THE CALENDAR QUARTER IN WHICH THE GAMING EVENT IS TO BE CONDUCTED, A FUNDRAISING ORGANIZATION SEEKING A GAMING PERMIT SHALL SUBMIT TO THE BOARD AN APPLICATION AND THE APPLICATION FEE.

(2) THE APPLICATION SHALL CONTAIN THE FOLLOWING:

(I) THE NAME OF THE FUNDRAISING ORGANIZATION;

(II) A STATEMENT THAT THE FUNDRAISING ORGANIZATION QUALIFIES TO CONDUCT A GAMING EVENT UNDER THIS SUBTITLE;

(III) THE DATES, TIMES, AND LOCATION OF THE GAMING EVENT;

(IV) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE REPRESENTATIVE RESPONSIBLE FOR THE GAMING EVENT;

(V) A ROSTER OF THE CURRENT MEMBERSHIP OF THE FUNDRAISING ORGANIZATION THAT INCLUDES NAMES, AGES, AND ADDRESSES;

(VI) A STATEMENT THAT:

1. AN AGREEMENT DOES NOT EXIST FOR SHARING THE PROCEEDS OF THE GAMING EVENT WITH ANY OTHER PERSON; AND

2. NO PERSON OTHER THAN THE FUNDRAISING ORGANIZATION OR ITS REPRESENTATIVE MAY RECEIVE ANY PROCEEDS OF THE GAMING EVENT EXCEPT TO FURTHER THE PURPOSES OF THE FUNDRAISING ORGANIZATION; AND

(VII) ANY OTHER INFORMATION THAT THE BOARD CONSIDERS NECESSARY OR HELPFUL.

(3) A PRINCIPAL OFFICER OF THE FUNDRAISING ORGANIZATION SHALL SIGN AND VERIFY THE APPLICATION UNDER THE PENALTIES OF PERJURY.

(D) APPLICATION FEE.

THE COUNTY COMMISSIONERS MAY SET A REASONABLE APPLICATION FEE FOR A GAMING PERMIT.

(E) REVIEW OF APPLICATION.

(1) THE BOARD SHALL:

(I) REVIEW THE GAMING PERMIT APPLICATIONS FOR A CALENDAR QUARTER WITHIN 10 DAYS AFTER THE APPLICATION DEADLINE SET IN SUBSECTION (C)(1) OF THIS SECTION;

(II) RECOMMEND APPROVAL OR DENIAL OF EACH APPLICATION; AND

(III) PROMPTLY FORWARD THE APPLICATIONS AND RECOMMENDATIONS TO THE COUNTY COMMISSIONERS.

(2) THE COUNTY COMMISSIONERS SHALL:

(I) REVIEW THE APPLICATIONS AND RECOMMENDATIONS;

(II) APPROVE OR DISAPPROVE EACH APPLICATION WITHIN 15 DAYS AFTER THE APPLICATION DEADLINE SET IN SUBSECTION (C)(1) OF THIS SECTION;

(III) PROMPTLY NOTIFY EACH APPLICANT OF THE COUNTY COMMISSIONERS' ACTION ON THE APPLICATION; AND

(IV) ISSUE A GAMING PERMIT FOR EACH APPROVED APPLICATION.

(3) THIS SECTION DOES NOT PREVENT THE BOARD OR THE COUNTY COMMISSIONERS FROM REVIEWING GAMING PERMIT APPLICATIONS MORE FREQUENTLY OR EARLIER THAN REQUIRED BY THIS SUBSECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(h)(1), (2), and (3)(i) through (vi) and (viii).

In subsection (a) of this section, the former reference to a fundraising organization located in the county "[p]rior to January 1, 1988" is deleted as obsolete.

Subsection (b) of this section is revised as an affirmative requirement to obtain a gaming permit for each gaming event for clarity and to avoid overlap with the gaming permit application procedure of subsection (c)(1) of this section.

In subsection (e)(3) of this section, the reference to this "section" is substituted for the former reference to this "paragraph", although this section is derived, in part, from material outside former Art. 27, § 253A(h)(3)(viii). Because no other portion of this section affects the timing of gaming permit application review by the board or the county commissioners, no substantive change results.

Defined terms: "Board" § 13-1101

"County commissioners" § 13-1101

"Fundraising organization" § 13-1101

"Gaming event" § 13-1101

"Gaming permit" § 13-1101

"Person" §§ 1-101, 13-1101

"Representative" § 13-1101

13-1107. SAME -- PERMIT.

THE GAMING PERMIT SHALL INCLUDE:

(1) THE NAME OF THE FUNDRAISING ORGANIZATION;

(2) THE NATURE OF THE APPROVED GAMING EVENT;

(3) THE DATES, TIMES, AND LOCATION OF THE APPROVED GAMING EVENT;

(4) THE GAMING DEVICES TO BE OPERATED AT THE GAMING EVENT; AND

(5) THE NAME OF THE REPRESENTATIVE RESPONSIBLE FOR THE APPROVED GAMING EVENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(h)(3)(vii).

Defined terms: "Fundraising organization" § 13-1101

"Gaming device" § 13-1101

"Gaming event" § 13-1101

"Gaming permit" § 13-1101

"Representative" § 13-1101

13-1108. GAMING EVENT -- CONDUCT.

(A) IN GENERAL.

(1) A GAMING EVENT MAY BE CONDUCTED ONLY IN ACCORDANCE WITH THIS SUBTITLE.

(2) A GAMING DEVICE MAY ONLY BE MANAGED OR OPERATED BY A REPRESENTATIVE OF THE FUNDRAISING ORGANIZATION NAMED IN THE GAMING PERMIT FOR THE GAMING EVENT.

(3) A PROFESSIONAL GAMING OPERATOR MAY NOT MANAGE, OPERATE, OR ASSIST IN THE MANAGEMENT OR OPERATION OF A GAMING DEVICE.

(4) A PERSON MAY NOT RECEIVE ANY COMMISSION, SALARY, REWARD, TIP, OR OTHER COMPENSATION FOR MANAGING OR OPERATING A GAMING DEVICE AT A GAMING EVENT.

(5) A MINOR MAY NOT PARTICIPATE IN A GAMING EVENT.

(6) A FUNDRAISING ORGANIZATION MAY LEASE GAMING DEVICES OR PREMISES FOR A GAMING EVENT ONLY FROM A FUNDRAISING ORGANIZATION THAT THE BOARD APPROVES.

(7) (I) A LEASE AGREEMENT OF GAMING DEVICES OR PREMISES FOR A GAMING EVENT SHALL BE PRICED ON THE BASIS OF FAIR MARKET VALUE OF THE EQUIPMENT OR PREMISES.

(II) A LEASE AGREEMENT MAY NOT INCLUDE A PROVISION FOR SHARING PROFIT FROM A GAMING EVENT WITH A LESSOR OR A PROVISION THAT REASONABLY MAY BE INTERPRETED TO PROVIDE FOR SHARING PROFIT FROM A GAMING EVENT.

(8) A FUNDRAISING ORGANIZATION MAY NOT CONDUCT MORE THAN THREE GAMING EVENTS DURING A CALENDAR QUARTER.

(9) (I) A FUNDRAISING ORGANIZATION MAY NOT CONDUCT A GAMING EVENT UNDER A SINGLE GAMING PERMIT FOR A PERIOD GREATER THAN 48 HOURS.

(II) THE ACTUAL GAMING TIME MAY NOT EXCEED 24 HOURS IN THAT 48-HOUR PERIOD, WHICH MAY BE DIVIDED INTO NOT MORE THAN TWO SEPARATE GAMING PERIODS.

(III) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, A FUNDRAISING ORGANIZATION THAT CONDUCTS A GAMING EVENT AT THE CHARLES COUNTY FAIR IN CONJUNCTION WITH THE CHARLES COUNTY FAIR BOARD MAY CONDUCT THE GAMING EVENT UNDER A SINGLE GAMING PERMIT FOR MORE THAN 48 HOURS, SUBJECT TO REGULATIONS THAT THE COUNTY COMMISSIONERS ADOPT ON RECOMMENDATION OF THE BOARD.

(B) REPORT.

(1) A FUNDRAISING ORGANIZATION THAT HAS CONDUCTED A GAMING EVENT SHALL SUBMIT A REPORT TO THE BOARD WITHIN 30 DAYS AFTER THE END OF THE CALENDAR QUARTER IN WHICH THE GAMING EVENT WAS CONDUCTED.

(2) THE REPORT SHALL CONTAIN:

(I) THE NAME OF THE FUNDRAISING ORGANIZATION;

(II) THE NUMBER OF THE GAMING PERMIT;

(III) THE DATE OF THE GAMING EVENT;

(IV) THE DATE, AMOUNT, NATURE, SOURCE, AND RECIPIENT OF EACH RECEIPT AND EXPENDITURE ASSOCIATED WITH THE GAMING EVENT, IN THE FORMAT THAT THE BOARD PRESCRIBES;

(V) A SEPARATE LIST OF THE DATE, AMOUNT, AND RECIPIENT OF EACH CHARITABLE DONATION FROM THE PROCEEDS;

(VI) THE NAME, AGE, ADDRESS, AND DATE OF MEMBERSHIP OF EACH REPRESENTATIVE WHO MANAGED, OPERATED, OR ASSISTED IN THE OPERATION OR MANAGEMENT OF A GAMING DEVICE AT THE GAMING EVENT;

(VII) A STATEMENT THAT EACH LISTED REPRESENTATIVE QUALIFIED AS A REPRESENTATIVE UNDER § 13-1101(I) OF THIS SUBTITLE AT THE TIME OF THE GAMING EVENT;

(VIII) A STATEMENT THAT:

1. AN AGREEMENT DOES NOT EXIST AND HAS NOT EXISTED FOR SHARING THE PROCEEDS OF A GAMING EVENT WITH ANY OTHER PERSON; AND

2. ONLY THE FUNDRAISING ORGANIZATION OR ITS REPRESENTATIVE HAS RECEIVED OR WILL RECEIVE ANY PROCEEDS OF THE GAMING EVENT, EXCEPT TO FURTHER THE PURPOSES OF THE FUNDRAISING ORGANIZATION; AND

(IX) ANY OTHER INFORMATION THAT THE BOARD CONSIDERS NECESSARY OR HELPFUL.

(3) A PRINCIPAL OFFICER OF THE FUNDRAISING ORGANIZATION SHALL SIGN AND VERIFY THE REPORT UNDER THE PENALTIES OF PERJURY.

(C) RECORD KEEPING AND AVAILABILITY.

A FUNDRAISING ORGANIZATION THAT CONDUCTS A GAMING EVENT SHALL MAINTAIN ACCURATE RECORDS OF EACH TRANSACTION CONCERNING THE GAMING EVENT, AND SHALL KEEP THE RECORDS AVAILABLE FOR EXAMINATION BY THE BOARD AND THE COUNTY COMMISSIONERS FOR 3 YEARS AFTER THE GAMING EVENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(h)(4) through (6).

In subsection (a)(3) of this section, the reference to management "or" operation is added for clarity.

In subsection (b)(2)(vi) of this section, the reference to "manage[ment]" of a

gaming device is added for consistency with subsection (a)(2) and (3) of this section.

Defined terms: "Board" § 13-1101

"County commissioners" § 13-1101

"Fundraising organization" § 13-1101

"Gaming device" § 13-1101

"Gaming event" § 13-1101

"Gaming permit" § 13-1101

"Minor" § 1-101

"Person" §§ 1-101, 13-1101

"Representative" § 13-1101

13-1109. BINGO.

(A) IN GENERAL.

A FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION MAY CONDUCT BINGO EITHER FOR THE BENEFIT OF CHARITY IN THE COUNTY OR TO FURTHER THE PURPOSES OF THE ORGANIZATION.

(B) FORM OF PRIZE.

SUBJECT TO SUBSECTION (C) OF THIS SECTION, A FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION MAY AWARD MONEY OR MERCHANDISE AS A PRIZE IN A BINGO GAME.

(C) PRIZE LIMITS.

(1) A FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION MAY NOT AWARD A MONEY PRIZE EXCEEDING $1,000 TO ANY PLAYER IN A BINGO GAME.

(2) A FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION MAY NOT AWARD MORE THAN $5,000 IN TOTAL MONEY PRIZES IN A SINGLE DAY.

(D) TIME LIMITS.

A FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION MAY NOT CONDUCT BINGO AT ONE LOCATION OR MORE THAN:

(1) 4 DAYS IN A 7-DAY PERIOD; OR

(2) 3 CONSECUTIVE DAYS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(g).

In subsections (b) and (c) of this section, the references to a "money" prize are substituted for the former references to a "cash" prize for consistency within this title.

In subsections (c)(2) and (d) of this section, the references to a "fundraising organization or educational organization" are added to clarify the entities that may conduct bingo under this section.

Defined term: "Fundraising organization" § 13-1101

13-1110. MANAGEMENT OF BINGO AND GAMING EVENTS.

A FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION MAY ONLY ALLOW ITS REPRESENTATIVES TO MANAGE OR OPERATE BINGO OR GAMING DEVICES AT ITS BINGO OR GAMING EVENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(i).

The reference to an "educational organization" is added to state explicitly that which was implied in the former law, that any organization, including an educational organization, that conducts bingo under this subtitle, may only allow its representatives to manage or operate bingo.

The reference to managing or operating "bingo", which is excluded from the term "gaming device" as defined in § 13-1101 of this subtitle, is added for clarity.

Defined terms: "Fundraising organization" § 13-1101

"Gaming device" § 13-1101

"Gaming event" § 13-1101

"Representative" § 13-1101

13-1111. USE OF PROCEEDS.

PROCEEDS OF BINGO OR A GAMING EVENT MAY NOT:

(1) BENEFIT A PERSON OTHER THAN THE FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION THAT CONDUCTS THE BINGO OR GAMING EVENT; OR

(2) BE SHARED WITH A PERSON OTHER THAN THE FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION, EXCEPT TO FURTHER THE PURPOSES OF THE FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(j).

The former reference to a "portion" of the proceeds of a bingo or gaming event is deleted as included in the reference to the "[p]roceeds" themselves.

Defined terms: "Fundraising organization" § 13-1101

"Gaming event" § 13-1101

"Person" §§ 1-101, 13-1101

13-1112. DONATION TO FAIR BOARD ALLOWED.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A FUNDRAISING ORGANIZATION OR EDUCATIONAL ORGANIZATION MAY DONATE PART OF THE PROCEEDS OF BINGO OR A GAMING EVENT AT THE CHARLES COUNTY FAIR TO THE CHARLES COUNTY FAIR BOARD.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(k).

Defined terms: "Fundraising organization" § 13-1101

"Gaming event" § 13-1101

13-1113. PENALTY.

A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(l).

Defined term: "Person" §§ 1-101, 13-1101

13-1114. DISQUALIFICATION AFTER VIOLATION.

IN ADDITION TO ANY OTHER PENALTY, A PERSON WHO VIOLATES THIS SUBTITLE IS INELIGIBLE TO OBTAIN A GAMING PERMIT FOR 3 YEARS AFTER THE DATE OF THE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(m).

Defined terms: "Gaming permit" § 13-1101

"Person" §§ 1-101, 13-1101

13-1115. EFFECT OF OTHER LAW.

THIS SUBTITLE DOES NOT RESTRICT THE AUTHORITY OF THE COUNTY COMMISSIONERS TO ADOPT REGULATIONS ON AMUSEMENTS AND ENTERTAINMENTS UNDER CHAPTER 4 OF THE CODE OF PUBLIC LOCAL LAWS OF CHARLES COUNTY OR OTHER STATE LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253A(f).

Defined term: "County commissioners" § 13-1101

SUBTITLE 12. DORCHESTER COUNTY.

13-1201. "GAMING EVENT" DEFINED.

IN THIS SUBTITLE, "GAMING EVENT" MEANS A CARNIVAL, BAZAAR, OR RAFFLE.

REVISOR'S NOTE: This section is new language added for brevity and consistency with similar references throughout this title.

13-1202. SCOPE AND APPLICATION OF SUBTITLE.

(A) SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN DORCHESTER COUNTY.

(B) APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN DORCHESTER COUNTY.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify that this subtitle applies only to Dorchester County.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 255(a)(7).

13-1203. BINGO.

(A) LICENSE REQUIRED.

A PERSON MUST HAVE A LICENSE FOR EACH DAY THAT THE PERSON CONDUCTS BINGO UNLESS THE BINGO IS CONDUCTED IN A LICENSED GAMING EVENT.

(B) ISSUED BY CLERK.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE OR SUBTITLE 2 OF THIS TITLE, IN ADDITION TO BINGO CONDUCTED IN CONNECTION WITH A GAMING EVENT UNDER SUBTITLE 2 OF THIS TITLE, THE CLERK OF THE CIRCUIT COURT OF THE COUNTY MAY ISSUE A LICENSE TO CONDUCT BINGO.

(C) QUALIFIED ORGANIZATIONS.

TO QUALIFY FOR A LICENSE TO CONDUCT BINGO, AN APPLICANT SHALL BE A:

(1) BONA FIDE RELIGIOUS GROUP THAT HAS CONDUCTED RELIGIOUS SERVICES AT A FIXED LOCATION IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A LICENSE;

(2) TAX-SUPPORTED VOLUNTEER FIRE COMPANY OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE FIRE COMPANY;

(3) NATIONALLY CHARTERED VETERANS' ORGANIZATION OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE ORGANIZATION; OR

(4) NONPROFIT ORGANIZATION THAT:

(I) INTENDS TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE THAT IS DESCRIBED IN THE APPLICATION FOR A LICENSE; AND

(II) HAS OPERATED IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A LICENSE.

(D) APPLICATION FOR LICENSE.

AN APPLICATION FOR A LICENSE TO CONDUCT BINGO SHALL CONTAIN A CERTIFICATION, BY A PRINCIPAL OFFICER OF THE APPLICANT, STATING:

(1) THE TIME AND PLACE OF THE ACTIVITIES FOR WHICH THE LICENSE IS SOUGHT;

(2) THAT THE BINGO WILL BE CONDUCTED AND MANAGED SOLELY AND PERSONALLY BY THE REGULAR MEMBERS OF THE APPLICANT WITHOUT THE ASSISTANCE OF GAMING PROFESSIONALS; AND

(3) THAT NO COMPENSATION OR REWARD WILL BE PAID TO ANY PERSON FOR CONDUCTING OR ASSISTING IN THE CONDUCTING OF THE BINGO.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255A(a), (b), and the fourth sentence of (c).

In subsection (a) of this section, the reference to a "gaming event" is substituted for the former reference to a "carnival" for clarity and consistency with subsection (b) of this section. The Criminal Law Article Review Committee calls this substitution to the attention of the General Assembly.

Also in subsection (a) of this section, the former reference to a "duly" licensed gaming event is deleted as surplusage.

In subsection (b) of this section, the reference to a gaming event "under Subtitle 2 of this title" is added for clarity.

Also in subsection (b) of this section, the reference to the clerk of the "circuit" court is added for clarity.

In subsection (c)(4)(i) of this section, the reference to "intend[ing]" to raise money is substituted for the former reference to "desiring" to raise money for consistency within this title.

Also in subsection (c)(4)(i) of this section, the former reference to a purpose

that is "specifically" described in an application is deleted as surplusage.

In subsection (d)(2) of this section, the reference to a "gaming" professional is added for clarity.

In subsection (d)(3) of this section, the former reference to a "commission, salary ... or recompense" is deleted in light of the comprehensive reference to a "compensation or reward".

Also in subsection (d)(3) of this section, the former reference to "operat[ing]" bingo is deleted as included in the reference to "conducting" bingo.

Defined terms: "Gaming event" § 13-1201

"Person" § 1-101

13-1204. PROHIBITIONS.

(A) SUNDAY GAMING.

A LICENSE ISSUED UNDER THIS SUBTITLE MAY NOT AUTHORIZE A GAME OR CARNIVAL ON A SUNDAY.

(B) MINORS.

AN INDIVIDUAL UNDER THE AGE OF 16 YEARS MAY NOT BE ALLOWED TO PLAY, CONDUCT, OR OPERATE BINGO.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255A(d) and the third sentence of (c).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a) of this section, the reference to "a game or carnival" may be too narrow to cover all gaming activities.

In subsection (b) of this section, the reference to an age limit for playing bingo under a "permit ... issued under this section" is deleted in light of § 13-1203(a) of this subtitle, which requires a license to conduct bingo.

13-1205. COIN OR SLOT MACHINES.

THIS SUBTITLE DOES NOT AUTHORIZE THE USE OF A SLOT MACHINE OR COIN MACHINE FOR GAMBLING PURPOSES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255A(e).

The former reference to "any type of" coin machine is deleted as surplusage.

13-1206. ENFORCEMENT.

THE BAILIFFS, MUNICIPAL POLICE OFFICERS, PROSECUTING OFFICIALS, AND OTHER PEACE OFFICERS OF THE COUNTY SHALL ENFORCE THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255A(f).

The former reference to being "strictly charged with" the enforcement of this subtitle is deleted as implicit in the phrase "shall enforce".

13-1207. LICENSE FEES.

(A) RAFFLE OR CARNIVAL.

THE CLERK OF THE CIRCUIT COURT OF THE COUNTY SHALL COLLECT $5 FOR A LICENSE FOR A RAFFLE OR CARNIVAL.

(B) BINGO.

THE CLERK OF THE CIRCUIT COURT SHALL COLLECT $25 FROM AN APPLICANT FOR AN ANNUAL BINGO LICENSE TO CONDUCT BINGO AND $1 FOR ISSUANCE OF THE LICENSE.

(C) DAILY BINGO LICENSE.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A 1-DAY BINGO LICENSE IS REQUIRED FOR EACH DAY A BINGO GAME IS CONDUCTED.

(2) THE CLERK OF THE CIRCUIT COURT OF THE COUNTY SHALL COLLECT $1 FOR A 1-DAY BINGO LICENSE.

(3) A 1-DAY BINGO LICENSE IS NOT REQUIRED FOR BINGO CONDUCTED AT A LICENSED CARNIVAL OR UNDER AN ANNUAL BINGO LICENSE.

REVISOR'S NOTE: This section is new language derived without substantive change from the first, second, and fourth sentences of former Art. 27, § 255A(c).

In subsections (b) and (c)(2) of this section, the references to the clerk of the "circuit" court are added for clarity and consistency with § 13-1203(b) of this subtitle. Correspondingly, in subsection (a) of this section, the reference to the "clerk of the circuit court" is added.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a) of this section, the reference to a "raffle or carnival" may be too narrow to cover all gaming activities. The Committee also notes that, in practice, the clerk does not accept fees for raffles or carnivals nor will the clerk issue a license for a raffle or carnival.

SUBTITLE 13. FREDERICK COUNTY.

13-1301. 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 the introductory language of former Art. 27, § 258A(a).

In this subsection, the reference to this "subtitle" is substituted for the former reference to this "section", although this subtitle is derived, in part, from material outside former Art. 27, § 258A. Because the term "gaming event" defined in this section is used only in provisions that are derived from former Art. 27, §§ 255 and 258A, and in light of § 13-1303 of this subtitle, no substantive change results.

(B) "COUNTY COMMISSIONERS" DEFINED.

"COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 258A(a)(1).

The defined term "county commissioners" is substituted for the former defined term "Board" for consistency within this title.

The former reference to "this section" is deleted in light of the reorganization of this revision.

(C) "GAMING EVENT".

"GAMING EVENT" INCLUDES A:

(1) BAZAAR;

(2) CARNIVAL;

(3) RAFFLE;

(4) TIP JAR; AND

(5) PUNCHBOARD.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 258A(a)(4).

The former reference to "other similar games of chance" is deleted in light

of the use of the word "includes". *See* Art. 1, § 30.

REVISOR'S NOTE TO SECTION

Former Art. 27, § 258A(a)(2), which defined "county" to mean Frederick County, is deleted as unnecessary in light of § 13-1302 of this subtitle.

13-1302. SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN FREDERICK COUNTY.

REVISOR'S NOTE: This section is new language added to clarify the scope of this subtitle.

13-1303. APPLICATION OF SUBTITLE 2.

(A) IN GENERAL.

SUBTITLE 2 OF THIS TITLE APPLIES IN FREDERICK COUNTY.

(B) APPLICATION OF SUBTITLE 2.

A GAMING EVENT UNDER SUBTITLE 2 OF THIS TITLE IS SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE.

(C) ADDITIONAL QUALIFIED ORGANIZATIONS.

IN ADDITION TO THE QUALIFIED ORGANIZATIONS LISTED IN SUBTITLE 2 OF THIS TITLE, THE FOLLOWING ORGANIZATIONS AND THEIR AUXILIARIES MAY CONDUCT ACTIVITIES GOVERNED BY THAT SUBTITLE:

(1) A VOLUNTEER FIRE COMPANY;

(2) A VOLUNTEER RESCUE COMPANY; AND

(3) A VOLUNTEER AMBULANCE COMPANY.

(D) ADDITIONAL ACTIVITIES REGULATED.

SUBTITLE 2 OF THIS TITLE ALSO REGULATES ANY GAMING DEVICE, INCLUDING A:

(1) CHANCE BOOK;

(2) TIP JAR;

(3) PADDLE WHEEL; AND

(4) WHEEL OF FORTUNE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(j) and (a)(8).

In subsection (b) of this section, the reference to this "subtitle" is substituted for the former reference to "§§ 249 and 258A of this article", although this subtitle is derived, in part, from material outside former Art. 27, §§ 249 and 258A. Because the only substantive requirements that could apply to a gaming event under Subtitle 2 of this title are in material derived from former §§ 249 and 258A, no substantive change results.

In subsection (d) of this section, the former reference to "similar devices" is deleted because the list of activities is illustrative. *See* Art. 1, § 30.

Defined term: "Gaming event" § 13-1301

13-1304. GAMING EVENTS.

(A) PERMIT REQUIRED.

BEFORE AN ORGANIZATION LISTED IN SUBSECTION (B) OF THIS SECTION MAY CONDUCT A GAMING EVENT, THE ORGANIZATION SHALL OBTAIN A PERMIT FROM THE COUNTY AGENCY THAT THE COUNTY COMMISSIONERS DESIGNATE.

(B) QUALIFIED ORGANIZATIONS.

AN ORGANIZATION MAY CONDUCT A GAMING EVENT FOR ITS OWN BENEFIT IF THE ORGANIZATION IS:

(1) A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) CIVIC ORGANIZATION;

(IV) WAR VETERANS' ORGANIZATION;

(V) HOSPITAL;

(VI) AMATEUR ATHLETIC ORGANIZATION;

(VII) PATRIOTIC ORGANIZATION;

(VIII) EDUCATIONAL ORGANIZATION; OR

(IX) CHARITABLE ORGANIZATION;

(2) A FREDERICK COUNTY VOLUNTEER:

(I) FIRE COMPANY;

(II) RESCUE COMPANY; OR

(III) AMBULANCE COMPANY; OR

(3) AN AUXILIARY FOR A FREDERICK COUNTY VOLUNTEER:

(I) FIRE COMPANY;

(II) RESCUE COMPANY; OR

(III) AMBULANCE COMPANY.

(C) APPLICATION.

(1) BEFORE THE COUNTY AGENCY MAY ISSUE A GAMING PERMIT, THE COUNTY AGENCY SHALL DETERMINE WHETHER THE ORGANIZATION APPLYING FOR THE GAMING PERMIT MEETS THE REQUIREMENTS OF THIS SECTION.

(2) AN APPLICATION AND THE ACTION THAT THE COUNTY AGENCY TAKES ON THE APPLICATION ARE PUBLIC RECORDS.

(D) TERMS.

(1) (I) A GAMING PERMIT IS VALID FOR 1 YEAR AFTER THE DATE THAT IT IS ISSUED.

(II) A GAMING PERMIT MAY NOT BE TRANSFERRED.

(2) THE COUNTY COMMISSIONERS MAY CHARGE A PERMIT FEE.

(E) LIMITATIONS.

(1) ONLY MEMBERS OF AN ORGANIZATION THAT HOLDS A GAMING PERMIT MAY CONDUCT THE GAMING EVENT.

(2) EXCEPT AS ALLOWED UNDER § 13-1305 OF THIS SUBTITLE, AN INDIVIDUAL MAY NOT BENEFIT FINANCIALLY FROM A GAMING EVENT.

(3) A GAMING PERMIT MAY NOT AUTHORIZE A GAMING EVENT TO BE CONDUCTED ON A SUNDAY BEFORE 1 P.M.

(F) PRIZES.

(1) THE HOLDER OF A GAMING PERMIT MAY AWARD:

(I) PRIZES TO INDIVIDUALS AT A GAMING EVENT; AND

(II) ONLY ONE MAJOR PRIZE AT EACH GAMING EVENT.

(2) DURING EACH CALENDAR YEAR, THE HOLDER OF A GAMING EVENT MAY NOT HOLD OR RECEIVE THE PROCEEDS FROM:

(I) MORE THAN ONE GAMING EVENT IN WHICH THE MAJOR PRIZE HAS A VALUE OF $5,000 OR MORE; AND

(II) MORE THAN FIVE RAFFLES IN WHICH THE MAJOR PRIZE HAS A VALUE OF $5,000 OR LESS.

(G) REGULATIONS.

THE COUNTY COMMISSIONERS MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION AND §§ 13-1305 AND 13-1307 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 258A(b) through (d).

In subsection (a) of this section, the reference to "conduct[ing]" a gaming event is substituted for the former reference to "operating" a gaming event for consistency throughout this subtitle.

In subsection (c)(1) of this section, the reference to "determin[ing] whether the organization applying for the gaming permit" meets requirements is substituted for the former reference to "ascertain[ing] the character of the organization for whom the application is made to determine if the application meets" requirements for clarity.

In subsection (e)(1) of this section, the former reference to a "managed" gaming event is deleted as included in the reference to "conduct[ing]" a gaming event.

In subsection (e)(3) of this section, the phrase "[a] gaming permit may not authorize a gaming event to be conducted on a Sunday before 1 p.m." is substituted for the former ambiguous phrase "[t]he permit authorizes the operation of a gaming event after 1 p.m. on Sunday" for clarity.

In subsection (g) of this section, the reference to §§ 13-1305 and 13-1307 of this subtitle" is added to reflect the reorganization of material derived from former Art. 27, § 258A in this revision.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the reference to a "major prize" in subsection (f)(1)(ii) is vague. Since a violation of that provision is a misdemeanor, the General Assembly may wish to clarify the reference.

13-1305. TIP JARS AND PUNCHBOARDS.

(A) QUALIFIED OPERATORS.

(1) TO OPERATE A TIP JAR OR PUNCHBOARD IN THE COUNTY, AN ESTABLISHMENT OR PROPRIETOR MUST BE LICENSED TO SERVE FOOD AND ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES.

(2) THE OPERATOR OF A TIP JAR SHALL DISPLAY CONSPICUOUSLY A GAMING PERMIT ISSUED TO THE BENEFICIARY OF THE TIP JAR UNDER § 13-1304 OF THIS SUBTITLE.

(3) THE OPERATOR OF A PUNCHBOARD SHALL DISPLAY WITHIN THE ESTABLISHMENT A GAMING PERMIT ISSUED TO THE BENEFICIARY OF THE PUNCHBOARD UNDER § 13-1304 OF THIS SUBTITLE.

(B) QUALIFIED BENEFICIARIES.

(1) A PERSON MAY OPERATE A TIP JAR OR PUNCHBOARD IN THE COUNTY ONLY FOR THE BENEFIT OF ONE OF THE FOLLOWING ORGANIZATIONS LOCATED IN THE COUNTY:

(I) A BONA FIDE:

1. RELIGIOUS ORGANIZATION;

2. FRATERNAL ORGANIZATION;

3. CIVIC ORGANIZATION;

4. WAR VETERANS' ORGANIZATION;

5. HOSPITAL;

6. AMATEUR ATHLETIC ORGANIZATION;

7. PATRIOTIC ORGANIZATION;

8. CHARITABLE ORGANIZATION; OR

9. EDUCATIONAL ORGANIZATION;

(II) A FREDERICK COUNTY VOLUNTEER:

1. FIRE COMPANY;

2. RESCUE COMPANY; OR

3. AMBULANCE COMPANY; OR

(III) AN AUXILIARY OF A FREDERICK COUNTY VOLUNTEER:

1. FIRE COMPANY;

2. RESCUE COMPANY; OR

3. AMBULANCE COMPANY.

(2) THE BENEFICIARY OF A TIP JAR MAY NOT HOLD MORE THAN THREE PERMITS TO OPERATE TIP JARS OR PUNCHBOARDS OUTSIDE OF THE BENEFICIARY'S PREMISES.

(C) FINANCIAL ACCOUNTING.

(1) THE BENEFICIARY OF A TIP JAR OR PUNCHBOARD MUST RECEIVE AT LEAST 70% OF THE GROSS PROCEEDS OF THE TIP JAR OR PUNCHBOARD AFTER PAYING WINNING PLAYERS AND REIMBURSING THE OPERATOR FOR OPERATING EXPENSES.

(2) FOR EACH TIP JAR OR PUNCHBOARD OPERATED, THE OPERATOR SHALL SUBMIT TO THE COUNTY AGENCY THAT ISSUED THE GAMING PERMIT MONTHLY REPORTS DETAILING:

(I) GROSS PROCEEDS;

(II) PRIZES;

(III) EXPENSES; AND

(IV) THE AMOUNT PAID TO THE BENEFICIARY.

(D) LICENSED DISTRIBUTORS.

THE TIP JAR OR PUNCHBOARD SHALL BE PURCHASED FROM A DISTRIBUTOR THAT:

(1) HAS AN OFFICE IN THE COUNTY;

(2) IS LICENSED BY THE COUNTY AGENCY THAT ISSUES GAMING EVENT PERMITS; AND

(3) KEEPS THE RECORDS THAT THE COUNTY COMMISSIONERS REQUIRE.

(E) RECORDS.

A PERSON WHO KEEPS RECORDS ABOUT TIP JARS OR PUNCHBOARDS SHALL MAKE THOSE RECORDS AVAILABLE FOR INSPECTION AND COPYING BY A LAW ENFORCEMENT UNIT OR BY THE COUNTY AGENCY THAT ISSUES THE GAMING EVENT PERMIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 258A(e).

In subsection (a)(2) and (3) of this section, the phrase "issued to the beneficiary" is added because of the statement in former Art. 27, § 258A(e)(5) that permits are issued to the beneficiary organizations and, because former Art. 27, § 258A(e)(2) limits the operation of games, to establishments or proprietors licensed to serve food and alcoholic beverages for consumption on the premises.

In subsections (b)(2) and (c)(1) of this section, the reference to a "beneficiary" is substituted for the former reference to an "organization" for clarity.

In subsection (c)(2)(ii) of this section, the reference to "prizes" is substituted for the former reference to "payouts for winnings" for brevity and clarity.

In subsection (e) of this section, the reference to a law enforcement "unit" is substituted for the former reference to a law enforcement "agency" for consistency within this article. *See* General Revisor's Note to article.

Defined terms: "County commissioners" § 13-1301

"Gaming event" § 13-1301

"Person" § 1-101

13-1306. BINGO -- GENERALLY.

(A) PERMIT REQUIRED.

A PERSON AUTHORIZED TO CONDUCT BINGO UNDER THIS SUBTITLE SHALL OBTAIN A BINGO PERMIT FROM THE COUNTY AGENCY DESIGNATED BY THE COUNTY COMMISSIONERS TO ISSUE A BINGO PERMIT.

(B) QUALIFIED ORGANIZATIONS.

ANY OF THE FOLLOWING ORGANIZATIONS, IF A LEGAL RESIDENT OF THE COUNTY, MAY CONDUCT BINGO TO BENEFIT CHARITY IN THE COUNTY OR TO FURTHER THE PURPOSES OF ONE OF THE FOLLOWING ORGANIZATIONS:

(1) A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) PATRIOTIC ORGANIZATION;

(IV) EDUCATIONAL ORGANIZATION;

(V) CIVIC ORGANIZATION;

(VI) WAR VETERANS' ORGANIZATION;

(VII) HOSPITAL;

(VIII) AMATEUR ATHLETIC ORGANIZATION; OR

(IX) CHARITABLE ORGANIZATION;

(2) A VOLUNTEER:

(I) FIRE COMPANY;

(II) RESCUE COMPANY; OR

(III) AMBULANCE COMPANY; OR

(3) AN AUXILIARY FOR A VOLUNTEER:

(I) FIRE COMPANY;

(II) RESCUE COMPANY; OR

(III) AMBULANCE COMPANY.

(C) UNQUALIFIED PERSONS.

(1) A PERSON WHO IS NOT A LEGAL RESIDENT OF FREDERICK COUNTY MAY NOT CONDUCT BINGO.

(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, EACH YEAR THE FREDERICK COUNTY AGRICULTURAL ASSOCIATION MAY SELL OR LEASE A RIGHT OR CONCESSION TO ANY PERSON TO CONDUCT BINGO AT THE FREDERICK COUNTY FAIR.

(D) APPLICATION.

(1) TO QUALIFY FOR A BINGO PERMIT, A PERSON SHALL MEET THE REQUIREMENTS SET BY THE COUNTY COMMISSIONERS.

(2) THE COUNTY COMMISSIONERS MAY REQUIRE AN APPLICANT FOR A BINGO PERMIT TO PAY A PERMIT FEE SET BY THE COUNTY COMMISSIONERS.

(E) PRIZE LIMITATIONS.

A PERSON WHO CONDUCTS BINGO MAY NOT OFFER OR AWARD:

(1) A PRIZE OR AWARD WITH A FAIR MARKET VALUE EXCEEDING $5,000; OR

(2) A MONEY PRIZE EXCEEDING $5,000.

(F) REGULATIONS.

THE COUNTY COMMISSIONERS MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 249.

In subsections (a) and (d) of this section, the references to a "bingo" permit are added for clarity.

In subsection (a) of this section, the reference to "conduct[ing]" bingo is substituted for the former reference to "operat[ing]" bingo for consistency with other provisions of this subtitle. Similarly, in subsection (b) of this section, the former reference to "operat[ing]" bingo is deleted as included in the reference to "conduct[ing]" bingo.

In the introductory language of subsection (b) of this section, the phrase "if a legal resident of the county," is added for clarity and consistency with subsection (c) of this section.

In subsection (b)(9) of this section, the former reference to "corporations" is deleted in light of the reference to an "organization".

In subsection (c) of this section, the former phrase "regardless of the residence of the purchaser or lessee" is deleted as surplusage.

Also in subsection (c) of this section, the former reference to a "copartnership, firm, group, corporation or organization" is deleted as included in the defined term "person". *See* § 1-101 of this article.

In subsection (e) of this section, the former references to offering a prize or award "to any player" and to "no such player" are deleted as surplusage.

Defined terms: "County commissioners" § 13-1301

"Person" § 1-101

13-1307. PROHIBITED ACTS.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY VIOLATE § 13-1304 OR § 13-1305 OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 258A(f).

Defined term: "Person" § 1-101

SUBTITLE 14. GARRETT COUNTY.

13-1401. APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN GARRETT COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(a)(9).

The reference to "Subtitle 2 of this title" is substituted for the former reference to "this section" to reflect the reorganization of the general provisions on gaming events in specified counties contained in former Art. 27, § 255.

SUBTITLE 15. HARFORD COUNTY.

13-1501. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 254(a)(1).

In this section and throughout this subtitle, the references to this "subtitle" are substituted for the former references to this "section" to reflect the reorganization of material derived from former Art. 27, § 254 in this subtitle.

No other changes are made.

(B) BINGO.

"BINGO":

(1) INCLUDES INSTANT BINGO; BUT

(2) DOES NOT INCLUDE MEMBERS-ONLY INSTANT BINGO.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 254(a)(2).

(C) 50/50.

"50/50" MEANS A DRAWING FROM A FINITE NUMBER OF CHANCES IN WHICH THE PROCEEDS FROM THE SALE OF CHANCES ARE SPLIT EVENLY BETWEEN THE WINNER AND THE ORGANIZATION CONDUCTING THE GAME.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 254(e)(1).

The former phrase "[f]or the purposes of this subsection" is deleted in light of the reorganization of material derived from former Art. 27, § 254(e) in this subtitle.

(D) GAMING EVENT.

"GAMING EVENT" MEANS BINGO, MEMBERS-ONLY INSTANT BINGO, A RAFFLE, OR A PADDLE WHEEL.

REVISOR'S NOTE: This subsection is new language added to reflect the gaming activities authorized under this subtitle, and for consistency within this title.

(E) MEMBERS-ONLY INSTANT BINGO.

"MEMBERS-ONLY INSTANT BINGO" MEANS AN INSTANT BINGO GAME THAT IS LIMITED TO MEMBERS AND GUESTS OF AN ORGANIZATION LISTED IN § 13-1503(B) OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 254(a)(3).

(F) SHERIFF.

"SHERIFF" MEANS THE SHERIFF OF HARFORD COUNTY.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the full title "Sheriff of Harford County".

13-1502. SCOPE OF SUBTITLE.

(A) APPLICATION OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN HARFORD COUNTY.

(B) SLOT MACHINES AND COIN MACHINES NOT AUTHORIZED.

THIS SUBTITLE DOES NOT AUTHORIZE THE USE OF A SLOT MACHINE OR ANY TYPE OF COIN MACHINE FOR GAMBLING PURPOSES.

REVISOR'S NOTE: Subsection (a) of this section is new language added to state expressly that which only was implied in former Art. 27, § 254, *i.e.*, that this subtitle applies only in Harford County.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 254(h).

13-1503. GAMING EVENTS.

(A) LICENSE REQUIRED.

BEFORE AN ORGANIZATION CONDUCTS A GAMING EVENT UNDER THIS SUBTITLE, THE ORGANIZATION SHALL OBTAIN A LICENSE FROM THE SHERIFF.

(B) QUALIFIED ORGANIZATIONS.

THE FOLLOWING ORGANIZATIONS MAY OBTAIN A LICENSE TO CONDUCT A GAMING EVENT:

(1) A BONA FIDE RELIGIOUS GROUP THAT HAS CONDUCTED RELIGIOUS SERVICES AT A FIXED LOCATION IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A LICENSE;

(2) A STATE-CHARTERED ORGANIZATION AUTHORIZED BY A NATIONALLY CHARTERED VETERANS ORGANIZATION;

(3) A TAX-SUPPORTED VOLUNTEER FIRE COMPANY; OR

(4) A NONPROFIT ORGANIZATION THAT INTENDS TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE WHICH IS SPECIFICALLY DESCRIBED IN THE APPLICATION FOR A LICENSE.

(C) APPLICATION.

AN APPLICATION FOR A LICENSE SHALL CONTAIN A CERTIFICATION BY A PRINCIPAL OFFICER OF THE ORGANIZATION THAT STATES:

(1) THE SCHEDULED TIME AND PLACE OF THE GAMING EVENT AND THE DATE OF ANY RAFFLE DRAWING;

(2) THAT THE LICENSED ACTIVITIES WILL BE MANAGED AND CONDUCTED SOLELY AND PERSONALLY BY THE REGULAR MEMBERS OF THE ORGANIZATION WITHOUT THE ASSISTANCE OF GAMING PROFESSIONALS;

(3) THAT ALL MONEY PRIZES OFFERED WILL COMPLY WITH THE LIMITS LISTED IN THIS SUBTITLE;

(4) THAT THE ORGANIZATION, BY ONE OF ITS PRINCIPAL OFFICERS, SHALL, WITHIN 15 DAYS AFTER THE LAST DAY NAMED IN THE APPLICATION FOR CONDUCTING THE LICENSED ACTIVITIES, FILE A REPORT UNDER PENALTIES OF PERJURY CONTAINING THE INFORMATION REQUIRED BY § 13-1509 OF THIS SUBTITLE; AND

(5) IF THE ORGANIZATION IS A NONPROFIT ORGANIZATION THAT INTENDS TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE, A SPECIFIC DESCRIPTION OF THE PURPOSE.

(D) FEES.

THE SHERIFF SHALL CHARGE THE FOLLOWING LICENSE FEES:

(1) $ 5 FOR A BINGO LICENSE;

(2) $10 FOR A PADDLE WHEEL LICENSE;

(3) $10 FOR A RAFFLE LICENSE; AND

(4) $15 FOR A MEMBERS-ONLY INSTANT BINGO LICENSE.

(E) PROFESSIONAL INVOLVEMENT PROHIBITED.

AN ACTIVITY FOR WHICH A LICENSE IS ISSUED UNDER THIS SUBTITLE MUST BE CONDUCTED AND MANAGED SOLELY AND PERSONALLY BY REGULAR MEMBERS OF THE ORGANIZATION:

(1) WHO DO NOT REGULARLY CONDUCT GAMING ACTIVITIES FOR ANY OTHER ORGANIZATION; AND

(2) WITHOUT THE ASSISTANCE OF GAMING PROFESSIONALS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(b), (c), and, as it related to license fees, (d)(1).

In subsection (b)(4) of this section, the reference to "intend[ing]" to raise money is substituted for the former reference to "desiring" to raise money for consistency within this title.

In subsection (c)(1) of this section, the term "scheduled" is added for clarity.

In subsection (c)(2) of this section, the former reference to "operat[ing]" is deleted as included in the reference to "conduct[ing]".

Subsection (e) of this section is revised as a substantive prohibition on certain types of gaming involvement, rather than as a mere certification of intent in a license application, for clarity.

Defined terms: "Bingo" § 13-1501

"Gaming event" § 13-1501

"Members-only instant bingo" § 13-1501

"Sheriff" § 13-1501

13-1504. BINGO.

(A) LIMITATIONS.

(1) THE SHERIFF MAY NOT ISSUE TO A SINGLE ORGANIZATION IN 1 CALENDAR YEAR MORE THAN 52 BINGO LICENSES.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, NOT MORE THAN ONE BINGO LICENSE MAY BE ISSUED TO A SINGLE ORGANIZATION IN A SINGLE CALENDAR WEEK.

(3) A LICENSE TO CONDUCT BINGO IS VALID:

(I) FOR 24 CONSECUTIVE HOURS; OR

(II) IF THE LICENSE IS ISSUED FOR USE IN CONJUNCTION WITH AND AT A CARNIVAL, DURING CARNIVAL HOURS, AND FOR THE SHORTER OF THE DURATION OF THE CARNIVAL OR 14 CONSECUTIVE DAYS.

(B) PRIZE.

A MONEY PRIZE FOR A BINGO GAME MAY NOT EXCEED:

(1) $50; OR

(2) $1,000 FOR A JACKPOT.

(C) INSTANT BINGO -- LOCATION.

AN INSTANT BINGO GAME MAY BE SOLD AND PLAYED ONLY AT THE LOCATION LISTED ON THE LICENSE.

(D) SAME -- MINORS PROHIBITED.

A MINOR MAY NOT SELL OR PLAY INSTANT BINGO.

(E) PADDLE WHEEL LICENSE AS AUTHORIZATION TO CONDUCT BINGO.

A LICENSE TO OPERATE A PADDLE WHEEL SHALL ALSO OPERATE AS A LICENSE TO CONDUCT BINGO, IF AUTHORIZED BY THE SHERIFF ON REQUEST.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(d)(2), (f)(2), (c)(3)(i) as it related to bingo, and (f)(1) as it related to instant bingo.

In subsection (d) of this section, the defined term "minor" is substituted for the former phrase "person under the age of 18 years" for brevity.

Defined terms: "Bingo" § 13-1501

"Minor" § 1-101

"Sheriff" § 13-1501

13-1505. MEMBERS-ONLY INSTANT BINGO.

(A) DURATION OF LICENSE.

A MEMBERS-ONLY INSTANT BINGO LICENSE IS VALID FOR 3 MONTHS.

(B) LIMITATION.

THE SHERIFF MAY NOT ISSUE TO A SINGLE ORGANIZATION IN 1 CALENDAR YEAR MORE THAN FOUR LICENSES FOR MEMBERS-ONLY INSTANT BINGO.

(C) PRIZE.

A MONEY PRIZE FOR A MEMBERS-ONLY INSTANT BINGO GAME MAY NOT EXCEED $50.

(D) LOCATION.

A MEMBERS-ONLY INSTANT BINGO GAME MAY BE SOLD AND PLAYED ONLY AT THE LOCATION LISTED ON THE LICENSE.

REVISOR'S NOTE: This section is new language derived without substantive change from the second sentence of former Art. 27, § 254(d)(1) and, as they related to members-only instant bingo, (c)(3)(i), (d)(3)(i), and (f)(1).

Defined terms: "Members-only instant bingo" § 13-1501

"Sheriff" § 13-1501

13-1506. RAFFLES.

(A) LIMITATIONS.

(1) THE SHERIFF MAY NOT ISSUE TO A SINGLE ORGANIZATION IN 1 CALENDAR YEAR MORE THAN 12 RAFFLE LICENSES, NO MORE THAN ONE OF WHICH MAY BE FOR A RAFFLE WITH A MONEY PRIZE EXCEEDING $1,000.

(2) ALL RAFFLE DRAWINGS SHALL BE CONDUCTED IN 1 CALENDAR DAY.

(3) A RAFFLE LICENSE IS VALID UNTIL ALL RAFFLES ARE DRAWN.

(4) A RAFFLE LICENSE SHALL STATE THE DAY FOR THE DRAWING OR DRAWINGS.

(B) PRIZES.

A MONEY PRIZE FOR A RAFFLE MAY NOT EXCEED:

(1) $10,000 IF THE SPONSORING ORGANIZATION HAS NOT HELD A RAFFLE FOR A MONEY PRIZE EXCEEDING $1,000 IN THE CURRENT CALENDAR YEAR; OR

(2) $1,000 IF THE SPONSORING ORGANIZATION HAS HELD A RAFFLE FOR A MONEY PRIZE EXCEEDING $1,000 IN THE CURRENT CALENDAR YEAR.

(C) SECURITY REQUIRED.

AN ORGANIZATION THAT INTENDS TO CONDUCT A RAFFLE FOR A MONEY PRIZE EXCEEDING $1,000 SHALL:

(1) POST A BOND IN THE AMOUNT OF THE MONEY PRIZE; OR

(2) OBTAIN AN IRREVOCABLE LETTER OF CREDIT FROM A BANK IN THE AMOUNT OF THE MONEY PRIZE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(c)(3)(ii), (d)(5) and (6), and, as they related to raffles, (c)(3)(i) and (d)(3)(i).

Throughout this section, the references to a "money" prize are substituted for the former references to a "cash" prize for consistency within this title.

In subsection (a)(3) of this section, the reference to a raffle license being valid until "all raffles are drawn" is substituted for the former references to being valid until "the time of the drawing or drawings" for clarity.

In the introductory language of subsection (c) of this section, the phrase "intends to" is added to clarify that an organization must post a bond or obtain an irrevocable letter of credit before conducting the raffle.

Defined term: "Sheriff" § 13-1501

13-1507. PADDLE WHEELS.

(A) LIMITATIONS.

(1) THE SHERIFF MAY NOT ISSUE TO A SINGLE ORGANIZATION IN 1 CALENDAR YEAR MORE THAN 12 LICENSES FOR PADDLE WHEELS.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, NOT MORE THAN ONE PADDLE WHEEL LICENSE OR BINGO LICENSE MAY BE ISSUED TO A SINGLE ORGANIZATION IN A SINGLE CALENDAR WEEK.

(3) A LICENSE TO OPERATE PADDLE WHEELS IS VALID:

(I) FOR 24 CONSECUTIVE HOURS; OR

(II) IF THE LICENSE IS ISSUED FOR USE IN CONJUNCTION WITH AND AT A CARNIVAL, DURING CARNIVAL HOURS, AND FOR THE SHORTER OF THE DURATION OF THE CARNIVAL OR 14 CONSECUTIVE DAYS.

(B) PRIZE.

A MONEY PRIZE FOR A PADDLE WHEEL GAME MAY NOT EXCEED $10.

(C) AUTHORIZATION TO CONDUCT BINGO.

A LICENSE TO OPERATE A PADDLE WHEEL SHALL ALSO OPERATE AS A LICENSE TO CONDUCT BINGO, IF AUTHORIZED BY THE SHERIFF ON REQUEST.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(d)(2) and, as they related to paddle wheels, (c)(3)(i) and (d)(3) and (4).

In subsection (c) of this section, the reference to authorization "by the sheriff" is added for clarity.

Defined terms: "Bingo" § 13-1501

"Sheriff" § 13-1501

13-1508. 50/50.

(A) LICENSE NOT REQUIRED.

AN ORGANIZATION LISTED IN § 13-1503(B) OF THIS SUBTITLE MAY CONDUCT A GAME OF 50/50 WITHOUT A LICENSE.

(B) LOCATION.

A GAME OF 50/50 MAY ONLY BE CONDUCTED AT A MEETING OF THE ORGANIZATION.

(C) PRIZE.

A MONEY PRIZE FOR A GAME OF 50/50 MAY NOT EXCEED $50.

(D) MINORS PROHIBITED.

A MINOR MAY NOT PARTICIPATE IN A GAME OF 50/50.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(e)(2) through (5).

In subsection (c) of this section, the reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

Defined terms: "50/50" § 13-1501

"Minor" § 1-101

13-1509. REPORT.

WITHIN 15 DAYS AFTER THE LAST DAY OF LICENSED ACTIVITY NAMED IN THE LICENSE APPLICATION, ONE OF THE PRINCIPAL OFFICERS OF THE ORGANIZATION SHALL FILE A REPORT UNDER THE PENALTIES OF PERJURY CERTIFYING:

(1) THAT THE ACTIVITIES AUTHORIZED BY THE LICENSE WERE CONDUCTED AT THE TIME AND PLACE STATED IN THE APPLICATION SOLELY BY THE REGULAR MEMBERS OF THE ORGANIZATION WITHOUT THE ASSISTANCE OF GAMING PROFESSIONALS, AND THAT THE MEMBERS CONDUCTING THE ACTIVITIES DO NOT REGULARLY CONDUCT GAMING ACTIVITIES FOR ANY OTHER ORGANIZATION;

(2) THAT MONEY PRIZES WERE NOT OFFERED, EXCEPT AS AUTHORIZED UNDER THIS SUBTITLE; AND

(3) THE AMOUNT AND DISPOSITION OF THE CASH PROCEEDS OF THE ACTIVITIES AUTHORIZED BY THE LICENSE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(c)(4).

This section is revised as a substantive requirement to file a report with specified contents, rather than as a mere certification by an officer of an applicant organization that the organization will file the report, in light of the penalty for failing to file the report under § 13-1510(d) of this subtitle.

13-1510. REQUIREMENTS; PENALTY.

(A) UNLICENSED OPERATION.

AN ORGANIZATION MAY NOT CONDUCT A GAMING EVENT UNLESS THE ORGANIZATION HAS ACQUIRED THE APPROPRIATE LICENSE.

(B) OBEYING LICENSE -- ORGANIZATION.

AN ORGANIZATION SHALL OBEY THE TERMS OF A LICENSE.

(C) SAME -- PERSON SIGNING APPLICATION.

EACH PERSON WHO SIGNED AN APPLICATION FOR A LICENSE SHALL OBEY THE TERMS OF THE LICENSE.

(D) FILING REPORT.

A PERSON SHALL FILE THE REPORT REQUIRED UNDER § 13-1509 OF THIS SUBTITLE.

(E) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(F) SEPARATE VIOLATION.

EACH DAY THAT A GAMING EVENT IS OPERATED WITHOUT A LICENSE OR IN VIOLATION OF ANY OF THE TERMS OF THE LICENSE IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(h).

In subsection (d) of this section, the former reference to the "proper" report is deleted as surplusage.

In subsection (f) of this section, the reference to the "appropriate" license is substituted for the former reference to a "proper" license for clarity.

Defined terms: "Gaming event" § 13-1501

"Person" § 1-101

13-1511. DISQUALIFICATION.

(A) FAILURE TO REPORT.

AN ORGANIZATION THAT FAILS TO FILE A REPORT REQUIRED BY § 13-1509 OF THIS SUBTITLE IS NOT ENTITLED TO A LICENSE UNDER THIS SUBTITLE UNTIL THE LATER OF:

(1) 1 YEAR AFTER THE DATE THE REPORT IS DUE; OR

(2) THE DAY THE REPORT IS FILED PROPERLY.

(B) CONVICTION OF GAMBLING VIOLATION.

AN ORGANIZATION THAT IS CONVICTED OF VIOLATING A GAMBLING LAW OF THIS STATE MAY NOT BE ISSUED A LICENSE UNDER THIS SUBTITLE UNTIL 1 MONTH AFTER THE DATE OF CONVICTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(g) and (i).

In subsection (a) of this section, the former reference to a "proper" report is deleted as surplusage.

13-1512. ENFORCEMENT.

THE SHERIFF, OTHER PEACE OFFICERS OF THE COUNTY, AND MUNICIPAL POLICE IN THE COUNTY SHALL ENFORCE THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 254(j).

The reference to "other" peace officers is added to avoid implying that the sheriff is not a peace officer.

Defined term: "Sheriff" § 13-1501

SUBTITLE 16. HOWARD COUNTY.

13-1601. SCOPE OF SUBTITLE.

(A) IN GENERAL.

THIS SUBTITLE APPLIES ONLY IN HOWARD COUNTY.

(B) APPLICATION OF SUBTITLE 2 OF THIS TITLE.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, SUBTITLE 2 OF THIS TITLE APPLIES IN HOWARD COUNTY.

(2) SUBTITLE 2 OF THIS TITLE DOES NOT APPLY TO BINGO REGULATED UNDER § 13-1602 OF THIS SUBTITLE.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify the scope of this subtitle.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 255(a)(10) and (g)(1) and (2).

13-1602. BINGO.

(A) QUALIFIED ORGANIZATIONS.

ANY OF THE FOLLOWING ORGANIZATIONS MAY CONDUCT BINGO TO BENEFIT CHARITY IN THE COUNTY OR TO FURTHER THE PURPOSES OF THE ORGANIZATION:

(1) A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) PATRIOTIC ORGANIZATION;

(IV) EDUCATIONAL ORGANIZATION; OR

(V) CHARITABLE ORGANIZATION; OR

(2) A VOLUNTEER FIRE COMPANY.

(B) OPERATION BY COUNTY RESIDENTS ONLY.

A PERSON WHO IS NOT A LEGAL RESIDENT OF THE COUNTY MAY NOT CONDUCT BINGO IN THE COUNTY, EVEN IF THE GAME IS FOR THE BENEFIT OF AN ORGANIZATION LISTED IN SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 250.

In subsection (a) of this section, the former references to "corporations" and a "corporation" are deleted as included in the references to an "organization".

Also in subsection (a) of this section, the former term "operate" is deleted as redundant of "conduct". Similarly, in subsection (b) of this section, the term "conduct" is substituted for the former term "operate" for consistency with other subtitles in this article.

Also in subsection (a) of this section, the former reference to a "game of" bingo is deleted for consistency within this title.

In subsection (b) of this section, the defined term "person" is substituted for the former reference to an "individual, partnership, corporation, group, or organization" for clarity. *See* § 1-101 of this article.

Defined term: "Person" § 1-101

13-1603. OTHER GAMING EVENTS.

A QUALIFIED ORGANIZATION UNDER SUBTITLE 2 OF THIS TITLE MAY AWARD PRIZES IN MONEY OR MERCHANDISE USING:

(1) A PADDLE WHEEL;

(2) A WHEEL OF FORTUNE;

(3) A CHANCE BOOK;

(4) BINGO; OR

(5) ANY OTHER GAMING DEVICE EXCEPT:

(I) A CARD GAME;

(II) A DICE GAME; OR

(III) ROULETTE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(g)(3)(ii).

The reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

The former reference to devices "commonly designated as" the listed devices is deleted as surplusage.

13-1604. PROHIBITED ACTIVITIES.

NOTWITHSTANDING SUBTITLE 2 OF THIS TITLE, A PERSON MAY NOT CONDUCT A CASINO NIGHT OR OPERATE ANY OF THE FOLLOWING GAMING DEVICES:

(1) A CARD GAME;

(2) A DICE GAME; OR

(3) ROULETTE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(g)(3)(i).

The reference to a "person" is added to clarify who is prohibited from

performing the specified activities.

The former reference to "any events commonly known as" casino nights is deleted as surplusage.

Defined term: "Person" § 1-101

SUBTITLE 17. KENT COUNTY.

13-1701. 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, § 253(a)(1)(i).

The reference to this "subtitle" is substituted for the former reference to this "section" although this subtitle is derived, in part, from material outside former Art. 27, § 253. Only § 13-1705 of this subtitle, which is derived from former Art. 27, § 247 as it related to Kent County, is also included in this subtitle, and it does not use any of the terms defined in this section. No substantive change results.

(B) COUNTY COMMISSIONERS.

"COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF KENT COUNTY.

REVISOR'S NOTE: This subsection is new language added for consistency within this title and brevity.

(C) PERMIT.

"PERMIT" MEANS:

(1) A MULTIPLE GAMING DEVICE PERMIT ISSUED UNDER § 13-1703 OF THIS SUBTITLE; OR

(2) A RAFFLE PERMIT ISSUED UNDER § 13-1704 OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 253(a)(1)(ii).

(D) RAFFLE.

"RAFFLE" MEANS A LOTTERY IN WHICH A PRIZE IS WON BY A PERSON WHO BUYS A PAPER CHANCE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 253(a)(1)(iii)1.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the reference to a "paper" chance may be overly specific.

Defined term: "Person" § 1-101

13-1702. SCOPE OF SUBTITLE.

(A) APPLICATION OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN KENT COUNTY.

(B) SLOT MACHINES.

THIS SUBTITLE DOES NOT AUTHORIZE GAMBLING USING A SLOT MACHINE OR COIN MACHINE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253(a)(2) and the first sentence of (6).

The second sentence of former Art. 27, § 253(a)(6), which stated that slot machines are regulated under [former] § 264B, is deleted as surplusage.

For current State provisions on slot machines, *see* Title 12, Subtitle 3 of this article.

13-1703. GAMING -- ELIGIBLE ORGANIZATIONS.

(A) PERMIT REQUIRED.

THE COUNTY COMMISSIONERS MAY ISSUE A PERMIT TO AN ORGANIZATION SPECIFIED IN SUBSECTION (C) OF THIS SECTION TO USE TWO OR MORE OF THE FOLLOWING GAMING DEVICES IN CONDUCTING A FUNDRAISER AT WHICH A PRIZE OF MERCHANDISE OR MONEY MAY BE AWARDED:

(1) A PADDLE WHEEL;

(2) A WHEEL OF FORTUNE;

(3) A CHANCE BOOK;

(4) A CARD GAME;

(5) A RAFFLE; OR

(6) ANY OTHER GAMING DEVICE.

(B) EXCEPTION.

UNLESS CONDUCTED AT AN EVENT REQUIRING A PERMIT UNDER SUBSECTION (A) OF THIS SECTION, A RAFFLE IS NOT A MULTIPLE GAMING DEVICE REGULATED UNDER THIS SECTION.

(C) QUALIFIED ORGANIZATIONS.

(1) IN THIS SUBSECTION, "CHARITY" MEANS AN ORGANIZATION, INSTITUTION, ASSOCIATION, SOCIETY, OR CORPORATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE.

(2) THE COUNTY COMMISSIONERS MAY ISSUE A PERMIT TO USE MULTIPLE GAMING DEVICES TO:

(I) A BONA FIDE RELIGIOUS ORGANIZATION THAT HAS CONDUCTED RELIGIOUS SERVICES AT THE SAME LOCATION IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A PERMIT;

(II) A COUNTY-SUPPORTED OR MUNICIPALLY SUPPORTED VOLUNTEER FIRE COMPANY OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE VOLUNTEER FIRE COMPANY OR AUXILIARY UNIT;

(III) A NATIONALLY CHARTERED VETERANS' ORGANIZATION OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE VETERANS' ORGANIZATION;

(IV) FOR THE PURPOSE OF CONDUCTING A FUNDRAISER FOR THE BENEFIT OF A CHARITY LOCATED IN THE COUNTY, A BONA FIDE:

1. FRATERNAL ORGANIZATION;

2. EDUCATIONAL ORGANIZATION;

3. CIVIC ORGANIZATION;

4. PATRIOTIC ORGANIZATION; OR

5. CHARITABLE ORGANIZATION; OR

(V) A BONA FIDE NONPROFIT ORGANIZATION THAT:

1. HAS OPERATED ON A NONPROFIT BASIS IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A PERMIT; AND

2. INTENDS TO USE THE MULTIPLE GAMING DEVICES TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE SPECIFICALLY DESCRIBED IN THE PERMIT APPLICATION.

(D) APPLICATION.

BEFORE ISSUING A PERMIT, THE COUNTY COMMISSIONERS SHALL DETERMINE THAT THE ORGANIZATION SEEKING THE PERMIT:

(1) IS ORGANIZED IN AND SERVES THE RESIDENTS OF THE COUNTY; AND

(2) MEETS THE CONDITIONS OF THIS SUBTITLE.

(E) PERMIT.

(1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERMIT IS VALID FOR ONE EVENT THAT DOES NOT LAST LONGER THAN 6 HOURS.

(II) THE COUNTY COMMISSIONERS MAY ISSUE A PERMIT FOR AN EVENT LONGER THAN 6 HOURS IF THE PERMIT HOLDER DOES NOT SEEK MORE THAN ONE PERMIT IN THE SAME YEAR.

(2) THE COUNTY COMMISSIONERS MAY NOT APPROVE A PERMIT FOR GAMING EVENTS TO BE HELD ON PREMISES THAT ARE LICENSED UNDER A CLASS B OR CLASS D ALCOHOLIC BEVERAGES LICENSE.

(3) THE COUNTY COMMISSIONERS MAY NOT ISSUE MORE THAN TWO PERMITS TO AN ORGANIZATION IN A SINGLE YEAR.

(4) THE COUNTY COMMISSIONERS MAY:

(I) CHARGE A FEE SET BY RESOLUTION FOR EACH PERMIT;

(II) SET THE NUMBER OF PERMITS THAT MAY BE ISSUED EACH YEAR; AND

(III) ADOPT REGULATIONS GOVERNING PERMIT APPLICATIONS AND THE ISSUANCE OF PERMITS.

(F) LIMITATIONS.

(1) AN ORGANIZATION THAT IS ISSUED A PERMIT SHALL CONDUCT ITS FUNDRAISER IN A:

(I) STRUCTURE THAT THE ORGANIZATION OWNS, LEASES, OR OCCUPIES;

(II) STRUCTURE THAT ANY ORGANIZATION THAT WOULD QUALIFY FOR A PERMIT OWNS, LEASES, OR OCCUPIES; OR

(III) PUBLIC LOCATION THAT IS:

1. DESCRIBED IN THE PERMIT APPLICATION; AND

2. APPROVED BY THE STATE'S ATTORNEY FOR THE COUNTY.

(2) (I) UNLESS THE COUNTY COMMISSIONERS GRANT A WAIVER, ONLY A RESIDENT OF THE COUNTY MAY MANAGE AND OPERATE A FUNDRAISER FOR WHICH A PERMIT IS ISSUED ON BEHALF OF THE PERMIT HOLDER.

(II) EACH PERMIT HOLDER SHALL DESIGNATE AN INDIVIDUAL TO BE RESPONSIBLE FOR COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS SUBTITLE AND A PERMIT ISSUED UNDER THIS SUBTITLE.

(III) A PERSON MAY NOT BE COMPENSATED FOR OPERATING THE GAMING ACTIVITY CONDUCTED UNDER A PERMIT.

(G) FINANCIAL ACCOUNTING.

(1) THE PERMIT HOLDER SHALL USE AT LEAST ONE-HALF OF THE FUNDS RAISED USING THE PERMIT FOR CIVIC, CHARITABLE, OR EDUCATIONAL PURPOSES.

(2) WITHIN 30 DAYS AFTER A FUNDRAISER, THE PERMIT HOLDER SHALL SEND TO THE COUNTY COMMISSIONERS:

(I) AN ACCOUNTING OF ALL FUNDS RECEIVED OR PLEDGED;

(II) AN ACCOUNTING OF ALL EXPENSES PAID OR INCURRED; AND

(III) A STATEMENT UNDER OATH OF THE APPLICATION OF THE NET PROFITS.

(H) DISQUALIFICATION.

THE COUNTY COMMISSIONERS MAY DENY A PERMIT FOR NOT MORE THAN 3 YEARS TO AN ORGANIZATION THAT VIOLATES THIS SUBTITLE OR REGULATIONS ADOPTED UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253(a)(1)(iii)2 and (3) through (5), (b) through (g), and (i).

Subsection (c)(2) of this section is restated as an affirmative grant of authority to issue permits to certain organizations for clarity.

In subsection (c)(2) of this section, the former limitation "[n]otwithstanding any other provision of this article," is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

In subsection (c)(2)(v)2 of this section, the phrase "intends to use two or more gaming devices" is added to clarify that the permit is for the use of multiple gaming devices.

Also in subsection (c)(2)(v)2 of this section, the phrase "multiple gaming devices" is added for clarity.

In subsection (e)(1)(ii) of this section, the reference to the "same" year is added for clarity.

In subsection (e)(2) of this section, the reference to "[t]he county commissioners" is added to clarify who is prohibited from issuing the permit.

In subsection (e)(3)(ii) of this section, the former reference to permits issued to "organizations" is deleted as surplusage.

In subsection (f)(1) of this section, the reference to an "organization that is issued a permit" is substituted for the former reference to "organization receiving the permit" for clarity and brevity.

In subsection (f)(2)(i) of this section, the reference to "a resident of" is substituted for the former reference to "individuals domiciled" for clarity.

In subsection (f)(2)(ii) of this section, the reference to "[e]ach permit holder" is substituted for the former reference to "[e]ach organization" for clarity.

In subsection (f)(2)(iii) of this section, the former reference to "management" of a gaming activity is deleted as included in the reference to "operating" a gaming activity.

In subsection (g)(1) of this section, the reference to "[t]he permit holder" is added to clarify which entity has the obligation imposed under this section.

Also in subsection (g)(1) of this section, the phrase "raised using the permit" is substituted for the former phrase "derived from a multiple gaming device fundraiser that permits the use of two or more gaming devices" for brevity.

In subsection (h) of this section, the former reference to "the provisions of" is deleted as surplusage.

Defined terms: "County commissioners" § 13-1701

"Permit" § 13-1701

"Person" § 1-101

"Raffle" § 13-1701

13-1704. RAFFLES.

(A) IN GENERAL.

THE COUNTY COMMISSIONERS MAY ISSUE A RAFFLE PERMIT TO AN ORGANIZATION THAT QUALIFIES FOR A PERMIT UNDER THIS SUBTITLE OR UNDER REGULATIONS THAT THE COUNTY COMMISSIONERS ADOPT.

(B) DURATION OF PERMIT.

THE HOLDER OF A RAFFLE PERMIT MUST AWARD THE LAST PRIZE IN THE RAFFLE WITHIN 1 YEAR AFTER THE DATE THAT THE PERMIT FOR THE RAFFLE IS ISSUED.

(C) LIMITATION ON NUMBER.

THE COUNTY COMMISSIONERS MAY REGULATE THE NUMBER OF RAFFLE PERMITS THAT AN ORGANIZATION MAY BE ISSUED IN 1 YEAR.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253(h).

In subsection (b) of this section, the reference to "[t]he holder of a raffle permit" is added to clarify which entity has the obligation to award the prize within 1 year.

Defined terms: "County commissioners" § 13-1701

"Permit" § 13-1701

"Raffle" § 13-1701

13-1705. BINGO.

TO BENEFIT CHARITY IN THE COUNTY OR TO FURTHER THE PURPOSES OF AN ORGANIZATION QUALIFIED TO CONDUCT BINGO UNDER THIS SECTION, AN ORGANIZATION MAY CONDUCT BINGO IF THE ORGANIZATION IS A BONA FIDE:

(1) RELIGIOUS ORGANIZATION;

(2) FRATERNAL ORGANIZATION;

(3) WAR VETERANS' ORGANIZATION;

(4) CHARITABLE ORGANIZATION; OR

(5) VOLUNTEER FIRE COMPANY OPERATING IN A COMMUNITY THAT DOES NOT HAVE A PAID FIRE DEPARTMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 247(a), as it related to Kent County.

The former reference to "operat[ing]" bingo is deleted as included in the reference to "conduct[ing]" bingo.

In item (4) of this section, the former reference to charitable "corporations" is deleted as included in the reference to a charitable "organization".

13-1706. PENALTIES.

(A) IN GENERAL.

A PERSON WHO VIOLATES A PROVISION OF §§ 13-1702 THROUGH 13-1704 OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(B) SEPARATE VIOLATION.

EACH DAY THAT A PERSON IS IN VIOLATION UNDER THIS SECTION IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 253(j).

In subsection (b) of this section, the reference to a separate "violation" is substituted for the former reference to a separate "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

SUBTITLE 18. MONTGOMERY COUNTY.

13-1801. DEFINITIONS.

(A) IN GENERAL.

IN 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) BREAKOUT TICKET.

"BREAKOUT TICKET" INCLUDES INSTANT BINGO, NEVADA CLUB, LUCKY SEVEN, AND SIMILAR GAMES.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255B(b)(10).

(C) QUALIFIED ORGANIZATION.

(1) "QUALIFIED ORGANIZATION" MEANS A BONA FIDE NONPROFIT ORGANIZATION QUALIFIED UNDER 26 U.S.C. § 501(C)(3), (4), (7), OR (10).

(2) "QUALIFIED ORGANIZATION" INCLUDES:

(I) A RELIGIOUS ORGANIZATION;

(II) A VOLUNTEER FIRE COMPANY;

(III) A VOLUNTEER RESCUE SQUAD;

(IV) A FRATERNAL ORGANIZATION;

(V) A PATRIOTIC ORGANIZATION;

(VI) AN EDUCATIONAL ORGANIZATION; AND

(VII) A CHARITABLE ORGANIZATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255B(a)(1), as it related to organizations that are authorized to hold bingo games or raffles. It is revised as a definition for clarity and brevity.

In paragraph (2)(iv) and (vii) of this section, the former references to a "corporation" are deleted as included in the references to an "organization".

13-1802. SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN MONTGOMERY COUNTY.

REVISOR'S NOTE: This section is new language added to clarify that this subtitle applies only in Montgomery County.

13-1803. BINGO -- IN GENERAL.

(A) AUTHORIZED.

(1) A QUALIFIED ORGANIZATION MAY CONDUCT BINGO IN THE COUNTY TO BENEFIT CHARITY OR TO FURTHER THE PURPOSE OF THE QUALIFIED ORGANIZATION.

(2) BINGO SHALL BE CONDUCTED ONLY BY THE QUALIFIED ORGANIZATION AND NOT BY A PERSON WHO:

(I) RETAINS A PORTION OF THE PROCEEDS FROM THE BINGO GAME; OR

(II) IS COMPENSATED BY THE QUALIFIED ORGANIZATION FOR WHICH THE BINGO IS HELD.

(3) A PERSON MAY NOT RECEIVE A PRIVATE PROFIT FROM THE PROCEEDS OF BINGO.

(4) A QUALIFIED ORGANIZATION THAT CONDUCTS BINGO SHALL:

(I) KEEP ACCURATE RECORDS OF ALL TRANSACTIONS THAT OCCUR ON BEHALF OF THE BINGO GAME;

(II) KEEP THE RECORDS FOR 2 YEARS AFTER THE BINGO GAME; AND

(III) ON REQUEST, MAKE THE RECORDS AVAILABLE FOR EXAMINATION BY:

1. THE STATE'S ATTORNEY FOR THE COUNTY;

2. THE COUNTY SHERIFF;

3. THE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES;

4. THE COUNTY ATTORNEY;

5. THE DEPARTMENT OF STATE POLICE; OR

6. A DESIGNATED OFFICER OR AGENT OF ANY OF THOSE UNITS.

(5) A PERSON CONDUCTING BINGO SHALL BE A RESIDENT OF THE COUNTY AND A MEMBER OF THE QUALIFIED ORGANIZATION.

(6) ALCOHOLIC BEVERAGES MAY NOT BE SOLD OR CONSUMED IN THE ROOM IN WHICH BINGO IS CONDUCTED, EITHER DURING A GAME OR AN INTERMISSION BETWEEN GAMES.

(7) MONEY PRIZES NOT EXCEEDING $500 IN EACH GAME MAY BE AWARDED IN BINGO.

(8) THE QUALIFIED ORGANIZATION MAY SELL BREAKOUT TICKETS IN THE ROOM IN WHICH BINGO IS CONDUCTED, EITHER DURING A GAME OR AN INTERMISSION BETWEEN GAMES.

(B) MONTGOMERY COUNTY FAIR.

(1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A PERSON MAY CONDUCT BINGO AT THE ANNUAL MONTGOMERY COUNTY FAIR FOR THE BENEFIT OF THE MONTGOMERY COUNTY AGRICULTURAL CENTER, INC.

(2) A PERSON WHO CONDUCTS BINGO UNDER THIS SUBSECTION MAY AWARD ONLY NONCASH PRIZES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B (c), (a)(1), (3), and (4) as they related to the rights, privileges, and duties of a person who conducts a raffle, and (b)(1), (6), (8), and, as it related to breakout tickets, (10).

Subsection (a)(1) of this section is restated as an affirmative grant of authority to certain organizations to conduct bingo under this subtitle for clarity.

In this section and throughout this subtitle, the references to "conduct[ing] bingo" are substituted for the former references to "operat[ing] a bingo game" and "hold[ing] a bingo game" for consistency within this title.

In subsection (a)(1) of this section, the former limitation

"[n]otwithstanding the provisions of this subtitle [sic]," is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in this revision in Titles 12 and 13 of this article.

In subsection (a)(3) of this section and throughout this subtitle, the defined term "person" is substituted for the former reference to a "person, or legal or business entity" for clarity and brevity. Similarly, in subsection (a)(5) of this section and throughout this subtitle, the reference to "person" is substituted for the former reference to "individual" for consistency within this subtitle. *See* § 1-101 of this article.

Also in subsection (a)(3) of this section and throughout this subtitle, the former redundant phrase "which operates the game" is deleted for brevity and clarity.

Also in subsection (a)(3) of this section, the former reference to "gain" is deleted as included in the reference to "profit".

In subsection (a)(4)(i) and (ii) of this section and throughout this subtitle, the former redundant reference to "books" is deleted as included in the reference to "records".

In subsection (a)(4)(ii) and throughout this subtitle, the former redundant reference to a record "that is recorded" is deleted for clarity and brevity.

In subsection (b)(1) of this section, the reference to "the benefit of" the Montgomery County Agricultural Center, Inc. is added for clarity.

Defined terms: "Breakout ticket" § 13-1801

"Person" § 1-101

"Qualified organization" § 13-1801

13-1804. SAME -- LICENSE REQUIRED.

A QUALIFIED ORGANIZATION THAT CONDUCTS BINGO IN THE COUNTY SHALL BE LICENSED BY THE COUNTY UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(a)(2)(ii).

Throughout this subtitle, the phrase "under this subtitle" is added for clarity.

The former redundant phrase "[i]f operating the game of bingo" is deleted as surplusage.

Defined term: "Qualified organization" § 13-1801

13-1805. SAME -- QUALIFICATION OF APPLICANTS.

A QUALIFIED ORGANIZATION THAT CONDUCTS BINGO IN THE COUNTY SHALL BE LOCATED IN THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(a)(2)(i).

Defined term: "Qualified organization" § 13-1801

13-1806. SAME -- LICENSE APPLICATION.

(A) IN GENERAL.

A QUALIFIED ORGANIZATION THAT INTENDS TO CONDUCT BINGO SHALL SUBMIT A BINGO LICENSE APPLICATION ON A FORM THAT THE COUNTY PROVIDES.

(B) CONTENTS.

A QUALIFIED ORGANIZATION SHALL DISCLOSE THE FOLLOWING INFORMATION ON THE LICENSE APPLICATION:

(1) THE NAME OF THE QUALIFIED ORGANIZATION, AND THE NAMES AND ADDRESSES OF ITS OFFICERS AND DIRECTORS;

(2) A COMPLETE STATEMENT OF THE PURPOSES AND OBJECTIVES OF THE QUALIFIED ORGANIZATION AND THE PURPOSES FOR WHICH THE QUALIFIED ORGANIZATION WILL USE THE PROCEEDS FROM THE BINGO;

(3) A STATEMENT UNDER OATH BY THE PRESIDENT AND TREASURER, OR THE CHIEF EXECUTIVE AND FISCAL OFFICER, OF THE QUALIFIED ORGANIZATION THAT:

(I) AN AGREEMENT DOES NOT EXIST TO DIVERT ANY OF THE PROCEEDS OF THE BINGO TO ANOTHER PERSON; AND

(II) ANOTHER PERSON WILL NOT RECEIVE ANY OF THE PROCEEDS OF THE BINGO EXCEPT TO FURTHER THE PURPOSE OF THE QUALIFIED ORGANIZATION; AND

(4) ANY ADDITIONAL INFORMATION THAT THE COUNTY REQUIRES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(b)(2).

The former redundant reference to the requirement that a qualified organization secure a license from the county is deleted in light of § 13-1804 of this subtitle, which requires a qualified organization to obtain a license to conduct bingo.

In subsection (a) of this section, the reference to "submit[ting]" an

application is substituted for the former reference to "ma[king]" an application for clarity and consistency within this title.

In subsection (b) of this section, the former redundant phrase "with respect to the nonprofit organization" is deleted for brevity and clarity, as the concept is repeated in all of the relevant following paragraphs.

In subsection (b)(2) of this section, the former reference to a "full" statement is deleted as included in the reference to a "complete" statement.

Defined terms: "Person" § 1-101

"Qualified organization" § 13-1801

13-1807. SAME -- LICENSE ISSUANCE.

THE COUNTY MAY ISSUE AN ANNUAL BINGO LICENSE AUTHORIZING THE HOLDER TO CONDUCT BINGO AT A SPECIFIED FIXED LOCATION:

(1) AT ANY TIME DURING THE YEAR FOR WHICH THE LICENSE IS ISSUED; BUT

(2) NOT TO EXCEED TWICE IN ANY 1 WEEK.

REVISOR'S NOTE: This section is new language derived without substantive change from the first sentence of former Art. 27, § 255B(b)(3).

In this section, the introductory phrase "the county may issue" is added to clarify the entity that issues the bingo license.

13-1808. SAME -- TEMPORARY LICENSE.

(A) IN GENERAL.

THE COUNTY MAY ISSUE:

(1) ONE TEMPORARY 10-DAY BINGO LICENSE TO EACH APPLICANT EACH CALENDAR YEAR AT A FEE DETERMINED BY THE COUNTY; OR

(2) A 1-DAY BINGO LICENSE AT A FEE DETERMINED BY THE COUNTY, NOT TO EXCEED THREE 1-DAY LICENSES TO EACH APPLICANT EACH CALENDAR YEAR, AUTHORIZING THE HOLDER TO CONDUCT BINGO AT A SPECIFIED FIXED LOCATION FOR 1 DAY.

(B) LIMITATION.

A TEMPORARY 10-DAY BINGO LICENSE AUTHORIZES THE HOLDER TO CONDUCT BINGO AT A SPECIFIED FIXED LOCATION FOR A MAXIMUM OF 10 DAYS IN ANY 1 YEAR.

REVISOR'S NOTE: This section is new language derived without substantive change from the first and second sentences of former Art. 27, § 255B(b)(4)

and the first and third sentences of (5).

In the introductory language of subsection (a) of this section, the phrase "[t]he county may issue" is added to clarify which entity issues the bingo license.

13-1809. SAME -- ADMINISTRATIVE PROVISIONS.

(A) IN GENERAL.

THE COUNTY SHALL:

(1) ADOPT REGULATIONS FOR THE CONDUCT OF BINGO;

(2) ESTABLISH LICENSE FEES, BASED ON THE ADMINISTRATIVE COST OF REGULATING BINGO AND ISSUING EACH CLASS OF LICENSE; AND

(3) ESTABLISH THE HOURS OF OPERATION FOR BINGO.

(B) DISQUALIFICATION OF LICENSEE.

AFTER A PUBLIC HEARING, THE COUNTY MAY REVOKE A BINGO LICENSE FOR FAILURE OF THE HOLDER TO COMPLY WITH THIS SUBTITLE OR REGULATIONS ADOPTED UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(b)(7) and (9).

In this section, the former redundant phrase "additional regulations deemed necessary" is deleted for brevity.

The second sentence of former Art. 27, § 255B(b)(3), the third sentence of former Art. 27, § 255B(b)(4), and the second sentence of former Art. 27, § 255B(b)(5), which required payment of certain license fees, are deleted in light of subsection (a)(2) of this section.

13-1810. RAFFLES -- IN GENERAL.

(A) AUTHORIZED.

A QUALIFIED ORGANIZATION MAY CONDUCT A RAFFLE IN THE COUNTY TO BENEFIT CHARITY OR TO FURTHER THE PURPOSE OF THE QUALIFIED ORGANIZATION.

(B) CONDUCTED BY QUALIFIED ORGANIZATION.

A RAFFLE SHALL BE CONDUCTED BY A QUALIFIED ORGANIZATION AND NOT BY A PERSON WHO:

(1) RETAINS A PORTION OF THE PROCEEDS FROM THE RAFFLE; OR

(2) IS COMPENSATED BY THE QUALIFIED ORGANIZATION FOR WHICH THE RAFFLE IS HELD.

(C) PRIVATE PROFIT PROHIBITED.

A PERSON MAY NOT RECEIVE A PRIVATE PROFIT FROM THE PROCEEDS OF A RAFFLE.

(D) RECORD KEEPING.

A QUALIFIED ORGANIZATION THAT CONDUCTS A RAFFLE SHALL:

(1) KEEP ACCURATE RECORDS OF ALL TRANSACTIONS THAT OCCUR ON BEHALF OF THE RAFFLE;

(2) KEEP THE RECORDS FOR 2 YEARS AFTER THE RAFFLE; AND

(3) ON REQUEST, MAKE THE RECORDS AVAILABLE FOR EXAMINATION BY:

(I) THE STATE'S ATTORNEY FOR THE COUNTY;

(II) THE COUNTY SHERIFF;

(III) THE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES;

(IV) THE COUNTY ATTORNEY;

(V) THE DEPARTMENT OF STATE POLICE; OR

(VI) A DESIGNATED OFFICER OR AGENT OF ANY OF THOSE UNITS.

(E) RESIDENCY REQUIREMENT.

A PERSON OPERATING A RAFFLE SHALL BE A RESIDENT OF THE COUNTY AND A MEMBER OF THE QUALIFIED ORGANIZATION.

(F) PRIZE -- MONEY OR MERCHANDISE.

PRIZES OF MONEY OR MERCHANDISE MAY BE AWARDED IN A RAFFLE CONDUCTED UNDER THIS SUBTITLE.

(G) SAME -- REAL PROPERTY.

FOR A RAFFLE OF REAL PROPERTY, THE REQUIREMENTS OF THIS SECTION ARE IN ADDITION TO THE REQUIREMENTS OF § 12-106(A) OF THIS ARTICLE.

(H) LIMITATION ON NUMBER OF RAFFLES YEARLY; EXCEPTION.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A QUALIFIED ORGANIZATION MAY NOT CONDUCT MORE THAN 12 RAFFLES EACH YEAR.

(2) THERE IS NO LIMIT TO THE NUMBER OF 50/50 RAFFLES THAT A QUALIFIED ORGANIZATION MAY CONDUCT IF THE PRIZE FOR EACH 50/50 RAFFLE DOES NOT EXCEED $300.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(a)(1), (3), and (4), as they related to the rights, privileges, and duties of a person who conducts a raffle, and (d)(1), (3), (5), (6), and, as it related to the rights, privileges, and duties of a person who conducts a raffle, (8).

Subsection (a) of this section is revised as an affirmative grant of authority to certain qualified organizations to conduct raffles for clarity.

In subsection (a) of this section, the former limitation "[n]otwithstanding the provisions of this subtitle" [sic] is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

In subsection (b) of this section, the former phrase "which operates the game" is deleted as implicit in the reference to "conduct[ing]" the raffle.

Also in subsection (b) of this section, the reference to proceeds derived "from the raffle" is added for clarity.

In subsection (f) of this section, the reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

In subsection (h)(1) of this section, the phrase "[e]xcept as provided in paragraph (2) of this subsection" is added for clarity.

Defined term: "Qualified organization" § 13-1801

13-1811. SAME -- PERMIT REQUIRED; EXCEPTION.

(A) PERMIT REQUIRED.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A QUALIFIED ORGANIZATION THAT INTENDS TO CONDUCT A RAFFLE IN THE COUNTY SHALL OBTAIN A PERMIT FROM THE COUNTY.

(B) EXCEPTION.

A PERMIT IS NOT REQUIRED TO CONDUCT A 50/50 RAFFLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(d)(8), as it related to permit exception and the first sentence of (2).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section is not limited to raffles with small prizes.

Defined term: "Qualified organization" § 13-1801

13-1812. SAME -- QUALIFICATION OF APPLICANTS.

A QUALIFIED ORGANIZATION THAT CONDUCTS A RAFFLE IN THE COUNTY SHALL BE LOCATED IN THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(a)(2)(i), as it related to raffles.

Defined term: "Qualified organization" § 13-1801

13-1813. SAME -- PERMIT APPLICATION.

(A) IN GENERAL.

A QUALIFIED ORGANIZATION SHALL APPLY FOR A RAFFLE PERMIT ON A FORM THAT THE COUNTY PROVIDES.

(B) CONTENTS.

A QUALIFIED ORGANIZATION SHALL DISCLOSE THE FOLLOWING INFORMATION ON THE PERMIT APPLICATION:

(1) THE NAME OF THE QUALIFIED ORGANIZATION, AND THE NAMES AND ADDRESSES OF ITS OFFICERS AND DIRECTORS;

(2) A COMPLETE STATEMENT OF THE PURPOSES AND OBJECTIVES OF THE QUALIFIED ORGANIZATION, AND THE PURPOSES FOR WHICH THE QUALIFIED ORGANIZATION WILL USE THE PROCEEDS FROM THE RAFFLE;

(3) A STATEMENT UNDER OATH BY THE PRESIDENT AND TREASURER, OR THE CHIEF EXECUTIVE AND FISCAL OFFICER, OF THE QUALIFIED ORGANIZATION THAT:

(I) AN AGREEMENT DOES NOT EXIST TO DIVERT ANY OF THE PROCEEDS OF THE RAFFLE TO ANOTHER; AND

(II) ANOTHER PERSON WILL NOT RECEIVE ANY OF THE PROCEEDS OF THE RAFFLE EXCEPT TO FURTHER THE PURPOSE OF THE QUALIFIED ORGANIZATION;

(4) IN THE CASE OF A RAFFLE OF REAL PROPERTY, UNDER § 12-106(A) OF THIS ARTICLE, A COPY OF THE DISCLOSURE STATEMENT FILED WITH THE SECRETARY OF STATE; AND

(5) ANY ADDITIONAL INFORMATION THAT THE COUNTY REQUIRES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(d)(2), as it related to the content of a raffle permit application.

In the introductory language of subsection (b) of this section, the former redundant phrase "with respect to the nonprofit organization" is deleted for brevity and clarity, as the concept is repeated in all of the relevant following paragraphs.

In subsection (b)(2) of this section, the former reference to a "full" statement is deleted as included in the reference to a "complete" statement.

Defined terms: "Person" § 1-101

"Qualified organization" § 13-1801

13-1814. SAME -- ADMINISTRATIVE PROVISIONS.

THE COUNTY:

(1) MAY ADOPT REGULATIONS NECESSARY FOR THE CONDUCT OF A RAFFLE; OR

(2) AFTER A PUBLIC HEARING, MAY REVOKE THE PERMIT OF A HOLDER FOR FAILURE TO COMPLY WITH THIS SUBTITLE OR REGULATIONS ADOPTED UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(d)(4) and (7).

13-1815. PROHIBITED ACT; PENALTY.

A PERSON WHO VIOLATES THIS SUBTITLE OR A REGULATION ADOPTED BY THE COUNTY UNDER THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE OF $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255B(e).

The former references to "any of the provisions of", "adopted by Montgomery County", and "under the authority granted under this section" are deleted as surplusage.

Defined term: "Person" § 1-101

SUBTITLE 19. PRINCE GEORGE'S COUNTY.

13-1901. DEFINITIONS.

(A) IN GENERAL.

IN 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) "BENEFIT PERFORMANCE".

"BENEFIT PERFORMANCE" INCLUDES AN OUTDOOR CARNIVAL, INDOOR CARNIVAL, FAIR, PICNIC, DANCE, CARD PARTY, BINGO PARTY, BAZAAR, CONCERT, CONTEST, EXHIBITION, LECTURE, BARBECUE, OR DINNER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 258B(a), as it related to the type of event that qualifies as a benefit performance, to clarify the meaning of "benefit performance," and to avoid repetition of the phrase "outdoor carnival, indoor carnival, fair, picnic, dance, card party, bingo party, bazaar, concert, contest, exhibition, lecture, barbecue, or dinner".

(C) "QUALIFIED ORGANIZATION".

(1) "QUALIFIED ORGANIZATION" MEANS AN ORGANIZATION OF A GROUP OF CITIZENS OF THE COUNTY OR A COMPANY, ASSOCIATION, OR CORPORATION THAT IS ORGANIZED IN GOOD FAITH IN THE COUNTY TO PROMOTE THE PURPOSES OF A VOLUNTEER FIRE DEPARTMENT OR OF A CHARITABLE, BENEVOLENT, PATRIOTIC, FRATERNAL, EDUCATIONAL, RELIGIOUS, OR CIVIC OBJECT.

(2) "QUALIFIED ORGANIZATION" DOES NOT INCLUDE A GROUP ORGANIZED FOR THE PRIVATE PROFIT OR GAIN OF ANY MEMBER OF THE GROUP, COMPANY, ASSOCIATION, OR CORPORATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 258B(a) and (b) as they related to organizations that may conduct benefit performances and raffles.

The defined term "qualified organization" is added to avoid repetition of the phrase "[a]ny group of citizens of Prince George's County, or any company, association or body corporate, bona fide organized within Prince George's County for the promotion of the purposes of a volunteer fire department, or of any charitable, benevolent, patriotic, fraternal, educational, religious or civic object, and not organized for the private profit or gain of any member of such group, company, association or body corporate".

13-1902. SCOPE AND APPLICATION OF SUBTITLE.

(A) SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN PRINCE GEORGE'S COUNTY.

(B) APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN PRINCE GEORGE'S COUNTY.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify that this subtitle applies only in Prince George's County.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 255(a)(11).

13-1903. BENEFIT PERFORMANCES.

(A) AUTHORIZED.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, A QUALIFIED ORGANIZATION MAY CONDUCT A BENEFIT PERFORMANCE TO WHICH THE PUBLIC IS INVITED OR ADMITTED WITH OR WITHOUT CHARGE.

(B) USE OF PROCEEDS.

THE NET PROCEEDS OF THE BENEFIT PERFORMANCE:

(1) SHALL BENEFIT THE QUALIFIED ORGANIZATION;

(2) SHALL BE USED FOR THE PURPOSES OF THE QUALIFIED ORGANIZATION; AND

(3) MAY NOT BENEFIT THE PRIVATE GAIN OF A MEMBER OF THE QUALIFIED ORGANIZATION.

REVISOR'S NOTE: This section is new language derived without substantive change from the first sentence of former Art. 27, § 258B(a).

In subsection (a) of this section, the limitation "[s]ubject to subsection (b) of this section" is added to qualify the circumstances under which a qualified organization may conduct a benefit performance.

Also in subsection (a) of this section, the former reference to "operat[ing]" a benefit performance is deleted as included in the reference to "conduct[ing]" a benefit performance.

In subsection (b) of this section, the more common term "benefit" is substituted for the former archaic term "inure" for clarity.

Also in subsection (b) of this section, the phrase "be used for the purposes

of the qualified organization" is substituted for the former phrase "for the promotion of, and to be used for, one or more of the objects hereinbefore set forth" for clarity because the "objects" referenced in the former phrase are no longer listed in the same section, but are referred to in § 13-1901 as a part of the definition of a qualified organization.

Defined terms: "Benefit performance" § 13-1901

"Qualified organization" § 13-1901

13-1904. SAME -- OPERATION.

(A) REQUIREMENTS.

A BENEFIT PERFORMANCE SHALL BE PERSONALLY MANAGED AND CONDUCTED ONLY BY MEMBERS OF THE QUALIFIED ORGANIZATION THAT SPONSORS THE BENEFIT PERFORMANCE.

(B) ACTIVITIES AUTHORIZED.

(1) AT A BENEFIT PERFORMANCE, A QUALIFIED ORGANIZATION MAY:

(I) CONDUCT GAMES OF SKILL; OR

(II) DISPOSE OF MERCHANDISE AND OTHER THINGS OF VALUE BY AUCTION, VOTING, OR USING A MECHANICAL DEVICE SUCH AS A PADDLE WHEEL, WHEEL OF FORTUNE, BINGO, OR SIMILAR DEVICE.

(2) THE ACTIVITIES ALLOWED UNDER THIS SUBSECTION MAY BE CONDUCTED WITH OR WITHOUT AN ENTRANCE OR PARTICIPATION FEE.

REVISOR'S NOTE: This section is new language derived without substantive change from the second and fifth sentences of former Art. 27, § 258B(a).

In subsection (b) of this section, the former phrase "conducted under the conditions herein prescribed" is deleted in light of the defined term "benefit performance". *See* § 13-1901 of this subtitle.

Also in subsection (b) of this section, the former reference to a participation "charge" is deleted in light of the reference to a participation "fee".

Defined terms: "Benefit performance" § 13-1901

"Qualified organization" § 13-1901

13-1905. SAME -- PERMIT REQUIRED.

A QUALIFIED ORGANIZATION SHALL OBTAIN A WRITTEN PERMIT FROM THE GOVERNING BODY OF THE COUNTY OR ITS DESIGNEE BEFORE CONDUCTING A BENEFIT PERFORMANCE.

REVISOR'S NOTE: This section is new language derived without substantive change from the fourth sentence of former Art. 27, § 258B(a).

Defined terms: "Benefit performance" § 13-1901

"Qualified organization" § 13-1901

13-1906. SAME -- FORM OF PRIZES.

AT A BENEFIT PERFORMANCE, A QUALIFIED ORGANIZATION MAY AWARD:

(1) A MERCHANDISE PRIZE; OR

(2) A MONEY PRIZE OF NOT MORE THAN $1,000 PER PRIZE.

REVISOR'S NOTE: This section is new language derived without substantive change from the third sentence of former Art. 27, § 258B(a), and the second sentence, as it related to the form of prizes allowed at a benefit performance.

In item (2) of this section, the reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

Defined terms: "Benefit performance" § 13-1901

"Qualified organization" § 13-1901

13-1907. SAME -- PROHIBITION; PENALTY.

A PERSON WHO CONDUCTS OR ATTEMPTS TO CONDUCT A BENEFIT PERFORMANCE IN VIOLATION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from the sixth sentence of former Art. 27, § 258B(a).

The former phrase "[e]xcept as otherwise provided in this section" is deleted as unnecessary as there are no other provisions in the former section relating to the penalties for operating or attempting to operate a benefit performance.

The term "person" is substituted for the former phrase "person, company, association or corporation" in light of § 1-101 of this article which states that the term "person" includes business entities.

The former phrases "in jail" and "in the discretion of the court" are deleted as implicit in setting a maximum penalty.

The reference to being "guilty of a misdemeanor" is added to state expressly that which was only 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. 483, 490 (1976); *State v. Bowser*, 136 Md. 342, 345 (1920); *Dutton v. State*, 123 Md. 373, 378 (1914); and *Williams v. State*, 4 Md. App. 342,

347 (1968).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that it is unclear whether this section applies to raffles conducted under this subtitle because there is no separate penalty for unauthorized raffles.

Defined terms: "Person" § 1-101

"Qualified organization" § 13-1901

13-1908. RAFFLES.

(A) AUTHORIZED.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, A QUALIFIED ORGANIZATION MAY CONDUCT A RAFFLE.

(B) USE OF PROCEEDS.

(1) THE PROCEEDS OF A RAFFLE:

(I) SHALL BENEFIT THE QUALIFIED ORGANIZATION; AND

(II) SHALL BE USED FOR THE PURPOSES OF THE QUALIFIED ORGANIZATION.

(2) EXCEPT FOR A BONA FIDE RAFFLE WINNER, AN INDIVIDUAL OR GROUP MAY NOT:

(I) BENEFIT FINANCIALLY FROM THE HOLDING OF A RAFFLE; OR

(II) RECEIVE OR BE PAID ANY PROCEEDS FROM A RAFFLE FOR PERSONAL USE OR BENEFIT.

REVISOR'S NOTE: This section is new language derived without substantive change from the first and second sentences of former Art. 27, § 258B(b).

In subsection (a) of this section, the limitation "[s]ubject to subsection (b) of this section" is added to clarify the circumstances under which a qualified organization may conduct a raffle.

Also in subsection (a) of this section, the former reference to "operat[ing]" a raffle is deleted as included in the reference to "conduct[ing]" a raffle.

In subsection (b)(1)(i) of this section, the more common term "benefit" is substituted for the former archaic term "inure" for clarity.

In subsection (b)(1)(ii) of this section, the phrase "be used for the purposes of the qualified organization" is substituted for the former phrase "for the promotion of, and to be used for, one or more of the objects hereinbefore set forth" for clarity because the "objects" referred to in the former phrase are

no longer listed in the same section, but are referred to in § 13-1901 as a part of the definition of a qualified organization.

Defined term: "Qualified organization" § 13-1901

13-1909. SAME -- OPERATION.

A RAFFLE SHALL BE PERSONALLY CONDUCTED AND MANAGED ONLY BY REGULAR MEMBERS OF THE QUALIFIED ORGANIZATION.

REVISOR'S NOTE: This section is new language derived without substantive change from the third sentence of former Art. 27, § 258B(b).

Defined term: "Qualified organization" § 13-1901

13-1910. SAME -- PERMIT REQUIRED.

(A) IN GENERAL.

A QUALIFIED ORGANIZATION SHALL OBTAIN A WRITTEN PERMIT FROM THE DEPARTMENT OF ENVIRONMENTAL RESOURCES BEFORE CONDUCTING A RAFFLE IF THE TOTAL CASH VALUE OF THE PRIZE EXCEEDS $200.

(B) QUALIFICATIONS.

(1) BEFORE ISSUING A PERMIT, THE DEPARTMENT OF ENVIRONMENTAL RESOURCES SHALL ASCERTAIN THE CHARACTER OF THE QUALIFIED ORGANIZATION APPLYING FOR A PERMIT UNDER THIS SECTION TO DETERMINE IF THE APPLICATION COMPLIES WITH THIS SUBTITLE.

(2) A PERMIT ISSUED TO A QUALIFIED ORGANIZATION TO CONDUCT A RAFFLE MAY NOT BE TRANSFERRED.

(C) FEE.

THE PERMIT FEE FOR EACH RAFFLE IS $15.

REVISOR'S NOTE: This section is new language derived without substantive change from the fifth, sixth, and seventh sentences of former Art. 27, § 258B(b).

Defined term: "Qualified organization" § 13-1901

13-1911. SAME -- FORM OF PRIZES.

A QUALIFIED ORGANIZATION CONDUCTING A RAFFLE MAY AWARD PRIZES IN MONEY NOT EXCEEDING A TOTAL OF $5,000 AND IN MERCHANDISE IN ANY AMOUNT OR THE MERCHANDISE CASH EQUIVALENT.

REVISOR'S NOTE: This section is new language derived without substantive change from the fourth sentence of former Art. 27, § 258B(b).

The reference to "[a] qualified organization conducting a raffle" awarding prizes is added for clarity.

The reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the Prince George's Department of Environmental Resources, which issues raffle permits, interprets the limits of this section to mean a combination of merchandise and cash not exceeding $5,000.

Defined term: "Qualified organization" § 13-1901

13-1912. CASINO NIGHT.

(A) "CASINO NIGHT".

IN THIS SECTION:

(1) "CASINO NIGHT" MEANS A BENEFIT PERFORMANCE AT WHICH:

(I) A CARD GAME, WHEEL OF CHANCE, OR ROULETTE IS PLAYED; AND

(II) MONEY WINNINGS OR TOKENS REDEEMABLE IN MONEY ARE AWARDED AS PRIZES; BUT

(2) "CASINO NIGHT" DOES NOT INCLUDE A BENEFIT PERFORMANCE AT WHICH THE ONLY FORM OF GAMING IS A WHEEL OF FORTUNE, BIG WHEEL, OR OTHER WHEEL OF CHANCE.

(B) PROHIBITED.

(1) THIS SUBTITLE AND SUBTITLE 2 OF THIS TITLE DO NOT AUTHORIZE CASINO NIGHTS IN THE COUNTY.

(2) A PERSON MAY NOT CONDUCT A CASINO NIGHT IN THE COUNTY.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION OR A COUNTY ORDINANCE ENACTED UNDER 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.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 258B(c).

In subsection (b)(1) of this section, the phrase "[t]his subtitle" is substituted for the former phrase "[s]ubsection (a) or subsection (b) of this

section or § 255 of this subheading" to reflect the reorganization of former §§ 255 and 258B in this subtitle.

Subsection (b)(2) of this section is new language added to state that which was only implied in the former law: because casino nights are not authorized, they are prohibited and subject to a specific penalty under this section.

In subsection (c) of this section, the references to this "section" are substituted for the former references to this "subsection" to reflect the reorganization of material related to casino nights in this revision.

Defined terms: "Benefit performance" § 13-1901

"Person" § 1-101

SUBTITLE 20. QUEEN ANNE'S COUNTY.

13-2001. 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, § 251C(a)(1)(i).

In this subsection and throughout this subtitle, the references to this "subtitle" are substituted for the former references to this "section", although portions of this subtitle are derived, in part, from material outside of former Art. 27, § 251C. The terms defined in this section do not appear in, or do not differ in substance from, the terms used in material derived from outside of former Art. 27, § 251C. No substantive change is intended.

(B) COUNTY COMMISSIONERS.

"COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY.

REVISOR'S NOTE: This subsection is new language added for consistency within this title and brevity.

(C) PERMIT.

"PERMIT" MEANS:

(1) A MULTIPLE GAMING DEVICE PERMIT ISSUED UNDER § 13-2003 OF THIS SUBTITLE; OR

(2) A RAFFLE PERMIT ISSUED UNDER § 13-2004 OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 251C(a)(1)(ii).

(D) RAFFLE.

(1) "RAFFLE" MEANS A LOTTERY IN WHICH A PRIZE IS WON BY A PERSON WHO BUYS A PAPER CHANCE.

(2) A "RAFFLE" IS NOT A MULTIPLE GAMING DEVICE REGULATED UNDER § 13-2003 OF THIS SUBTITLE UNLESS RUN IN CONJUNCTION WITH AN EVENT THAT REQUIRES A MULTIPLE GAMING DEVICE PERMIT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 251C(a)(1)(iii).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the reference to a "paper" chance in paragraph (1) of this subsection may be overly specific.

Defined term: "Person" § 1-101

13-2002. SCOPE OF SUBTITLE.

(A) APPLICATION.

THIS SUBTITLE APPLIES ONLY IN QUEEN ANNE'S COUNTY.

(B) SLOT MACHINES.

THIS SUBTITLE DOES NOT AUTHORIZE GAMBLING USING A SLOT MACHINE OR COIN MACHINE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251C(a)(2) and the first sentence of (6).

In subsection (a) of this section, the reference to this "subtitle" is substituted for the former reference to this "section", although portions of this subtitle are derived from material outside former Art. 27, § 251C. Because the portions of those other provisions revised in this subtitle only apply to Queen Anne's County, no substantive change results. Similarly, in subsection (b) of this section, the reference to this "subtitle" is substituted for the former reference to this "section". Because the portions of those other provisions revised in this subtitle do not authorize a slot machine or coin machine, no substantive change results.

The second sentence of former Art. 27, § 251C(a)(6), which stated that slot machines are regulated under [former] § 264B, is deleted as surplusage.

For current provisions on slot machines, *see* Title 12, Subtitle 3 of this article.

13-2003. GAMING EVENT -- MULTIPLE DEVICES.

(A) PERMIT REQUIRED.

AN ORGANIZATION LISTED IN SUBSECTION (B) OF THIS SECTION SHALL OBTAIN A PERMIT FROM THE COUNTY COMMISSIONERS BEFORE THE ORGANIZATION MAY USE TWO OR MORE OF THE FOLLOWING GAMING DEVICES IN CONDUCTING A FUNDRAISER AT WHICH PRIZES OF MERCHANDISE OR MONEY MAY BE AWARDED:

(1) A PADDLE WHEEL;

(2) A WHEEL OF FORTUNE;

(3) A CHANCE BOOK;

(4) A CARD GAME;

(5) A RAFFLE; OR

(6) ANY OTHER GAMING DEVICE.

(B) QUALIFIED ORGANIZATION.

(1) IN THIS SUBSECTION, "CHARITY" MEANS AN ORGANIZATION, INSTITUTION, ASSOCIATION, SOCIETY, OR CORPORATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, THE COUNTY COMMISSIONERS MAY ISSUE A PERMIT TO USE MULTIPLE GAMING DEVICES TO AN ORGANIZATION IF THE ORGANIZATION IS:

(I) A BONA FIDE RELIGIOUS ORGANIZATION THAT HAS CONDUCTED RELIGIOUS SERVICES AT THE SAME LOCATION IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A PERMIT;

(II) A COUNTY-SUPPORTED OR MUNICIPALLY SUPPORTED VOLUNTEER FIRE COMPANY OR AN AUXILIARY UNIT OF THE VOLUNTEER FIRE COMPANY WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE VOLUNTEER FIRE COMPANY OR AUXILIARY UNIT;

(III) A NATIONALLY CHARTERED VETERANS' ORGANIZATION OR AN AUXILIARY UNIT OF THE VETERANS' ORGANIZATION WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE VETERANS' ORGANIZATION;

(IV) IF THE ORGANIZATION INTENDS TO USE TWO OR MORE GAMING DEVICES TO CONDUCT A FUNDRAISER FOR THE BENEFIT OF A CHARITY LOCATED IN THE COUNTY, AN ORGANIZATION THAT IS A BONA FIDE:

1. FRATERNAL ORGANIZATION;

2. EDUCATIONAL ORGANIZATION;

3. CIVIC ORGANIZATION;

4. PATRIOTIC ORGANIZATION; OR

5. CHARITABLE ORGANIZATION; OR

(V) A BONA FIDE NONPROFIT ORGANIZATION THAT:

1. HAS OPERATED ON A NONPROFIT BASIS IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A PERMIT; AND

2. INTENDS TO USE THE MULTIPLE GAMING DEVICES TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE SPECIFICALLY DESCRIBED IN THE PERMIT APPLICATION.

(C) APPLICATION REVIEW.

BEFORE ISSUING A PERMIT, THE COUNTY COMMISSIONERS SHALL DETERMINE THAT THE ORGANIZATION SEEKING THE PERMIT:

(1) IS ORGANIZED IN AND SERVES THE RESIDENTS OF THE COUNTY; AND

(2) MEETS THE CONDITIONS OF THIS SECTION.

(D) PERMIT TERMS AND ADMINISTRATION.

(1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERMIT IS VALID FOR ONE EVENT THAT DOES NOT LAST LONGER THAN 6 HOURS.

(II) THE COUNTY COMMISSIONERS MAY ISSUE A PERMIT FOR AN EVENT LONGER THAN 6 HOURS IF THE PERMIT HOLDER DOES NOT SEEK MORE THAN ONE PERMIT IN THE SAME YEAR.

(2) THE COUNTY COMMISSIONERS MAY NOT APPROVE A PERMIT FOR GAMING EVENTS TO BE HELD ON PREMISES THAT ARE LICENSED UNDER A CLASS B OR CLASS D ALCOHOLIC BEVERAGES LICENSE.

(3) THE COUNTY COMMISSIONERS MAY NOT ISSUE MORE THAN TWO PERMITS TO AN ORGANIZATION IN A SINGLE YEAR.

(4) THE COUNTY COMMISSIONERS MAY:

(I) CHARGE A FEE SET BY RESOLUTION FOR EACH PERMIT;

(II) SET THE NUMBER OF PERMITS THAT MAY BE ISSUED EACH YEAR; AND

(III) ADOPT REGULATIONS GOVERNING PERMIT APPLICATIONS AND THE ISSUANCE OF PERMITS.

(E) OPERATIONAL REQUIREMENTS.

(1) AN ORGANIZATION THAT IS ISSUED A PERMIT SHALL CONDUCT ITS FUNDRAISER IN:

(I) A STRUCTURE THAT THE ORGANIZATION OWNS, LEASES, OR OCCUPIES;

(II) A STRUCTURE THAT ANY ORGANIZATION THAT WOULD QUALIFY FOR A PERMIT OWNS, LEASES, OR OCCUPIES; OR

(III) A PUBLIC LOCATION THAT IS:

1. DESCRIBED IN THE PERMIT APPLICATION; AND

2. APPROVED BY THE STATE'S ATTORNEY FOR THE COUNTY.

(2) (I) UNLESS THE COUNTY COMMISSIONERS GRANT A WAIVER, A FUNDRAISER FOR WHICH A PERMIT IS ISSUED SHALL BE MANAGED AND OPERATED ONLY BY INDIVIDUALS WHO RESIDE IN THE COUNTY AND ON BEHALF OF THE PERMIT HOLDER.

(II) EACH PERMIT HOLDER SHALL DESIGNATE AN INDIVIDUAL TO BE RESPONSIBLE FOR COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS SUBTITLE AND A PERMIT ISSUED UNDER THIS SUBTITLE.

(III) A PERSON MAY NOT BE COMPENSATED FOR OPERATING THE GAMING ACTIVITY CONDUCTED UNDER A PERMIT.

(F) FINANCIAL ACCOUNTING.

(1) THE PERMIT HOLDER SHALL USE AT LEAST ONE-HALF OF THE FUNDS RAISED USING THE PERMIT FOR CIVIC, CHARITABLE, OR EDUCATIONAL PURPOSES.

(2) WITHIN 30 DAYS AFTER A FUNDRAISER, THE PERMIT HOLDER SHALL SEND TO THE COUNTY COMMISSIONERS:

(I) AN ACCOUNTING OF ALL FUNDS RECEIVED OR PLEDGED;

(II) AN ACCOUNTING OF ALL EXPENSES PAID OR INCURRED; AND

(III) A STATEMENT UNDER OATH OF THE APPLICATION OF THE NET PROFITS.

(G) DISQUALIFICATION.

THE COUNTY COMMISSIONERS MAY DENY A PERMIT FOR NOT MORE THAN 3 YEARS TO AN ORGANIZATION THAT VIOLATES THIS SUBTITLE OR REGULATIONS ADOPTED UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251C(a)(3) through (5), (b) through (g), and (i).

In subsection (b)(2) of this section, the reference to "subtitle" is substituted for the former reference to "article" because, under this revision, all Queen Anne's County gambling provisions are compiled within this subtitle.

In subsection (b)(2)(iv) of this section, the phrase "intends to use two or more gaming devices" is added to clarify that the permit is for the use of multiple gaming devices.

In subsection (b)(2)(v)2 of this section, the phrase "multiple gaming devices" is added for clarity.

In subsection (d)(1)(ii) of this section, the reference to the "same" year is added for clarity.

In subsection (d)(2) of this section, the reference to "[t]he county commissioners" is added to clarify who is prohibited from approving the permit.

In subsection (d)(4)(ii) of this section, the former reference to "organizations" is deleted as surplusage.

In subsection (e)(2)(i) of this section, the reference to individuals "who reside" is substituted for the former reference to "individuals domiciled" for clarity.

In subsection (e)(2)(ii) of this section, the reference to each "permit holder" is substituted for the former reference to each "organization" for clarity.

In subsection (e)(2)(iii) of this section, the former reference to "management" of a gaming activity is deleted as included in the reference to "operating" a gaming activity.

In subsection (f) of this section, the reference to the "permit holder" is added to clarify which entity has the obligation imposed under this section.

In subsection (f)(1) of this section, the phrase "raised using the permit" is substituted for the former phrase "derived from a multiple gaming device fund-raiser that permits the use of two or more gaming devices" for brevity.

In subsection (g) of this section, the former reference to "the provisions of" is deleted as surplusage.

Defined terms: "County commissioners" § 13-2001

"Permit" § 13-2001

"Person" § 1-101

"Raffle" § 13-2001

13-2004. RAFFLES.

(A) IN GENERAL.

THE COUNTY COMMISSIONERS MAY ISSUE A RAFFLE PERMIT TO AN ORGANIZATION THAT QUALIFIES FOR A PERMIT UNDER § 13-2003 OF THIS SUBTITLE OR UNDER REGULATIONS THAT THE COUNTY COMMISSIONERS ADOPT.

(B) DURATION OF PERMIT.

THE HOLDER OF A RAFFLE PERMIT MUST AWARD THE LAST PRIZE IN THE RAFFLE WITHIN 1 YEAR AFTER THE DATE THAT THE PERMIT FOR THE RAFFLE IS ISSUED.

(C) LIMITATION ON NUMBER.

THE COUNTY COMMISSIONERS MAY REGULATE THE NUMBER OF RAFFLE PERMITS THAT AN ORGANIZATION MAY BE ISSUED IN 1 YEAR.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251C(h).

In subsection (b) of this section, the reference to "[t]he holder of a raffle permit" is added to clarify which entity has the obligation to award the prize within 1 year.

Defined terms: "County commissioners" § 13-2001

"Permit" § 13-2001

"Raffle" § 13-2001

13-2005. BINGO.

TO BENEFIT CHARITY IN THE COUNTY OR TO FURTHER ITS PURPOSES, AN ENTITY MAY CONDUCT BINGO IF THE ENTITY IS A BONA FIDE:

(1) RELIGIOUS ORGANIZATION;

(2) FRATERNAL ORGANIZATION;

(3) CHARITABLE ORGANIZATION; OR

(4) VOLUNTEER FIRE COMPANY OPERATING IN A COMMUNITY THAT DOES NOT HAVE A PAID FIRE DEPARTMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 247(a), as it related to Queen Anne's County.

This section is restated as an affirmative grant of authority to certain qualified organizations to conduct bingo for clarity.

In the introductory language of this section, the former limitation "[n]othing in this subtitle [sic] shall be construed to make it unlawful" is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

Also in the introductory language of this section, the former reference to the authority to "operate" bingo is deleted as included in the reference to the authority to "conduct" bingo.

In item (3) of this section, the former reference to "corporations" is deleted as included in the reference to an "organization".

13-2006. PROHIBITION; PENALTY.

(A) IN GENERAL.

A PERSON WHO VIOLATES A PROVISION OF § 13-2002, § 13-2003, OR § 13-2004 OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(B) SEPARATE VIOLATION.

EACH DAY THAT A PERSON VIOLATES THIS SECTION IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251C(j).

In subsection (a) of this section, the reference to "§ 13-2002, § 13-2003, or § 13-2004 of this subtitle" is substituted for the former reference to this "section" to reflect the reorganization of substantive material derived from former Art. 27, § 251C.

In subsection (b) of this section, the reference to a separate "violation" is substituted for the former reference to a separate "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

SUBTITLE 21. ST. MARY'S COUNTY.

13-2101. DEFINITIONS.

(A) IN GENERAL.

IN 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) COUNTY COMMISSIONERS.

"COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF ST. MARY'S COUNTY.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "Board of County Commissioners of St. Mary's County" and for consistency within this title.

(C) "GAMING DEVICE".

(1) "GAMING DEVICE" INCLUDES A PADDLE WHEEL, WHEEL OF FORTUNE, CHANCE BOOK, BINGO, NEVADA CARD, AND A STAMP MACHINE.

(2) "GAMING DEVICE" DOES NOT INCLUDE A SLOT MACHINE, AS DEFINED IN § 12-301 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "paddle wheels, wheels of fortune, chance books, bingo, Nevada cards, stamp machines, or any other gaming device" found in former Art. 27, § 255(d).

(D) "GAMING EVENT".

"GAMING EVENT" MEANS A CARNIVAL, BAZAAR, OR RAFFLE.

REVISOR'S NOTE: This subsection is new language added for consistency within this title.

(E) "QUALIFIED ORGANIZATION".

"QUALIFIED ORGANIZATION" MEANS:

(1) A VOLUNTEER FIRE COMPANY; OR

(2) A BONA FIDE:

(I) RELIGIOUS ORGANIZATION;

(II) FRATERNAL ORGANIZATION;

(III) CIVIC ORGANIZATION;

(IV) WAR VETERANS' ORGANIZATION; OR

(V) CHARITABLE ORGANIZATION.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "a volunteer fire company or bona fide fraternal, civic, war veterans', religious, or charitable organization or corporation".

The former reference to a "corporation" is deleted as implicit in the references to an "organization".

(F) SHERIFF.

"SHERIFF" MEANS THE SHERIFF OF ST. MARY'S COUNTY.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "Sheriff of St. Mary's County" and for consistency within this title.

13-2102. SCOPE AND APPLICATION OF SUBTITLE.

(A) SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN ST. MARY'S COUNTY.

(B) APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN ST. MARY'S COUNTY.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify that this subtitle applies only in St. Mary's County.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 255(a)(12) and the first sentence of (d), as it related to its application to St. Mary's County.

13-2103. BINGO -- LICENSE REQUIRED.

A QUALIFIED ORGANIZATION MUST HAVE A BINGO LICENSE WHENEVER THE QUALIFIED ORGANIZATION CONDUCTS BINGO.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251(a), as it related to the requirement of a qualified organization to conduct bingo.

The references to a "qualified" organization are substituted for the former reference to an "eligible" organization for consistency within this title.

Defined term: "Qualified organization" § 13-2101

13-2104. SAME -- QUALIFIED ORGANIZATIONS.

TO BE ELIGIBLE FOR A BINGO LICENSE, AN ORGANIZATION MUST BE:

(1) A BONA FIDE RELIGIOUS GROUP THAT HAS CONDUCTED RELIGIOUS SERVICES AT A FIXED LOCATION IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE THE APPLICATION DATE;

(2) A VOLUNTEER FIRE COMPANY OR VOLUNTEER RESCUE SQUAD, REGARDLESS OF WHETHER THE COMPANY OR SQUAD IS SUPPORTED BY TAX REVENUES, OR AN AUXILIARY UNIT WHOSE MEMBERS ARE ASSOCIATED DIRECTLY WITH THE COMPANY OR SQUAD;

(3) A NATIONALLY CHARTERED VETERANS' ORGANIZATION, OR AN AUXILIARY UNIT WHOSE MEMBERS ARE ASSOCIATED DIRECTLY WITH THE ORGANIZATION;

(4) A NONPROFIT ORGANIZATION THAT:

(I) HAS OPERATED IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE THE APPLICATION DATE; AND

(II) INTENDS TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE SPECIFICALLY DESCRIBED IN THE APPLICATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251(b).

In item (1) of this section, the former reference to "all types of licenses under this section" is deleted as unnecessary.

In items (3) and (4) of this section, the former references regarding submission of an application for a bingo license "to the Sheriff" are deleted in light of § 13-2107(a) of this subtitle.

13-2105. SAME -- LICENSE APPLICATION.

(A) SUBMISSION TO SHERIFF.

AN ORGANIZATION SHALL SUBMIT AN APPLICATION FOR A BINGO LICENSE TO THE SHERIFF.

(B) CONTENTS.

A PRINCIPAL OFFICER OF THE ORGANIZATION SHALL CERTIFY IN THE APPLICATION FOR A BINGO LICENSE:

(1) THE NAME AND ADDRESS OF THE ORGANIZATION;

(2) THE NAME AND ADDRESS OF THE OFFICER SEEKING THE LICENSE FOR THE ORGANIZATION;

(3) THAT THE OFFICER IS AUTHORIZED BY THE ORGANIZATION TO FILE THE APPLICATION;

(4) THE TIME AND PLACE OF BINGO;

(5) THAT, WITHIN 15 DAYS AFTER THE LAST DAY NAMED IN THE APPLICATION FOR THE LICENSE TO CONDUCT BINGO, A PRINCIPAL OFFICER OF THE ORGANIZATION WILL FILE UNDER PENALTIES OF PERJURY THE REPORT REQUIRED BY § 13-2109 OF THIS SUBTITLE;

(6) THAT BINGO WILL BE CONDUCTED SOLELY AND PERSONALLY BY THE REGULAR MEMBERS OF THE ORGANIZATION, WITHOUT THE ASSISTANCE OF GAMING PROFESSIONALS; AND

(7) THAT NO COMPENSATION OR REWARD WILL BE PAID TO A PERSON FOR CONDUCTING OR ASSISTING IN CONDUCTING BINGO.

REVISOR'S NOTE: Subsection (a) of this section is new language added to state expressly that which was formerly implied by the references regarding submission of an application for a bingo license "to the Sheriff" in former Art. 27, § 251(b) and (c).

In subsection (a) of this section, the reference to "[a]n organization" submitting an application for a license is added to state expressly that which was formerly implied by the reference to the ability of an organization to receive a license under former Art. 27, § 251(c).

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 251(c).

In the introductory language of subsection (b) of this section, the former reference to submission of an application "to the Sheriff" is deleted as unnecessary in light of subsection (a) of this section.

Also in the introductory language of subsection (b) of this section, the former reference to the "issuance of" a license is deleted as unnecessary.

In subsection (b)(1), (2), and (3) of this section, the former references to an "eligible" organization are deleted to clarify that an organization may submit an application and is only considered "eligible", after consideration of the application by the sheriff.

In subsection (b)(2) of this section, the reference to a "license" is substituted for the former incorrect reference to a "permit" for consistency within this part.

In subsection (b)(3) of this section, the former phrase, "[t]he certification of the officer seeking the permit", is deleted for brevity.

In subsection (b)(5) of this section, the references to "bingo" are substituted for the former references to "activities for which the license is sought" for brevity and clarity.

In subsection (b)(6) of this section, the reference to "gaming" professionals is added for clarity.

In subsection (b)(7) of this section, the former references to "commission, salary" and "recompense" are deleted as included in the comprehensive reference to "compensation or reward".

Also in subsection (b)(7) of this section, the former references to "operating" and "holding" bingo are deleted as included in the references to "conducting" bingo.

Defined terms: "Person" § 1-101

"Sheriff" § 13-2101

13-2106. SAME -- LICENSE FEE.

(A) ESTABLISHED BY COUNTY COMMISSIONERS.

BY RESOLUTION, THE COUNTY COMMISSIONERS MAY ESTABLISH A BINGO LICENSE FEE SCHEDULE BASED ON CRITERIA THAT THE COUNTY COMMISSIONERS CONSIDER APPROPRIATE.

(B) CHARGED BY SHERIFF.

THE SHERIFF SHALL CHARGE FOR EACH LICENSE THE ANNUAL LICENSE FEE THAT THE COUNTY COMMISSIONERS SET BY RESOLUTION.

(C) DEPOSIT.

A RESOLUTION ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL SPECIFY THE FUND IN WHICH THE LICENSE FEES ARE TO BE DEPOSITED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251(d).

In subsections (a) and (b) of this section, the former references to a "bingo" license are deleted for consistency and clarity.

In subsection (b) of this section, the former reference to the "issuance of" a license is deleted as unnecessary.

Defined terms: "County commissioners" § 13-2101

"Sheriff" § 13-2101

13-2107. SAME -- RIGHT TO LICENSE.

THE SHERIFF SHALL ISSUE A NUMBERED LICENSE TO AN ORGANIZATION THAT MEETS THE REQUIREMENTS OF §§ 13-2103 THROUGH 13-2110 OF THIS SUBTITLE TO CONDUCT BINGO AND AWARD PRIZES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251(a) as it related to the right of eligible organizations to bingo licenses.

The former phrase "[n]otwithstanding any other provisions of this subtitle [sic]" is deleted as implicit in the reorganization of material derived from the former "Gaming" subheading of Article 27.

The defined term "sheriff" is substituted for the former reference to the "Sheriff of St. Mary's County" for brevity.

Defined term: "Sheriff" § 13-2101

13-2108. SAME -- LICENSE TERM.

A LICENSE ISSUED UNDER THIS SUBTITLE IS VALID FOR 1 YEAR.

REVISOR'S NOTE: This section is new language derived from former Art. 27, § 251(a), as it related to the term of a bingo license, and is revised for consistency with similar provisions elsewhere in the Code.

13-2109. SAME -- REPORT.

WITHIN 15 DAYS AFTER THE LAST DAY AUTHORIZED FOR BINGO IN THE LICENSE, A PRINCIPAL OFFICER OF THE ORGANIZATION SHALL FILE A REPORT UNDER PENALTIES OF PERJURY THAT CERTIFIES:

(1) THAT THE REGULAR MEMBERS OF THE ORGANIZATION PERSONALLY CONDUCTED BINGO AT THE TIME AND PLACE STATED IN THE APPLICATION WITHOUT THE ASSISTANCE OF GAMING PROFESSIONALS;

(2) THE DISPOSITION OF THE CASH PROCEEDS OF THE BINGO; AND

(3) THAT THE ORGANIZATION DID NOT PAY A PREMISES RENTAL FEE TO:

(I) ITSELF;

(II) ITS TRUSTEES;

(III) A COMMITTEE OF THE ORGANIZATION; OR

(IV) ANY ORGANIZATION WHOSE MEMBERS ARE THE SAME, OR SUBSTANTIALLY THE SAME, AS THE LICENSED ORGANIZATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251(c)(7).

This section is revised as an affirmative requirement to file a report on bingo activities rather than as a mere promise to file a report contained in a license application under § 13-2105 of this subtitle, to reflect the duty to file implicit in that promise and the sanction for failure to file the report under § 13-2110 of this subtitle.

In item (1) of this section, the reference to "gaming" professionals is added for clarity and consistency within this title.

In item (3)(iii) of this section, the reference to an "organization" is substituted for the former reference to a "licensee" for consistency.

In item (3)(iv) of this section, the reference to a "licensed" organization is added for clarity.

13-2110. SAME -- DISQUALIFICATION.

AN ORGANIZATION IS DISQUALIFIED FROM OBTAINING A LICENSE UNDER THIS SUBTITLE FOR 1 YEAR IF THE ORGANIZATION FAILS TO:

(1) FILE THE REPORT REQUIRED UNDER § 13-2109 OF THIS SUBTITLE; OR

(2) COMPLY WITH §§ 13-2103 THROUGH 13-2110 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251(e).

The reference to "[being] disqualified from obtaining" a license is substituted for the former reference to "forfeit[ing] its right to the issuance of" any license for clarity.

The reference to an organization that "fails" to file is substituted for the former reference to an organization "refusing" to file for consistency.

In item (2) of this section, the reference to "§§ 13-2103 through 13-2110 of this subtitle" is substituted for the former reference to this "section" to reflect the reorganization of material derived from former Art. 27, § 251.

13-2111. GAMING EVENTS AND GAMING DEVICES.

A QUALIFIED ORGANIZATION MAY HOLD A GAMING EVENT AND MAY OPERATE A GAMING DEVICE IF AN INDIVIDUAL OR GROUP OF INDIVIDUALS DOES NOT:

(1) BENEFIT FINANCIALLY FROM THE OPERATION OF THE GAMING DEVICE; OR

(2) RECEIVE FROM THE OPERATION OF THE GAMING DEVICE ANY PROCEEDS FOR PERSONAL USE OR BENEFIT.

REVISOR'S NOTE: This section is new language derived without substantive change from the first sentence of former Art. 27, § 255(d).

The former reference to "St. Mary's County" is deleted in light of § 13-2101 of this subtitle.

The former reference to "conduct[ing]" a gaming event is deleted as included in the reference to "hold[ing]" a gaming event.

In item (2) of this section, the former reference to being "paid" proceeds from the operation of a gaming device is deleted as included in "receiv[ing]" the proceeds.

Defined terms: "Gaming device" § 13-2101

"Gaming event" § 13-2101

"Qualified organization" § 13-2101

13-2112. SAME -- MANAGEMENT OF OPERATION.

MEMBERS OF THE QUALIFIED ORGANIZATION SHALL PERSONALLY MANAGE THE OPERATION OF THE GAMING DEVICE.

REVISOR'S NOTE: This section is new language derived without substantive change from the fifth sentence of former Art. 27, § 255(d).

Defined terms: "Gaming device" § 13-2101

"Qualified organization" § 13-2101

13-2113. SAME -- DAILY USE LIMITATION.

IF A QUALIFIED ORGANIZATION USES A GAMING DEVICE ON A DAILY BASIS:

(1) THE QUALIFIED ORGANIZATION MAY NOT OPERATE MORE THAN FIVE GAMING DEVICES; AND

(2) THE PREMISES IN WHICH THE QUALIFIED ORGANIZATION OPERATES THE GAMING DEVICE MAY NOT CONTAIN MORE THAN FIVE GAMING DEVICES.

REVISOR'S NOTE: This section is new language derived without substantive change from the second sentence of former Art. 27, § 255(d).

In the introductory language of this section, the reference to "a qualified organization [that] uses a gaming device" on a daily basis is new language added to state expressly that which was only implied by the context of former Art. 27, § 255(d).

In items (1) and (2) of this section, the former reference to a "corporation" operating gaming devices is deleted as included in the reference to an "organization" operating gaming devices.

Defined terms: "Gaming device" § 13-2101

"Qualified organization" § 13-2101

13-2114. SAME -- PROCEEDS.

(A) ALLOWED USES.

ALL PROCEEDS FROM A GAMING DEVICE SHALL BE USED SOLELY FOR THE LEGITIMATE CHARITABLE, BENEVOLENT, OR TAX-EXEMPT PURPOSES OF THE QUALIFIED ORGANIZATION.

(B) PERSONAL BENEFIT PROHIBITED.

PROCEEDS FROM THE OPERATION OF A GAMING DEVICE MAY NOT BE USED TO BENEFIT PERSONALLY ANY MEMBER OF THE QUALIFIED ORGANIZATION.

REVISOR'S NOTE: This section is new language derived without substantive change from the third sentence of former Art. 27, § 255(d).

In subsection (a) of this section, the reference to "tax-exempt" purposes is substituted for the former reference to "exempt" purposes for clarity. The Criminal Law Article Review Committee calls this substitution to the attention of the General Assembly.

In subsection (b) of this section, the reference to "[p]roceeds from the operation of a gaming device" is added for clarity.

Defined terms: "Gaming device" § 13-2101

"Qualified organization" § 13-2101

13-2115. SAME -- RECORD KEEPING.

(A) REQUIRED.

A QUALIFIED ORGANIZATION SHALL KEEP ACCURATE RECORDS OF PROCEEDS AND EXPENDITURES INVOLVING GAMING DEVICES.

(B) INSPECTION.

ON REQUEST, A QUALIFIED ORGANIZATION SHALL ALLOW THE STATE'S ATTORNEY FOR THE COUNTY, A STATE POLICE OFFICER, AND THE SHERIFF OR DEPUTY SHERIFF TO EXAMINE THE RECORDS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from the fourth sentence of former Art. 27, § 255(d).

In this section, the former reference to "books" is deleted as included in the term "records".

Defined terms: "Gaming device" § 13-2101

"Qualified organization" § 13-2101

"Sheriff" § 13-2101

SUBTITLE 22. SOMERSET COUNTY.

13-2201. SCOPE AND APPLICATION OF SUBTITLE.

(A) SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN SOMERSET COUNTY.

(B) APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN SOMERSET COUNTY.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify that this subtitle applies only to Somerset County.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 255(a)(13).

13-2202. BINGO.

TO BENEFIT CHARITY IN THE COUNTY OR TO FURTHER THE PURPOSES OF AN ORGANIZATION QUALIFIED TO CONDUCT BINGO UNDER THIS SECTION, AN ORGANIZATION MAY CONDUCT BINGO IF THE ORGANIZATION IS A BONA FIDE:

(1) RELIGIOUS ORGANIZATION;

(2) FRATERNAL ORGANIZATION;

(3) WAR VETERANS' ORGANIZATION;

(4) CHARITABLE ORGANIZATION; OR

(5) VOLUNTEER FIRE COMPANY OPERATING IN A COMMUNITY THAT DOES NOT HAVE A PAID FIRE DEPARTMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 247(a), as it related to Somerset County.

This section is restated as an affirmative grant of authority to certain qualified organizations to conduct bingo for clarity.

The former limitation "[n]othing in this subtitle [sic] shall be construed to make it unlawful" is deleted in light of § 13-101 of this article and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

The former reference to "operat[ing]" bingo is deleted as included in the reference to "conduct[ing]" bingo.

In item (5) of this section, the former reference to a charitable "corporation" is deleted as included in the reference to a charitable "organization".

SUBTITLE 23. TALBOT COUNTY.

13-2301. APPLICATION OF SUBTITLE 2.

SUBTITLE 2 OF THIS TITLE APPLIES IN TALBOT COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(a)(14).

The reference to "Subtitle 2 of this title" is substituted for the former reference to "this section" to reflect the reorganization of the general provisions on gaming events in specified counties contained in former Art. 27, § 255.

SUBTITLE 24. WASHINGTON COUNTY.

PART I. GENERAL PROVISIONS.

13-2401. "COUNTY COMMISSIONERS" DEFINED.

IN THIS SUBTITLE, "COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(a)(2).

The term "county commissioners" is defined in place of the former definition of "Board" to avoid potential confusion with other public entities such as the Board of License Commissioners referred to in § 13-2437 of this subtitle.

Although the former provision defined "Board" of County Commissioners solely for purposes of Art. 27, § 255C -- now Part III of this subtitle -- it is redefined for purposes of this subtitle to avoid the need to repeat the full title of the Board of County Commissioners of Washington County in other provisions of this subtitle.

13-2402. SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN WASHINGTON COUNTY.

REVISOR'S NOTE: This section is new language added to clarify the application of this subtitle and for consistency with other subtitles of this title.

13-2403. APPLICATION OF SUBTITLE 2.

EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, SUBTITLE 2 OF THIS TITLE APPLIES IN WASHINGTON COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(a)(15).

The introductory clause is added to indicate that exceptions exist.

13-2404. GENERAL PROVISIONS.

(A) VOLUNTEER RESCUE COMPANIES.

A VOLUNTEER RESCUE COMPANY SHALL BE TREATED AS A VOLUNTEER FIRE COMPANY FOR PURPOSES OF SUBTITLE 2 OF THIS TITLE.

(B) LIMITATION ON GAMING ACTIVITIES IN BINGO HALLS.

A PERSON MAY NOT OPERATE A CHANCE BOOK, PADDLE WHEEL, TIP JAR, WHEEL OF FORTUNE, OR OTHER GAMING DEVICE, OTHER THAN A BINGO GAME, ON PREMISES THAT ARE OWNED BY, LEASED TO, OR USED AS A PLACE OF BUSINESS BY A PERSON THAT CONDUCTS A BINGO GAME FOR PURPOSES OF MAKING A PROFIT.

(C) TIP JARS.

(1) SUBTITLE 2 OF THIS TITLE DOES NOT APPLY TO THE OPERATION OF TIP JARS.

(2) TIP JARS ARE REGULATED UNDER PART III OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255(c).

Throughout this section, the former references to "Washington County" are deleted in light of § 13-2402 of this subtitle, which limits the application of this subtitle to Washington County.

In subsection (b) of this section, the reference to a "person" is substituted for the former references to an "individual, corporation, organization, or other entity" for brevity. *See* § 1-101 of this article.

Defined term: "Person" § 1-101

13-2405. RESERVED.

13-2406. RESERVED.

PART II. BINGO.

13-2407. EFFECT OF PART.

BINGO MAY BE CONDUCTED IN ACCORDANCE WITH PART II OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259(a).

This section is rewritten as an authorization to conduct bingo, rather than as an exception to the general prohibition against gambling under Title 12 of this article, in light of § 13-101 of this title, which casts the entire title as an exception to the prohibitions contained in Title 12 of this article, and for consistency within this title.

The former reference to "Washington County" is deleted in light of § 13-2402 of this subtitle, which limits the application of this subtitle to

Washington County.

The former reference to "operat[ing]" a bingo "game" is deleted in light of the reference to bingo "conducted" under this part.

13-2408. BINGO -- IN GENERAL.

(A) PERMIT REQUIRED.

BEFORE A PERSON MAY CONDUCT BINGO, THE PERSON SHALL OBTAIN A BINGO PERMIT FROM THE COUNTY COMMISSIONERS.

(B) REVIEW BY COUNTY COMMISSIONERS.

(1) BEFORE ISSUING A BINGO PERMIT, THE COUNTY COMMISSIONERS SHALL ASCERTAIN:

(I) THE PURPOSE OF THE BINGO GAME; AND

(II) THE INTENDED USE OF RECEIPTS FROM BINGO.

(2) THE COUNTY COMMISSIONERS MAY NOT ISSUE A NEW BINGO PERMIT FOR BINGO THAT IS TO BE CONDUCTED FOR PROFIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259(c)(1), (2), and (4).

In subsection (a) of this section, the former reference to "operat[ing]" a bingo game is deleted in light of the reference to "conduct[ing]" bingo.

In subsection (b)(1)(ii) of this section, the reference to the "intended" use of receipts is added to state expressly what was implied in the former law.

In subsection (b)(2) of this section, the former reference to "January 12, 1995," is deleted as obsolete.

As to subsection (b) of this section, Ch. 585, Acts of 1995, § 2, provides that this section does not "affect the right of any person ... that is authorized to conduct the game of bingo in Washington County for profit on January 11, 1995 ... and the person ... may continue to operate ... as permitted by the County Commissioners ... but the authorization ... may not be transferred".

Defined terms: "County commissioners" § 13-2401

"Person" § 1-101

13-2409. PERMIT FEE.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A NONPROFIT ORGANIZATION SEEKING A BINGO PERMIT.

(B) FEE.

THE COUNTY COMMISSIONERS MAY CHARGE AN ANNUAL FEE NOT EXCEEDING $5,000 FOR A BINGO PERMIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259(c)(3).

Defined term: "County commissioners" § 13-2401

13-2410. PRIZE LIMITATION.

A PERSON MAY NOT GIVE OR OFFER IN A SINGLE BINGO GAME:

(1) A MONEY PRIZE EXCEEDING $1,000;

(2) A MERCHANDISE PRIZE EXCEEDING A VALUE OF $1,000; OR

(3) A PRIZE OF MONEY AND MERCHANDISE WITH A COMBINED VALUE EXCEEDING $1,000.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259(b).

In item (1) of this section, the reference to a "money" prize is added for clarity and consistency within this title.

Defined term: "Person" § 1-101

13-2411. PROHIBITED ACT; PENALTY.

(A) IN GENERAL.

A PERSON MAY NOT CONDUCT BINGO IN VIOLATION OF PART II OF THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(C) SERIES OF VIOLATIONS.

EACH DAY THAT A VIOLATION OCCURS IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 259(d).

In subsection (a) of this section, the former reference to "operat[ing]" a bingo game is deleted in light of the reference to "conduct[ing]" bingo.

Defined term: "Person" § 1-101

13-2412. RESERVED.

13-2413. RESERVED.

PART III. TIP JARS.

13-2414. DEFINITIONS.

(A) IN GENERAL.

IN PART III 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, § 255C(a)(1).

(B) AGENCY.

"AGENCY" MEANS THE COUNTY AGENCY THAT THE COUNTY COMMISSIONERS DESIGNATE TO ADMINISTER PART III OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255C(a)(5).

Defined term: "County commissioners" § 13-2401

(C) FUND.

"FUND" MEANS THE WASHINGTON COUNTY GAMING FUND.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 255C(a)(6).

No changes are made.

(D) GAMING COMMISSION.

"GAMING COMMISSION" MEANS THE WASHINGTON COUNTY GAMING COMMISSION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255C(a)(3).

The term "gaming commission" is substituted for the former term "Commission" to avoid potential confusion with the defined term "county commissioners".

(E) TIP JAR.

"TIP JAR" MEANS:

(1) A GAMING DEVICE FROM WHICH FOR CONSIDERATION A NUMBER, SERIES OF NUMBERS, OR OTHER SYMBOL IS OBTAINED BY SELECTION OF A SEALED PIECE OF PAPER THAT MAY ENTITLE THE PURCHASER TO A PAYOFF IN MONEY OR OTHERWISE, EITHER ON RECEIPT OR AS THE RESULT OF A SUBSEQUENT ANNOUNCEMENT OF A WINNING NUMBER, SERIES OF NUMBERS, OR OTHER SYMBOL; OR

(2) ANY OTHER DEVICE COMMONLY RECOGNIZED AS A TIP JAR.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255C(a)(8).

In item (1) of this subsection, the former reference to the purchaser "of the number or numbers or other symbol" is deleted as implicit.

(F) TIP JAR LICENSE.

"TIP JAR LICENSE" MEANS A LICENSE THAT THE AGENCY ISSUES TO OPERATE A TIP JAR.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255C(a)(10).

The former phrase, "in the County", is deleted in light of § 13-2402 of this subtitle, which limits the application of this subtitle to Washington County.

Occasionally, the term "tip jar licensee" is used in this subtitle as a synonym for a "person who holds a tip jar license". Since "tip jar license" is defined, "tip jar licensee" need not be defined separately.

(G) TIP JAR PACKET.

"TIP JAR PACKET" MEANS A PACKAGE OF NUMBERS, SERIES OF NUMBERS, OR SYMBOLS ON FOLDED OR SEALED PIECES OF PAPER THAT IS DESIGNED TO BE SOLD THROUGH A TIP JAR AND THAT IS SUFFICIENT FOR A SINGLE TIP JAR GAME.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255C(a)(9).

The reference to "numbers, series of numbers, or symbols on folded or sealed pieces of paper" is substituted for the former reference to "tips" for consistency with the definition of "tip jar". *See* subsection (e) of this section.

(H) WHOLESALER'S LICENSE.

"WHOLESALER'S LICENSE" MEANS A LICENSE THAT THE AGENCY ISSUES TO SELL OR WHOLESALE TIP JAR PACKETS FOR PROFIT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 255C(a)(11).

The former phrase "in the County" is deleted in light of § 13-2402 of this subtitle, which limits the application of this subtitle to Washington County.

13-2415. GAMING COMMISSION -- ESTABLISHED.

THERE IS A WASHINGTON COUNTY GAMING COMMISSION.

REVISOR'S NOTE: This section formerly was Art. 27, § 255C(b).

It is set forth as a separate section for emphasis.

No changes are made.

13-2416. SAME -- MEMBERSHIP.

(A) COMPOSITION; APPOINTMENT OF MEMBERS.

(1) THE GAMING COMMISSION CONSISTS OF SEVEN MEMBERS.

(2) OF THE SEVEN MEMBERS OF THE GAMING COMMISSION:

(I) THREE SHALL BE APPOINTED BY THE COUNTY COMMISSIONERS;

(II) ONE SHALL BE APPOINTED BY THE STATE SENATORS WHOSE DISTRICTS ARE IN OR INCLUDE PART OF THE COUNTY;

(III) ONE SHALL BE APPOINTED BY THE CHAIRPERSON OF THE COUNTY DELEGATION TO THE HOUSE OF DELEGATES, WITH THE CONCURRENCE OF THAT DELEGATION;

(IV) ONE SHALL BE FROM THE WASHINGTON COUNTY CLUBS ASSOCIATION, APPOINTED BY THE COUNTY SENATE AND HOUSE DELEGATIONS; AND

(V) ONE SHALL BE A REPRESENTATIVE OF THE ALCOHOLIC BEVERAGES, RESTAURANT, AND TAVERN INDUSTRIES IN THE COUNTY, APPOINTED BY THE COUNTY SENATE AND HOUSE DELEGATIONS.

(B) QUALIFICATIONS FOR MEMBERS.

EACH MEMBER OF THE GAMING COMMISSION SHALL BE A RESIDENT OF THE COUNTY.

(C) RESTRICTIONS ON SELECT MEMBERS.

(1) A MEMBER APPOINTED TO THE GAMING COMMISSION UNDER SUBSECTION (A)(2)(I), (II), OR (III) OF THIS SECTION MAY NOT:

(I) HOLD A TIP JAR LICENSE OR WHOLESALER'S LICENSE OR BE EMPLOYED BY A PERSON WHO HOLDS A TIP JAR LICENSE OR WHOLESALER'S LICENSE; OR

(II) HOLD AN OWNERSHIP INTEREST IN OR RECEIVE A DIRECT BENEFIT FROM A PERSON WHO HOLDS A TIP JAR LICENSE OR WHOLESALER'S LICENSE.

(2) IF A MEMBER OF THE GAMING COMMISSION SERVES ON THE BOARD OF DIRECTORS OR AS AN OFFICER OF AN ORGANIZATION AND THAT ORGANIZATION APPLIES FOR FUNDS FROM THE GAMING COMMISSION, THE MEMBER SHALL CEASE IMMEDIATELY TO SERVE ON THE GAMING COMMISSION.

(D) TENURE; VACANCIES.

(1) THE TERM OF A MEMBER OF THE GAMING COMMISSION IS 2 YEARS AND BEGINS ON MARCH 1 OR OCTOBER 1, ACCORDING TO THE STAGGERED SCHEDULE REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE GAMING COMMISSION ON OCTOBER 1, 2002.

(2) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED.

(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.

(E) TERM LIMIT.

A MEMBER WHO COMPLETES TWO FULL TERMS ON THE GAMING COMMISSION MAY NOT BE REAPPOINTED WITHIN THE 5 YEARS AFTER THE END OF THE SECOND TERM.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(c)(1), (2)(i), (ii), and (iii), and (3) through (9).

In subsection (a)(2)(iii) of this section, the reference to the "chairperson" is substituted for the former reference to the "[c]hairman" because SG § 2-1238 requires the use of words that are neutral as to gender to the extent practicable.

In subsection (a)(2)(v) of this section, the former requirement that the representative of the alcoholic beverage, restaurant, and tavern industries be "from Washington County" is deleted in light of subsection (b) of this section, which requires that each member of the gaming commission be a county resident.

In subsection (c)(2) of this section, the former phrase "and a new member shall be appointed to complete the term" is deleted in light of subsection (d)(3) of this section, which implies that a vacancy requires the appointment of a replacement member for the duration of the term.

Also in subsection (c)(2) of this section, the former phrase "during the member's term" is deleted as surplusage. In subsection (d)(2) of this

section, the reference to "October 1, 2002" is substituted for the former reference to "October 1, 2000" and the former obsolete reference to "July 1, 1995". This substitution reflects the date that this revision becomes effective and is not intended to alter the term of any member of the gaming commission. *See* Chapter ___, § ___, Acts of 2002.

In subsection (e) of this section, the limitation that a member who completes "two full terms ... may not be reappointed during the 5 years after the end of the second term" is substituted for the former phrase "within 5 years after completion of two 2-year terms" for clarity.

Former Art. 27, § 255C(c)(2)(iv), which prohibited select members of the gaming commission from serving on the board of directors or as officers of an organization that applies for funds from the gaming commission, is deleted in light of subsection (f) of this section, which provides for the removal of members who hold certain positions in organizations that apply to the gaming commission for funds.

Defined terms: "County commissioners" § 13-2401

"Gaming commission" § 13-2414

"Person" § 1-101

"Tip jar license" § 13-2414

"Wholesaler's license" § 13-2414

13-2417. SAME -- CHAIRPERSON.

(A) IN GENERAL.

EACH YEAR THE GAMING COMMISSION SHALL ELECT A CHAIRPERSON FROM AMONG ITS MEMBERS.

(B) ELECTION.

THE MANNER OF ELECTION OF A CHAIRPERSON SHALL BE AS THE GAMING COMMISSION DETERMINES.

REVISOR'S NOTE: Subsection (a) of this section is new language derived without substantive change from former Art. 27, § 255C(d)(1).

Subsection (b) of this section is standard language added to clarify the manner of election for the chairperson of the gaming commission.

In subsections (a) and (b) of this section, the references to a "chairperson" are substituted for the former references to a "chairman" because SG § 2-1238 requires the use of words that are neutral as to gender to the extent practicable.

In subsection (a) of this section, the reference to "elect[ion]" of a chairperson is substituted for the former reference to "choose" to clarify the manner in which the chairperson is selected.

Defined term: "Gaming commission" § 13-2414

13-2418. SAME -- MEETINGS; COMPENSATION; STAFF.

(A) REIMBURSEMENT FOR EXPENSES.

A MEMBER OF THE GAMING COMMISSION:

(1) MAY NOT RECEIVE COMPENSATION; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES, IN ACCORDANCE WITH A POLICY OF THE COUNTY COMMISSIONERS.

(B) STAFF.

THE COUNTY COMMISSIONERS SHALL ASSIGN APPROPRIATE PROFESSIONAL STAFF TO THE GAMING COMMISSION FOR THE GAMING COMMISSION'S MEETINGS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(c)(10) and (d)(2).

Defined terms: "County commissioners" § 13-2401

"Gaming commission" § 13-2414

13-2419. SAME -- MISCELLANEOUS POWERS AND DUTIES.

(A) REGULATIONS.

(1) THE COUNTY COMMISSIONERS SHALL ADOPT REGULATIONS TO CARRY OUT PART III OF THIS SUBTITLE.

(2) THE AGENCY MAY RECOMMEND TO THE COUNTY COMMISSIONERS REGULATIONS OR GUIDELINES CONCERNING THE ADMINISTRATION OF PART III OF THIS SUBTITLE.

(B) PUBLIC ACCESS TO REPORTS.

THE COUNTY COMMISSIONERS SHALL MAKE AVAILABLE FOR PUBLIC INSPECTION:

(1) AUDIT REPORTS COMPLETED UNDER § 13-2432(A) OF THIS SUBTITLE; AND

(2) IN ACCORDANCE WITH REGULATIONS OF THE COUNTY COMMISSIONERS, TIP JAR REPORTS SUBMITTED UNDER § 13-2424 OF THIS SUBTITLE.

(C) CRIMINAL HISTORY RECORDS CHECKS.

BY REGULATION, THE COUNTY COMMISSIONERS MAY REQUIRE:

(1) AN APPLICANT FOR A TIP JAR LICENSE OR WHOLESALER'S LICENSE OR AN INDIVIDUAL INVOLVED IN THE OPERATION OF A TIP JAR TO BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY RECORDS CHECK; AND

(2) THE AGENCY TO OBTAIN A CRIMINAL HISTORY RECORDS CHECK IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION.

(D) SAME -- IMPLEMENTATION.

(1) IF THE COUNTY COMMISSIONERS DIRECT THE AGENCY TO OBTAIN CRIMINAL HISTORY RECORDS CHECKS, THE AGENCY SHALL APPLY TO THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES FOR A STATE CRIMINAL HISTORY RECORDS CHECK FOR EACH:

(I) APPLICANT FOR A TIP JAR LICENSE OR WHOLESALER'S LICENSE; AND

(II) INDIVIDUAL INVOLVED IN THE OPERATION OF A TIP JAR.

(2) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK, THE AGENCY SHALL SUBMIT TO THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY:

(I) A COMPLETE SET OF THE APPLICANT'S OR INDIVIDUAL'S LEGIBLE FINGERPRINTS ON FORMS APPROVED BY THE DIRECTOR OF THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY; AND

(II) THE FEE AUTHORIZED UNDER § 10-221(B)(7) OF THE CRIMINAL PROCEDURE ARTICLE.

(3) THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY SHALL PROVIDE THE REQUESTED INFORMATION IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE CRIMINAL PROCEDURE ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(e)(1) through (4), (j)(2)(iii), and (r)(6).

In subsection (c)(1) of this section, the phrase "for purposes of a criminal history records check" is added for clarity. Although subsection (c)(1) of this section authorizes the county commissioners to require an "applicant" or an "individual involved in the operation of a tip jar" to be fingerprinted, by regulation, the county commissioners have addressed fingerprinting requirements applicable to various entities. For example, all officers of a corporation may be required to be fingerprinted. Fingerprinting is to be done at the direction or under the supervision of the agency. (Regulation 1-104(a)(5)).

In subsection (c)(2) of this section, the phrase, "in accordance with subsection (d) of this section", is substituted for the former phrase "from

the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services" for brevity.

In subsection (d)(2)(i) of this section, the reference to an "applicant's or individual's ... fingerprints" is substituted for the former reference to an "employee's ... fingerprints" for accuracy and consistency with subsection (d)(1) of this section.

In subsection (d) of this section, the former phrase "for access to Maryland criminal history records" is deleted as surplusage.

Defined terms: "Agency" § 13-2414

"County commissioners" § 13-2401

"Tip jar" § 13-2414

"Tip jar license" § 13-2414

"Wholesaler's license" § 13-2414

13-2420. TIP JAR OPERATIONS -- LICENSE REQUIRED.

(A) IN GENERAL.

A PERSON SHALL BE LICENSED BY THE AGENCY BEFORE OPERATING A TIP JAR.

(B) ELIGIBILITY.

TO BE ELIGIBLE FOR A LICENSE TO OPERATE A TIP JAR, AN APPLICANT SHALL BE A:

(1) RELIGIOUS ORGANIZATION;

(2) CIVIC ORGANIZATION;

(3) FRATERNAL ORGANIZATION;

(4) VETERANS' ORGANIZATION;

(5) BONA FIDE CHARITABLE ORGANIZATION;

(6) SPORTSMEN'S ASSOCIATION THAT IS TAX EXEMPT UNDER § 501(C) OF THE INTERNAL REVENUE CODE AND THAT IS APPROVED BY THE COUNTY COMMISSIONERS;

(7) HOLDER OF A CLASS A BEER, WINE AND LIQUOR LICENSE;

(8) RESTAURANT WITH AN ALCOHOLIC BEVERAGES LICENSE;

(9) TAVERN WITH AN ALCOHOLIC BEVERAGES LICENSE;

(10) VOLUNTEER FIRE COMPANY; OR

(11) VOLUNTEER RESCUE COMPANY.

(C) RESTRICTIONS.

(1) A PERSON MAY NOT RECEIVE A TIP JAR LICENSE IF THE PERSON:

(I) OWES TAXES TO THE STATE, THE COUNTY, OR A MUNICIPAL CORPORATION IN THE COUNTY;

(II) UNLESS AUTHORIZED UNDER PARAGRAPH (2) OF THIS SUBSECTION, HOLDS A WHOLESALER'S LICENSE; OR

(III) HAS BEEN CONVICTED OF A:

1. FELONY; OR

2. MISDEMEANOR INVOLVING A VIOLATION OF A GAMBLING OR GAMING LAW OF THE STATE.

(2) A VOLUNTEER FIRE COMPANY OR VOLUNTEER RESCUE COMPANY MAY HOLD BOTH A TIP JAR LICENSE AND WHOLESALER'S LICENSE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(f) and (p).

In subsection (a) of this section, the former phrase "in the County" is deleted in light of § 13-2402 of this subtitle, which limits the application of this subtitle to Washington County.

In subsection (c)(1) of this section, the former prohibition on operating a tip jar under certain circumstances is revised as a restriction on receiving a license to operate a tip jar for clarity.

Subsection (c)(2) of this section repeats § 13-2427(c)(2) of this subtitle for clarity.

Defined terms: "Agency" § 13-2414

"County commissioners" § 13-2401

"Person" § 1-101

"Tip jar" § 13-2414

"Tip jar license" § 13-2414

"Wholesaler's license" § 13-2414

13-2421. SAME -- APPLICATION.

(A) IN GENERAL.

(1) AN APPLICANT FOR A TIP JAR LICENSE SHALL:

(I) SUBMIT TO THE AGENCY AN APPLICATION ON THE FORM THAT THE AGENCY PROVIDES; AND

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, PAY AN ANNUAL FEE OF $250 TO THE COUNTY.

(2) THE COUNTY COMMISSIONERS MAY WAIVE OR REDUCE THE ANNUAL FEE FOR AN ORGANIZATION THAT QUALIFIES FOR A LICENSE UNDER § 13-2420(B)(1) THROUGH (6), (10), OR (11) OF THIS SUBTITLE.

(B) DISPOSITION OF LICENSE FEES.

THE COUNTY SHALL CREDIT LICENSE FEES COLLECTED UNDER SUBSECTION (A)(1)(II) OF THIS SECTION TO THE GENERAL FUND OF THE COUNTY.

REVISOR'S NOTE: Subsection (a)(1)(i) of this section is standard language added to state expressly that which was only implied in the former law -- *i.e.*, applications must be made on the form that the agency provides.

Subsections (a)(1)(ii) and (2) and (c) of this section are new language derived without substantive change from former Art. 27, § 255C(g).

In subsection (a)(1)(ii) of this section, the reference to "the county" is added for clarity. This addition is supported by regulations adopted by the county commissioners. Similarly, in subsection (b) of this section, the reference to "the county" is added.

Criminal history records checks of applicants are obtained in accordance with § 13-2419(d) of this subtitle.

Defined terms: "Agency" § 13-2414

"County commissioners" § 13-2401

"Tip jar license" § 13-2414

13-2422. SAME -- ISSUANCE.

THE AGENCY MAY ISSUE A TIP JAR LICENSE TO EACH APPLICANT THAT MEETS THE REQUIREMENTS OF PART III OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(g)(1), as it related to issuance of a license.

Defined terms: "Agency" § 13-2414

"Tip jar license" § 13-2414

13-2423. SAME -- LICENSED OPERATIONS.

(A) LOCATION -- HOURS OF OPERATIONS.

UNLESS OTHERWISE AUTHORIZED BY THE COUNTY COMMISSIONERS, A TIP JAR LICENSEE MAY OPERATE A TIP JAR GAME ONLY:

(1) DURING NORMAL BUSINESS HOURS; AND

(2) ON THE TIP JAR LICENSEE'S PREMISES.

(B) PRIZES.

A TIP JAR LICENSEE MAY AWARD PRIZES IN MONEY OR MERCHANDISE FOR A TIP JAR GAME.

(C) INSPECTION OF PREMISES.

THE AGENCY PERIODICALLY SHALL SEND AN AGENT TO INSPECT THE PREMISES OF EACH TIP JAR LICENSEE TO ENSURE COMPLIANCE WITH PART III OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(h) and (j)(1).

In subsection (b) of this section, the reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

Also in subsection (b) of this section, the phrase "for a tip jar game" is added for clarity.

Defined terms: "Agency" § 13-2414

"County commissioners" § 13-2401

13-2424. SAME -- REPORTING REQUIREMENTS.

(A) REPORTS REQUIRED.

AT LEAST THREE TIMES A YEAR, A TIP JAR LICENSEE SHALL SUBMIT TO THE COUNTY COMMISSIONERS A REPORT CONCERNING THE TIP JARS THE PERSON OPERATES.

(B) CONTENTS -- IN GENERAL.

EACH REPORT SHALL:

(1) IDENTIFY GAMING STICKERS USED;

(2) INDICATE THE NUMBER OF TIP JARS IN OPERATION;

(3) INDICATE THE NUMBER OF TIP JAR PACKETS PURCHASED; AND

(4) INCLUDE ANY ADDITIONAL INFORMATION THAT THE COUNTY COMMISSIONERS REQUIRE.

(C) SAME -- FOR-PROFIT ESTABLISHMENTS.

(1) THIS SUBSECTION ONLY APPLIES TO A PERSON WHO QUALIFIES FOR A TIP JAR LICENSE UNDER § 13-2420(B)(7), (8), OR (9) OF THIS SUBTITLE.

(2) IN ACCORDANCE WITH REGULATIONS OF THE COUNTY COMMISSIONERS, A PERSON SUBJECT TO THIS SUBSECTION SHALL INCLUDE IN EACH REPORT AN ACCOUNTING OF RECEIPTS AND DISBURSEMENTS MADE IN CONNECTION WITH TIP JARS FOR THE REPORTING PERIOD.

(D) SAME -- CERTIFICATION OF CONTENTS.

EACH REPORT SHALL INCLUDE A WRITTEN STATEMENT, SIGNED BY THE INDIVIDUAL MAKING THE REPORT, IN WHICH THE INDIVIDUAL AFFIRMS UNDER THE PENALTIES OF PART III OF THIS SUBTITLE AND UNDER THE PENALTY OF PERJURY THAT THE CONTENTS OF THE REPORT ARE TRUE TO THE BEST OF THE INDIVIDUAL'S KNOWLEDGE, INFORMATION, AND BELIEF.

(E) SAME -- SELECT NONPROFIT ORGANIZATIONS.

(1) THIS SUBSECTION ONLY APPLIES TO AN ORGANIZATION THAT QUALIFIES FOR A TIP JAR LICENSE UNDER § 13-2420(B)(1) THROUGH (6) OF THIS SUBTITLE.

(2) EACH REPORT FOR AN ORGANIZATION THAT IS SUBJECT TO THIS SUBSECTION:

(I) SHALL BE FILED BY AN OFFICER OF THE ORGANIZATION; AND

(II) IN ACCORDANCE WITH REGULATIONS OF THE COUNTY COMMISSIONERS, SHALL INCLUDE FOR THE REPORTING PERIOD AN ACCOUNTING OF:

1. ALL RECEIPTS IN CONNECTION WITH THE OPERATION OF A TIP JAR; AND

2. THE DISBURSEMENTS MADE IN COMPLIANCE WITH § 13-2435(E) OF THIS SUBTITLE.

(3) IN FILING A REPORT UNDER THIS SUBSECTION, THE OFFICER OF THE ORGANIZATION MAY NOT:

(I) FRAUDULENTLY USE A FALSE OR FICTITIOUS NAME;

(II) KNOWINGLY CONCEAL A MATERIAL FACT;

(III) KNOWINGLY MAKE A FALSE STATEMENT; OR

(IV) OTHERWISE COMMIT FRAUD.

(4) A PERSON WHO VIOLATES PARAGRAPH (3) OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(r)(1) through (5).

In subsection (d) of this section, the former reference to swearing "solemnly" is deleted as surplusage.

In subsection (e)(1) of this section, the reference to "§ 13-2420(b)(1) through (6) of this subtitle", pertaining to certain nonprofit organizations that qualify to operate tip jars, is substituted for the former reference to "an organization ... subject to [§ 13-2435(e) of this subtitle]" for clarity and consistency with the scope provision in subsection (c) of this section.

In subsection (e)(3) of this section, the specific reference to "the officer of the organization" is substituted for the former vague reference to "an individual" who files a report for clarity and consistency with subsection (e)(2)(i) of this section.

Defined terms: "County commissioners" § 13-2401

"Person" § 1-101

"Tip jar" § 13-2414

"Tip jar license" § 13-2414

"Tip jar packet" § 13-2414

13-2425. SAME -- TERM; TRANSFER PROHIBITED.

(A) TERM OF LICENSE.

A TIP JAR LICENSE EXPIRES ON THE FIRST JULY 1 AFTER ITS EFFECTIVE DATE.

(B) LICENSE NONTRANSFERABLE.

A TIP JAR LICENSE IS NOT TRANSFERABLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(i).

Defined term: "Tip jar license" § 13-2414

13-2426. TEMPORARY LICENSE.

(A) LICENSE AUTHORIZED.

BY REGULATION, THE COUNTY COMMISSIONERS MAY ESTABLISH A TEMPORARY TIP JAR LICENSE FOR A NONPROFIT ORGANIZATION THAT DESIRES TO RAISE MONEY SOLELY FOR AN ATHLETIC, CHARITABLE, OR EDUCATIONAL PURPOSE THAT:

(1) MEETS THE REQUIREMENTS FOR A CHARITABLE CONTRIBUTION UNDER § 170(C) OF THE INTERNAL REVENUE CODE; AND

(2) DOES NOT BENEFIT A:

(I) LAW ENFORCEMENT AGENCY;

(II) LAW ENFORCEMENT FRATERNAL ORGANIZATION;

(III) POLITICAL CLUB, POLITICAL COMMITTEE, OR POLITICAL PARTY; OR

(IV) UNIT OF THE STATE GOVERNMENT OR OF A POLITICAL SUBDIVISION OF THE STATE OTHER THAN:

1. AN AMBULANCE, FIRE FIGHTING, OR RESCUE SQUAD; OR

2. A PRIMARY OR SECONDARY SCHOOL OR AN INSTITUTION OF HIGHER EDUCATION.

(B) REGULATIONS.

IF THE COUNTY COMMISSIONERS ESTABLISH A TEMPORARY TIP JAR LICENSE, BY REGULATION, THE COUNTY COMMISSIONERS SHALL:

(1) SET THE FEE FOR A TEMPORARY TIP JAR LICENSE;

(2) SET THE TERM OF A TEMPORARY TIP JAR LICENSE;

(3) PRESCRIBE WHICH PROVISIONS OF PART III OF THIS SUBTITLE APPLY TO THE ISSUANCE OF A TEMPORARY TIP JAR LICENSE AND THE OPERATION OF A TIP JAR UNDER A TEMPORARY TIP JAR LICENSE; AND

(4) ESTABLISH ANY ADDITIONAL REQUIREMENTS THAT THE COUNTY COMMISSIONERS CONSIDER APPROPRIATE CONCERNING OPERATION OF A TIP JAR UNDER A TEMPORARY TIP JAR LICENSE.

(C) ORGANIZATION SUBJECT TO AUDIT.

AN ORGANIZATION THAT RECEIVES A TEMPORARY TIP JAR LICENSE IS SUBJECT TO AUDIT BY THE GAMING COMMISSION.

(D) PERSONAL PROFIT PROHIBITED.

AN INDIVIDUAL INVOLVED IN THE OPERATION OF A TIP JAR UNDER A TEMPORARY TIP JAR LICENSE MAY NOT PERSONALLY BENEFIT FINANCIALLY FROM THE OPERATION OF THE TIP JAR.

(E) FINAL DISPOSITION OF PROCEEDS.

IF AN ORGANIZATION THAT HAS OPERATED A TIP JAR UNDER A TEMPORARY TIP JAR LICENSE DISBANDS, THE ORGANIZATION SHALL TRANSFER ANY REMAINING PROCEEDS FROM THE OPERATION OF A TIP JAR TO THE FUND.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(k).

In subsection (a)(2)(iv) of this section, the word "unit" is substituted for the

former word "agency". *See* General Revisor's Note to article.

In subsection (a)(2)(iv)2 of this section, the reference to an "institution of higher education" is substituted for the former reference to a "college" for consistency with Division III of the Education Article.

In subsection (b) of this section, the introductory clause, "[i]f the county commissioners establish a temporary tip jar license," is added for clarity.

Defined terms: "County commissioners" § 13-2401

"Fund" § 13-2414

"Gaming commission" § 13-2414

"Tip jar" § 13-2414

"Tip jar license" § 13-2414

13-2427. WHOLESALER OPERATIONS -- LICENSE REQUIRED.

(A) IN GENERAL.

A PERSON SHALL BE LICENSED BY THE AGENCY AS A WHOLESALER BEFORE THE PERSON MAY SELL A TIP JAR PACKET FOR PROFIT.

(B) ELIGIBILITY.

(1) A PERSON MAY SELL OR WHOLESALE FOR PROFIT A TIP JAR PACKET IF THE PERSON:

(I) IS OF GOOD MORAL CHARACTER;

(II) EXCEPT FOR A VOLUNTEER FIRE COMPANY OR VOLUNTEER RESCUE COMPANY, HAS HAD AN ESTABLISHED PLACE OF BUSINESS IN THE COUNTY FOR AT LEAST 3 YEARS, AS EVIDENCED BY THE FILING OF A PERSONAL PROPERTY TAX RETURN;

(III) HAS BEEN ESTABLISHED IN THE COUNTY FOR AT LEAST 1 YEAR;

(IV) DOES NOT OWE TAXES TO THE STATE, THE COUNTY, OR A MUNICIPAL CORPORATION IN THE COUNTY;

(V) UNLESS AUTHORIZED UNDER PARAGRAPH (2) OF THIS SUBSECTION, DOES NOT HOLD A TIP JAR LICENSE; AND

(VI) HAS NOT BEEN CONVICTED OF A:

1. FELONY; OR

2. MISDEMEANOR INVOLVING A VIOLATION OF A GAMBLING OR GAMING LAW OF THE STATE.

(2) A VOLUNTEER FIRE COMPANY OR VOLUNTEER RESCUE COMPANY MAY HOLD BOTH A TIP JAR LICENSE AND A WHOLESALER'S LICENSE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(l) and (p).

In subsection (a) of this section, the former phrase, "in the County", is deleted in light of § 13-2402 of this subtitle, which limits the application of this subtitle to Washington County.

Subsection (b)(2) of this section repeats § 13-2420(c)(2) for clarity.

Defined terms: "Agency" § 13-2414

"Person" § 1-101

"Tip jar license" § 13-2414

"Tip jar packet" § 13-2414

13-2428. SAME -- APPLICATION.

(A) IN GENERAL.

(1) AN APPLICANT FOR A WHOLESALER'S LICENSE SHALL:

(I) SUBMIT TO THE AGENCY AN APPLICATION ON THE FORM THAT THE AGENCY PROVIDES; AND

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, PAY TO THE AGENCY AN ANNUAL FEE OF $500.

(2) THE COUNTY COMMISSIONERS SHALL WAIVE THE ANNUAL FEE FOR A VOLUNTEER FIRE COMPANY OR A VOLUNTEER RESCUE COMPANY.

(B) DISPOSITION OF LICENSE FEES.

THE AGENCY SHALL CREDIT LICENSE FEES COLLECTED UNDER SUBSECTION (A)(1)(II) OF THIS SECTION TO THE GENERAL FUND OF THE COUNTY.

REVISOR'S NOTE: Subsection (a)(1)(i) of this section is standard language added to state expressly that which was only implied in the former law -- *i.e.*, applications must be made on the form the agency requires.

Subsections (a)(1)(ii) and (2) and (c) of this section are new language derived without substantive change from former Art. 27, § 255C(m)(2) and (3) and, as it related to the application and fee for a wholesaler's license, (1).

In subsection (a)(1)(ii) of this section, the reference to an "annual" fee is added for clarity. This addition is supported by the reference to an annual fee in former Art. 27, § 255C(m)(2) - now subsection (a)(2) of this section.

Subsection (b) of this section is revised to clarify that the agency is

responsible for crediting license fees it collects to the county general fund.

Criminal history records checks of applicants are obtained in accordance with § 13-2419(d) of this subtitle.

Defined terms: "Agency" § 13-2414

"County commissioners" § 13-2401

"Wholesaler's license" § 13-2414

13-2429. SAME -- ISSUANCE.

THE AGENCY MAY ISSUE A WHOLESALER'S LICENSE TO EACH APPLICANT THAT MEETS THE REQUIREMENTS OF PART III OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(m)(1), as it related to issuance of a wholesaler's license.

Defined terms: "Agency" § 13-2414

"Wholesaler's license" § 13-2414

13-2430. SAME -- LICENSED OPERATIONS.

(A) SALES RESTRICTED.

A HOLDER OF A WHOLESALER'S LICENSE MAY NOT SELL A TIP JAR PACKET TO A PERSON WHO DOES NOT HAVE A TIP JAR LICENSE.

(B) REQUIRED GAMING STICKER.

BEFORE SELLING A TIP JAR PACKET, A HOLDER OF A WHOLESALER'S LICENSE SHALL:

(1) OBTAIN A GAMING STICKER FROM THE AGENCY; AND

(2) AFFIX THE GAMING STICKER TO THE TIP JAR PACKET IN THE MANNER THE COUNTY COMMISSIONERS REQUIRE.

(C) FEE LIMITATION.

A HOLDER OF A WHOLESALER'S LICENSE MAY NOT CHARGE A FEE FOR A GAMING STICKER TO A VOLUNTEER FIRE COMPANY OR A VOLUNTEER RESCUE COMPANY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(o).

Defined terms: "Agency" § 13-2414

"County commissioners" § 13-2401

"Person" § 1-101

"Tip jar license" § 13-2414

"Tip jar packet" § 13-2414

"Wholesaler's license" § 13-2414

13-2431. SAME -- TERM; TRANSFER PROHIBITED.

(A) TERM OF LICENSE.

A WHOLESALER'S LICENSE EXPIRES ON THE FIRST JULY 1 AFTER ITS EFFECTIVE DATE.

(B) LICENSE NONTRANSFERABLE.

A WHOLESALER'S LICENSE IS NOT TRANSFERABLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(n).

Defined term: "Wholesaler's license" § 13-2414

13-2432. LICENSEES SUBJECT TO AUDIT.

(A) IN GENERAL.

THE COUNTY COMMISSIONERS MAY AUDIT RECORDS RELATING TO TIP JARS OF A HOLDER OF A TIP JAR LICENSE OR WHOLESALER'S LICENSE.

(B) ACCESS TO RECORDS.

IN ACCORDANCE WITH REGULATIONS OF THE COUNTY COMMISSIONERS, A HOLDER OF A TIP JAR LICENSE OR A WHOLESALER'S LICENSE SHALL MAKE AVAILABLE TO AN AUDITOR DESIGNATED BY THE COUNTY COMMISSIONERS THE RECORDS THAT ARE REQUIRED FOR AN AUDIT.

(C) RECORD RETENTION.

A HOLDER OF A TIP JAR LICENSE OR A WHOLESALER'S LICENSE SHALL RETAIN FOR AT LEAST 5 YEARS THE RECORDS THAT ARE REQUIRED BY THE COUNTY COMMISSIONERS BY REGULATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(j)(2)(i) and (ii) and (3).

Defined terms: "County commissioners" § 13-2401

"Person" § 1-101

"Tip jar" § 13-2414

"Tip jar license" § 13-2414

"Wholesaler's license" § 13-2414

13-2433. DENIALS, REPRIMANDS, SUSPENSIONS, REVOCATIONS.

(A) IN GENERAL.

SUBJECT TO THE HEARING PROVISIONS OF § 13-2434 OF THIS SUBTITLE, THE AGENCY MAY:

(1) DENY A TIP JAR LICENSE OR A WHOLESALER'S LICENSE TO AN APPLICANT; OR

(2) IN ACCORDANCE WITH § 13-2437 OF THIS SUBTITLE, DISCIPLINE A HOLDER OF A TIP JAR LICENSE OR WHOLESALER'S LICENSE.

(B) EFFECT OF LICENSE REVOCATION.

THE AGENCY SHALL DENY A LICENSE TO AN APPLICANT WHOSE TIP JAR LICENSE OR WHOLESALER'S LICENSE HAS BEEN REVOKED.

(C) AFFILIATED ORGANIZATIONS.

IF THE LICENSE OF A HOLDER OF A TIP JAR LICENSE OR WHOLESALER'S LICENSE IS REVOKED FOR TWO SEPARATE CIVIL VIOLATIONS UNDER § 13-2437 OF THIS SUBTITLE OR A CRIMINAL VIOLATION UNDER § 13-2424(E) OR § 13-2438(A) OF THIS SUBTITLE, THE AGENCY MAY DENY A TIP JAR LICENSE OR WHOLESALER'S LICENSE TO:

(1) A CORPORATE OR LIMITED LIABILITY ENTITY APPLICANT IF 50% OR MORE OF THE CAPITAL STOCK IS OWNED BY AN INDIVIDUAL, OR AN IMMEDIATE FAMILY MEMBER OF AN INDIVIDUAL, WHOSE LICENSE WAS REVOKED; OR

(2) A PARTNERSHIP APPLICANT IF THE PARTNERSHIP INCLUDES AS A PARTNER AN INDIVIDUAL WHOSE LICENSE WAS REVOKED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(s)(1) and (t).

Subsection (b) of this section has been revised to clarify that it is the obligation of the agency to deny a license to an applicant who previously had a tip jar license or wholesaler's license revoked.

Defined terms: "Agency" § 13-2414

"Person" § 1-101

"Tip jar license" § 13-2414

"Wholesaler's license" § 13-2414

13-2434. SAME -- HEARINGS.

(A) RIGHT TO HEARING.

BEFORE THE AGENCY TAKES ACTION UNDER § 13-2433(A) OF THIS SUBTITLE, IT SHALL GIVE THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED THE OPPORTUNITY FOR A HEARING.

(B) SAME -- HEARING PROCESS.

IF A HEARING IS REQUESTED, THE COUNTY COMMISSIONERS SHALL:

(1) GIVE NOTICE AND HOLD THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE; OR

(2) DELEGATE TO THE OFFICE OF ADMINISTRATIVE HEARINGS THE AUTHORITY TO HOLD THE HEARING.

(C) HEARINGS BY COUNTY COMMISSIONERS -- OATHS.

IF THE COUNTY COMMISSIONERS HOLD THE HEARING, THE COUNTY COMMISSIONERS MAY ADMINISTER OATHS IN CONNECTION WITH THE HEARING.

(D) HEARINGS BY OAH.

(1) IF THE OFFICE OF ADMINISTRATIVE HEARINGS HOLDS THE HEARING:

(I) THE ADMINISTRATIVE LAW JUDGE SHALL STATE ON THE RECORD THE CONCLUSIONS OF LAW AND FINDINGS OF FACT; AND

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE IS A FINAL DECISION FOR PURPOSES OF JUDICIAL REVIEW IN THE SAME MANNER AS A FINAL DECISION IN A CONTESTED CASE UNDER § 10-222 OF THE STATE GOVERNMENT ARTICLE.

(2) IN AN APPEAL OF A DECISION OF THE ADMINISTRATIVE LAW JUDGE:

(I) IF THE CIVIL PENALTY IS LESS THAN $5,000, JUDICIAL REVIEW OF DISPUTED ISSUES OF FACT SHALL BE CONFINED TO THE RECORD; OR

(II) IF THE CIVIL PENALTY IS $5,000 OR MORE, JUDICIAL REVIEW SHALL BE DE NOVO.

(E) FAILURE TO REQUEST HEARING OR APPEAR.

AFTER NOTICE, IF THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED:

(1) FAILS OR REFUSES TO APPEAR, NEVERTHELESS THE COUNTY COMMISSIONERS MAY HEAR AND DETERMINE THE MATTER; OR

(2) DOES NOT REQUEST A HEARING, THE COUNTY COMMISSIONERS MAY IMPOSE A CIVIL PENALTY WITHOUT A HEARING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(u).

In subsection (a) of this section, the reference to "§ 13-2433(a) of this subtitle" is substituted for the reference to former Art. 27, § 255C(s). Although the revised reference incorporates only former Art. 27, §

255C(s)(1), it was only that part of the former provision that addressed actions taken, subject to the interested party's right to an administrative hearing.

Also in subsection (a) of this section, the former reference to a hearing "before the Board" is deleted in light of subsection (b) of this section, which authorizes the county commissioners to delegate responsibility for a hearing to the Office of Administrative Hearings.

In subsection (c) of this section, the phrase "in connection with the proceeding" is added for clarity.

In subsection (d) of this section, the former phrase, "[i]f the Board delegates the authority to hold a hearing", is deleted in light of subsection (b)(2) of this section.

In subsection (d)(1)(ii) of this section, the phrase "subject to paragraph (2) of this subsection" is added to reflect an exemption to the normal review process following a final decision in an administrative proceeding.

In subsection (e)(2) of this section, the reference to "a civil penalty" is substituted for the former reference to "fine" for clarity.

Also in subsection (e)(2) of this section, the phrase "without a hearing" is substituted for the former phrase "may deem that the matter has been heard" to avoid the legal fiction that a hearing takes place.

Defined terms: "Agency" § 13-2414

"County commissioners" § 13-2401

"Person" § 1-101

13-2435. WASHINGTON COUNTY GAMING FUND.

(A) "GROSS PROFITS" DEFINED.

IN THIS SECTION, "GROSS PROFITS" MEANS THE TOTAL PROCEEDS FROM THE OPERATION OF A TIP JAR LESS THE AMOUNT OF MONEY WINNINGS OR VALUE OF PRIZES DISTRIBUTED.

(B) FUND ESTABLISHED.

THERE IS A WASHINGTON COUNTY GAMING FUND.

(C) ADMINISTRATION.

(1) THE COUNTY COMMISSIONERS SHALL ESTABLISH:

(I) THE METHOD AND TIME OF DEPOSITS TO THE FUND; AND

(II) OTHER PROCEDURES NECESSARY TO CARRY OUT SUBSECTIONS (D) AND (E) OF THIS SECTION.

(2) IN ACCORDANCE WITH A WRITTEN AGREEMENT BETWEEN THE COUNTY COMMISSIONERS AND THE GAMING COMMISSION, THE GAMING COMMISSION MAY USE MONEY FROM THE FUND TO REIMBURSE THE COUNTY COMMISSIONERS FOR THE COSTS TO THE COUNTY FOR ADMINISTERING PART III OF THIS SUBTITLE.

(D) ASSESSMENTS -- BUSINESS ESTABLISHMENTS.

(1) THIS SUBSECTION APPLIES ONLY TO A PERSON WHO HOLDS A TIP JAR LICENSE ISSUED UNDER § 13-2420(B)(7), (8), OR (9) OF THIS SUBTITLE.

(2) SUBJECT TO PARAGRAPHS (3) AND (4) OF THIS SUBSECTION, A PERSON SUBJECT TO THIS SUBSECTION SHALL DEPOSIT WITH A FINANCIAL INSTITUTION DESIGNATED BY THE GAMING COMMISSION, TO THE CREDIT OF THE FUND, THE GROSS PROFITS FROM EACH TIP JAR THAT THE PERSON OPERATES.

(3) THE GROSS PROFITS FROM A TIP JAR MAY NOT EXCEED $250.

(4) TO OFFSET THE COSTS OF OPERATING A TIP JAR, A PERSON WITH A TIP JAR LICENSE MAY RETAIN 50% OF THE GROSS PROFITS FROM EACH TIP JAR GAME.

(E) SAME -- NONPROFIT ORGANIZATIONS; CLUBS.

(1) THIS SUBSECTION APPLIES ONLY TO A PERSON WHO HOLDS A TIP JAR LICENSE UNDER § 13-2420(B)(1) THROUGH (6) OF THIS SUBTITLE.

(2) A PERSON SUBJECT TO THIS SUBSECTION SHALL DEPOSIT WITH A FINANCIAL INSTITUTION DESIGNATED BY THE GAMING COMMISSION, TO THE CREDIT OF THE FUND, 15% OF THE GROSS PROFITS EARNED THROUGH THE OPERATION OF TIP JARS DURING THE 12-MONTH PERIOD ENDING JUNE 30.

(3) IF A PERSON FAILS TO CONTRIBUTE THE FULL AMOUNT REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE PERSON SHALL DEPOSIT THE BALANCE REQUIRED DURING THE NEXT YEAR.

(F) DISBURSEMENTS; LIMITATION.

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AND AFTER THE REIMBURSEMENT UNDER SUBSECTION (C)(2) OF THIS SECTION, EACH YEAR THE GAMING COMMISSION SHALL DISTRIBUTE:

(I) 50% OF THE MONEY DEPOSITED IN THE FUND TO THE WASHINGTON COUNTY VOLUNTEER FIRE AND RESCUE ASSOCIATION; AND

(II) SUBJECT TO ANY RESTRICTIONS THAT THE COUNTY COMMISSIONERS ADOPT BY REGULATION, 50% OF THE MONEY DEPOSITED IN THE FUND TO BONA FIDE CHARITABLE ORGANIZATIONS IN THE COUNTY.

(2) THE GAMING COMMISSION MAY NOT DISTRIBUTE MORE THAN $50,000 TO EACH APPLICANT PER APPLICATION.

(G) REPORT.

EVERY 6 MONTHS, ON OR BEFORE JANUARY 31 AND JULY 31, THE GAMING COMMISSION SHALL REPORT TO THE COUNTY DELEGATION ON HOW RECIPIENTS OF MONEYS FROM THE FUND HAVE BEEN AFFECTED BY THE FORMULA FOR DISTRIBUTING THOSE MONEYS SPECIFIED UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(q)(1) through (8) and (10).

In subsection (a) of this section, the reference to the "value of" prizes is added for clarity.

In subsection (b) of this section, the former phrase "established by the Commission" is deleted as surplusage.

In subsection (c)(1) of this section, the reference to "the fund" is added for clarity.

In subsection (d)(1) of this section, the reference to a "person who holds" a license is substituted for the former reference to a "person that qualifies" for a license for clarity. Similarly, in subsection (e)(1) of this section, the reference to a "person who holds" a license is substituted for the former reference to an "organization that qualifies for" a license.

In subsection (d)(3) of this section, the former phrase "operated by a person that is subject to this paragraph" is deleted in light of subsection (d)(1) of this section.

In subsection (e) of this section, the references to "a person" are substituted for the former references to enumerated organizations for brevity and in light of subsection (e)(1) of this section, which states the application of the subsection.

In subsection (e)(2) of this section, the phrase "through the operation of tip jars" is added for clarity. Similarly, the reference to June 30 "of the following year" is added.

In subsection (e)(3) of this section, the former reference to "a financial institution that the Commission designates and to the credit of the Fund" is deleted as implicit in light of subsection (e)(2) of this section.

In subsection (g) of this section, the former reference to the initial reporting date of "January 31, 2000" is deleted as obsolete.

Defined terms: "County commissioners" § 13-2401

"Fund" § 13-2414

"Gaming commission" § 13-2414

"Person" § 1-101

"Tip jar" § 13-2414

"Tip jar license" § 13-2414

13-2436. PROHIBITED ACTS.

(A) OPERATION OF TIP JAR.

UNLESS LICENSED TO OPERATE A TIP JAR BY THE AGENCY, A PERSON MAY NOT OFFER TO ANOTHER A CHANCE FROM A TIP JAR OR OTHERWISE OPERATE A TIP JAR.

(B) PLAYER, LOCATION RESTRICTIONS.

A HOLDER OF A TIP JAR LICENSE MAY NOT:

(1) ALLOW A MINOR TO PLAY A TIP JAR; OR

(2) OPERATE A TIP JAR ON PROPERTY OWNED BY THE BOARD OF EDUCATION OF WASHINGTON COUNTY.

(C) SALE OF TIP JAR PACKETS.

UNLESS LICENSED AS A WHOLESALER TO SELL TIP JAR PACKETS BY THE AGENCY, A PERSON MAY NOT SELL OR WHOLESALE A TIP JAR PACKET FOR PROFIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(v)(1) through (3).

In subsection (b)(1) of this section, the defined term "minor" is substituted for the former reference to an "individual under the age of 18 years" for brevity. *See* § 1-101 of this article.

In subsection (b)(2) of this section, the reference to the "Board of Education of Washington County" is substituted for the former reference to the "Washington County School Board" for accuracy.

In subsection (c) of this section, the phrase "as a wholesaler" is added for clarity.

Defined terms: "Agency" § 13-2414

"Minor" § 1-101

"Person" § 1-101

"Tip jar" § 13-2414

"Tip jar packet" § 13-2414

13-2437. ADMINISTRATIVE AND CIVIL PENALTIES.

(A) IN GENERAL.

IF A PERSON VIOLATES PART III OF THIS SUBTITLE, THE PERSON IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, SUSPENSION OF THE PERSON'S TIP JAR LICENSE OR WHOLESALER'S LICENSE AND A CIVIL PENALTY NOT EXCEEDING $1,500; OR

(2) FOR EACH SUBSEQUENT VIOLATION, REVOCATION OF THE PERSON'S TIP JAR LICENSE OR WHOLESALER'S LICENSE AND A CIVIL PENALTY NOT EXCEEDING $5,000.

(B) ACTION AGAINST LIQUOR LICENSE.

IN ADDITION TO THE PENALTIES UNDER SUBSECTION (A)(2) OF THIS SECTION, IF THE PERSON HAS A LIQUOR LICENSE, THE AGENCY MAY RECOMMEND TO THE BOARD OF LICENSE COMMISSIONERS FOR WASHINGTON COUNTY THAT THE BOARD SUSPEND THE PERSON'S LIQUOR LICENSE FOR NOT LESS THAN 15 DAYS FOR A SUBSEQUENT VIOLATION.

(C) DISPOSITION OF CIVIL PENALTIES.

CIVIL PENALTIES COLLECTED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE CREDITED TO THE GENERAL FUND OF WASHINGTON COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(s)(2) through (4).

In subsections (a) and (c) of this section, the references to a "civil penalt[y]" are substituted for the former references to a "civil fine" and "[f]ines" for accuracy.

In the introductory language of subsection (a) of this section, the former phrase "[i]f the County agency finds" is deleted for accuracy in light of § 13-2434 of this subtitle, which specifies that a final decision is made by the county commissioners or an administrative law judge.

In subsection (a)(1) and (2) of this section, the references to a "violation" are substituted for the former references to an "offense" for consistency within this article. *See* General Revisor's Note to article.

In subsection (a)(1) of this section, the former reference to "denial" of a license is deleted as unnecessary in light of § 13-2433(a) of this subtitle, as it relates to applicants, and as inaccurate, as it relates to persons currently in possession of a license.

In subsection (a)(2) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a second or" subsequent offense for consistency within this article.

In subsection (b) of this section, the reference to the Board of License

Commissioners "for Washington County" is added for clarity.

Defined terms: "Agency" § 13-2414

"Person" § 1-101

"Tip jar license" § 13-2414

"Wholesaler's license" § 13-2414

13-2438. CRIMINAL PENALTIES.

(A) IN GENERAL.

(1) A PERSON WHO VIOLATES § 13-2436 OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:

(I) FOR A FIRST VIOLATION, $5,000; OR

(II) FOR EACH SUBSEQUENT VIOLATION, $10,000.

(2) EACH SALE OR OFFER OF A CHANCE FROM A TIP JAR IS A SEPARATE VIOLATION.

(B) ACTION AGAINST LIQUOR LICENSE.

IF A PERSON CONVICTED UNDER THIS SECTION HAS A LIQUOR LICENSE, THE AGENCY SHALL RECOMMEND TO THE BOARD OF LICENSE COMMISSIONERS FOR WASHINGTON COUNTY THAT THE BOARD SUSPEND THE PERSON'S LIQUOR LICENSE FOR NOT LESS THAN 15 DAYS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(v)(4) through (6).

In subsection (a) of this section, the references to a "violation" are substituted for the former references to an "offense" for consistency within this article. *See* General Revisor's Note to article.

In subsection (a)(1)(ii) of this section, the reference to "each" subsequent violation is substituted for the former reference to "a" subsequent offense for consistency within this article.

In subsection (b) of this section, the reference to the Board of License Commissioners "for Washington County" is added for clarity.

Defined terms: "Agency" § 13-2414

"Person" § 1-101

"Tip jar" § 13-2414

GENERAL REVISOR'S NOTE TO SUBTITLE

Former Art. 27, § 255C(a)(4), which defined "county" to mean Washington County, is deleted in light of § 13-2402 of this subtitle, which limits application of this subtitle to Washington County.

Former Art. 27, § 255C(a)(7), which defined "gaming sticker", is deleted in light of § 13-2430(b) of this subtitle, which requires that a person with a wholesaler's license obtain a gaming sticker and affix the sticker to a tip jar packet in the manner that the county commissioners require. The former reference to a bar code is deleted as unnecessary since the type of sticker required is left to the discretion of the county commissioners.

Former Art. 27, § 255C(q)(9), which prohibited the county commissioners from reducing appropriations to nonprofit organizations in the County below the amount budgeted in fiscal year 1996, was recodified as § 1-108(e) of the Public Local Laws of Washington County as part of the enactment of this article. *See* Chapter ___, § ___, Acts of 2002. This provision was initially enacted in 1996 as part of legislation concerning the regulation of tip jars. However, because it did not directly relate to the regulation of tip jars, the Criminal Law Article Review Committee determined that it would be more appropriately codified in the Public Local Laws rather than in this subtitle.

Portions of §§ 13-2430 and 13-2435, which are derived from former Art. 27, § 255C(o) and (q), respectively, are subject to abrogation on June 30, 2003, in accordance with Ch. 479, Acts of the General Assembly of 2000.

SUBTITLE 25. WICOMICO COUNTY.

13-2501. DEFINITIONS.

(A) IN GENERAL.

IN 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) COMMITTEE.

"COMMITTEE" MEANS THE GAMING ADVISORY COMMITTEE ESTABLISHED UNDER § 13-2505 OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "Gaming Advisory Committee" and for consistency within this title.

(C) SHERIFF.

"SHERIFF" MEANS THE SHERIFF OF WICOMICO COUNTY.

REVISOR'S NOTE: This subsection is new language added for brevity and consistency within this title.

13-2502. SCOPE OF SUBTITLE.

(A) APPLICATION.

THIS SUBTITLE APPLIES ONLY IN WICOMICO COUNTY.

(B) SLOT MACHINES.

THIS SUBTITLE DOES NOT AUTHORIZE GAMBLING USING A SLOT MACHINE OR A COIN MACHINE.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify the scope of this subtitle.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 256(g).

In subsection (b) of this section, the former reference to a "type of" machine is deleted as surplusage.

13-2503. GAMING -- IN GENERAL.

(A) LICENSE REQUIRED.

THE SHERIFF MAY ISSUE A LICENSE TO AN ORGANIZATION LISTED IN SUBSECTION (B) OF THIS SECTION TO CONDUCT A GAME THAT USES ANY OF THE FOLLOWING DEVICES TO AWARD PRIZES OF MERCHANDISE OR MONEY:

(1) A PADDLE WHEEL;

(2) A WHEEL OF FORTUNE;

(3) A CHANCE BOOK;

(4) BINGO;

(5) A RAFFLE; OR

(6) ANY OTHER GAMING DEVICE.

(B) QUALIFIED ORGANIZATION.

TO QUALIFY FOR A LICENSE UNDER THIS SUBTITLE, AN ORGANIZATION SHALL BE:

(1) A BONA FIDE RELIGIOUS ORGANIZATION THAT HAS CONDUCTED RELIGIOUS SERVICES AT A FIXED LOCATION IN THE COUNTY FOR AT LEAST 5 YEARS BEFORE THE ORGANIZATION APPLIES FOR A LICENSE;

(2) A TAX-SUPPORTED VOLUNTEER FIRE COMPANY OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE FIRE COMPANY;

(3) AN ORGANIZATION THAT HAS BEEN LOCATED IN THE COUNTY FOR AT LEAST 5 YEARS BEFORE IT APPLIES FOR A LICENSE AND IS:

(I) A NATIONALLY CHARTERED VETERANS' ORGANIZATION OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE VETERANS' ORGANIZATION;

(II) A NONPROFIT ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OR (4) OF THE INTERNAL REVENUE CODE;

(III) A NONPROFIT FRATERNAL ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(10) OF THE INTERNAL REVENUE CODE; OR

(IV) A NONPROFIT ORGANIZATION THAT:

1. INTENDS TO USE THE GAMING LICENSE TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE THAT MEETS THE CONDITIONS OF SUBSECTION (C) OF THIS SECTION; AND

2. STATES THE CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE IN THE APPLICATION TO THE SHERIFF.

(C) CHARITABLE PURPOSE.

FOR THE PURPOSES OF SUBSECTION (B)(3)(IV) OF THIS SECTION, A PURPOSE IS CONSIDERED A CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE IF THE PURPOSE:

(1) MEETS THE REQUIREMENTS FOR A CHARITABLE CONTRIBUTION UNDER § 170(C) OF THE INTERNAL REVENUE CODE; AND

(2) DOES NOT BENEFIT A:

(I) LAW ENFORCEMENT UNIT;

(II) FRATERNAL ORGANIZATION FOR A LAW ENFORCEMENT UNIT;

(III) POLITICAL CLUB;

(IV) POLITICAL COMMITTEE;

(V) POLITICAL PARTY; OR

(VI) UNIT OF STATE GOVERNMENT OR A POLITICAL SUBDIVISION OF THE STATE OTHER THAN:

1. AN AMBULANCE COMPANY;

2. A FIRE FIGHTING COMPANY;

3. A RESCUE COMPANY;

4. A PRIMARY SCHOOL;

5. A SECONDARY SCHOOL; OR

6. AN INSTITUTION OF HIGHER EDUCATION.

(D) APPLICATION.

(1) AN APPLICANT FOR A LICENSE SHALL SUBMIT AN APPLICATION TO THE SHERIFF.

(2) THE APPLICATION SHALL CONTAIN:

(I) A COPY OF THE TAX EXEMPT VERIFICATION OF THE ORGANIZATION;

(II) A COPY OF THE APPLICANT'S CHARTER, IF APPLICABLE; AND

(III) A CERTIFICATION BY A PRINCIPAL OFFICER OF THE APPLICANT STATING:

1. THE DATES FOR WHICH THE LICENSE IS SOUGHT;

2. THE PLACE AT WHICH THE GAME WILL BE CONDUCTED;

3. THE TYPE OF GAME FOR WHICH THE LICENSE IS SOUGHT;

4. THAT ONLY THE REGULAR MEMBERS OF THE APPLICANT WILL CONDUCT THE GAMES AND OPERATE THE GAMING DEVICE FOR WHICH THE LICENSE IS SOUGHT;

5. THAT THE APPLICANT WILL NOT USE THE ASSISTANCE OF GAMING PROFESSIONALS IN CONDUCTING GAMES OR OPERATING GAMING DEVICES;

6. THAT PERSONS CONDUCTING THE GAMES AND OPERATING THE GAMING DEVICES OR ASSISTING IN CONDUCTING THE GAMES AND OPERATING THE GAMING DEVICES WILL NOT RECEIVE COMPENSATION OR REWARD; AND

7. THAT ALL PROCEEDS OBTAINED UNDER THE LICENSE WILL BE USED TO FURTHER THE PURPOSES OF THE ORGANIZATION.

(3) THE SHERIFF SHALL RETAIN THE COPIES OF THE APPLICANT'S VERIFICATION OF TAX EXEMPTION AND CHARTER.

(E) LICENSE.

(1) THE SHERIFF MAY ISSUE A LICENSE:

(I) FOR ONE OR MORE SPECIFIC DATES; OR

(II) FOR A PERIOD NOT EXCEEDING 1 YEAR.

(2) THE LICENSING YEAR SHALL RUN FROM JULY 1 THROUGH THE FOLLOWING JUNE 30.

(3) THE LICENSE SHALL STATE:

(I) THE DATES THAT THE GAME WILL BE CONDUCTED;

(II) THE PLACE THAT THE GAME WILL BE CONDUCTED; AND

(III) THE TYPE OF GAME AUTHORIZED.

(F) LIMITATIONS.

(1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A LICENSEE MAY NOT CONDUCT A GAME ON SUNDAY.

(2) (I) A LICENSEE MAY OPERATE A RAFFLE ON SUNDAY.

(II) A RAFFLE IS CONSIDERED TO BE OPERATED ON THE DAY THAT THE LICENSEE SELECTS THE RAFFLE WINNER.

(III) THE SHERIFF SHALL LICENSE A 50/50 GAME OPERATED FOR A PERIOD OF MORE THAN 1 DAY AS A RAFFLE.

(3) A LICENSEE MAY NOT ALLOW A CHILD WHO IS UNDER THE AGE OF 16 YEARS TO:

(I) OPERATE A GAME OR GAMING DEVICE FOR WHICH A LICENSE IS ISSUED UNDER THIS SUBTITLE;

(II) CONDUCT A GAME IN WHICH A GAMING DEVICE IS OPERATED; OR

(III) PLAY OR PARTICIPATE IN A GAME IN WHICH A GAMING DEVICE IS OPERATED.

(4) THE LICENSEE MAY NOT PAY A FEE FOR THE RENTAL OF THE PREMISES ON WHICH A GAME IS CONDUCTED TO:

(I) ITSELF;

(II) A TRUSTEE OF THE LICENSEE;

(III) A COMMITTEE OF THE LICENSEE; OR

(IV) AN ORGANIZATION WITH THE SAME MEMBERS OR SUBSTANTIALLY THE SAME MEMBERS AS THE LICENSEE.

(G) FEES.

THE SHERIFF SHALL CHARGE EACH APPLICANT:

(1) A LICENSE FEE OF $1 FOR EACH DAY FOR WHICH A LICENSE IS ISSUED; AND

(2) THE FOLLOWING ADDITIONAL AMOUNTS:

(I) EXCEPT AS PROVIDED IN SUBITEMS (II) THROUGH (V) OF THIS ITEM, $1 FOR EACH GAMING DEVICE TO BE OPERATED EACH DAY;

(II) $1 FOR EACH DAY THAT A PULL TAB OR INSTANT BINGO DEVICE IS TO BE SOLD;

(III) $1 FOR EACH DAY THAT A BINGO EVENT IS TO BE CONDUCTED;

(IV) $1 FOR EACH DAY THAT A BINGO SPECIAL EVENT IS TO BE CONDUCTED; AND

(V) $1 FOR EACH RAFFLE TO BE CONDUCTED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 256(a), (b), (c), (d)(1)(iii), (e), and (f).

In subsection (a) of this section, the former limitation "[n]otwithstanding any other provisions of this subtitle [sic]," is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

Also in subsection (a) of this section, the reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

In subsection (c)(2)(i) of this section, the reference to a "law enforcement unit" is substituted for the former reference to a "law enforcement agency" for consistency within this article.

In subsection (c)(2)(vi)1 through 3 of this section, the reference to a "company" is substituted for the former reference to a "squad" for consistency within this article.

In subsection (c)(2)(vi)6 of this section, the reference to an "institution of higher education" is substituted for the former reference to a "college" for accuracy and consistency with Division III of the Education Article.

In subsections (d)(2)(iii)1 and (e)(3) of this section, the former references to a "date" are deleted as included in the references to "dates". *See* Art. 1, § 8.

In subsection (d)(2)(iii)4 of this section, the word "only" is substituted for the former phrase "solely and personally" for brevity.

In subsection (d)(2)(iii)6 of this section, the former reference to

"commission, salary [or] recompense" is deleted as included in the reference to "compensation or reward".

In subsection (e)(1)(i) of this section, the phrase "for one or more specific dates" is substituted for the former phrase "[o]n a daily basis for specific dates" for clarity.

In subsection (e)(3)(iii) of this section, the reference "the type of game" is substituted for the former reference "games" for clarity.

In subsection (f)(2)(ii) of this section, the reference to "the licensee" is added to clarify who selects the winner of the raffle.

In subsection (f)(2)(iii) of this section, the reference to the "sheriff" is added to clarify who has the authority to license the 50/50 game as a raffle.

In subsection (f)(3) of this section, the reference to "[a] licensee" is added to clarify who has the obligation to limit and control the actions of a minor.

In subsection (g)(2)(i) of this section, the introductory language "except as provided in items (ii) through (v) of this item" is added for clarity.

Defined terms: "Person" § 1-101

"Sheriff" § 13-2501

13-2504. REPORTS.

(A) SCHEDULE.

(1) IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION, A PRINCIPAL OFFICER OF A LICENSEE SHALL FILE A REPORT UNDER OATH WITH THE SHERIFF ON THE FORM THAT THE SHERIFF PROVIDES.

(2) (I) A LICENSEE THAT IS ISSUED A LICENSE FOR A PERIOD OF LESS THAN 1 YEAR SHALL FILE THE REPORT WITHIN 15 DAYS AFTER THE DATE THAT THE LICENSE EXPIRES.

(II) A LICENSEE THAT IS ISSUED A LICENSE FOR A PERIOD OF 1 YEAR SHALL FILE:

1. A SEMIANNUAL REPORT ON OR BEFORE JANUARY 31 OF THE LICENSING YEAR; AND

2. AN ANNUAL REPORT WITHIN 30 DAYS AFTER THE DATE THAT THE LICENSE EXPIRES.

(3) (I) A LICENSEE ALSO SHALL KEEP A WEEKLY REPORT IN THE FORM THAT THE SHERIFF REQUIRES.

(II) THE WEEKLY REPORT SHALL BE COMPLETED UNDER OATH.

(III) THE WEEKLY REPORT IS SUBJECT TO AUDIT AT A REASONABLE HOUR BY:

1. THE SHERIFF;

2. THE STATE'S ATTORNEY FOR THE COUNTY; OR

3. A REPRESENTATIVE OF THE SHERIFF OR THE STATE'S ATTORNEY.

(B) CONTENTS.

THE REPORT THAT A LICENSEE SUBMITS TO THE SHERIFF SHALL:

(1) STATE WHETHER THE AUTHORIZED ACTIVITIES WERE CONDUCTED:

(I) ON THE DATES AND AT THE LOCATION STATED IN THE APPLICATION; AND

(II) BY THE REGULAR MEMBERS OF THE LICENSEE WITHOUT THE ASSISTANCE OF GAMING PROFESSIONALS;

(2) REPORT THE AMOUNT OF THE PROCEEDS OBTAINED FROM THE LICENSED ACTIVITIES;

(3) REPORT THE DISBURSEMENTS MADE IN CONNECTION WITH THE LICENSED ACTIVITIES; AND

(4) STATE THAT THE LICENSEE HAS NOT PAID A FEE FOR THE RENTAL OF PREMISES ON WHICH THE GAME WAS CONDUCTED TO:

(I) ITSELF;

(II) A TRUSTEE OF THE LICENSEE;

(III) A COMMITTEE OF THE LICENSEE; OR

(IV) ANY ORGANIZATION WITH THE SAME MEMBERS OR SUBSTANTIALLY THE SAME MEMBERS AS THE LICENSEE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 256(d).

In subsections (a) and (b) of this section, the reference to a "licensee" is substituted for the former reference to an "applicant", since the required reports must be made after the applicant becomes a licensee.

In subsection (a)(3)(i) of this section, the former reference to keeping records "on file" is deleted as included in the reference to "keep[ing]" the records.

In subsection (a)(3)(iii) of this section, the reference to "the sheriff ... the State's Attorney for the county; or ... a representative of the sheriff or the State's Attorney" is substituted for the former reference to "member of the Sheriff's office or the State's Attorney's office" for clarity.

Also in subsection (a)(3)(iii) of this section, the reference to the State's Attorney "for the county" is added for clarity and accuracy.

In the introductory language of subsection (b)(1) of this section, the reference to stating "whether" authorized activities were conducted in a certain manner is substituted for the former reference to stating "that" they were so conducted for accuracy.

In subsection (b)(1) of this section, the former reference to "the date" is deleted as included in the reference to "the dates". *See* Art. 1, § 8.

In subsection (b)(4) of this section, the reference to the premises "on which the game was conducted" is added for clarity.

Defined term: "Sheriff" § 13-2501

13-2505. WICOMICO COUNTY GAMING ADVISORY COMMITTEE.

(A) ESTABLISHED.

(1) THERE IS A GAMING ADVISORY COMMITTEE IN THE COUNTY.

(2) THE MEMBERS OF THE COMMITTEE ARE APPOINTED BY, AND SERVE AT THE PLEASURE OF, THE SHERIFF.

(3) THE MEMBERS OF THE COMMITTEE MAY NOT RECEIVE COMPENSATION.

(B) DUTIES.

THE COMMITTEE SHALL:

(1) RECOMMEND TO THE SHERIFF STANDARDS FOR REPORTING REQUIREMENTS FOR LICENSEES;

(2) EXAMINE THE AUDITS AND REPORTS REQUIRED UNDER § 13-2504 OF THIS SUBTITLE; AND

(3) MAKE ANY OTHER RECOMMENDATIONS TO ASSIST THE SHERIFF IN THE ADMINISTRATION OF LICENSING AND OTHER DUTIES OF THE SHERIFF UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 256A.

In subsection (a) of this section, the reference to the appointment of the

members of the committee by the sheriff is substituted for the former reference to "[t]he Sheriff ... shall establish a Gaming Advisory Committee" for clarity.

Defined terms: "Committee" § 13-2501

"Sheriff" § 13-2501

13-2506. PENALTIES.

(A) SUSPENSION.

(1) THE SHERIFF SHALL SUSPEND A LICENSE IF THE LICENSEE FAILS TO COMPLY WITH THE REPORTING REQUIREMENTS OF § 13-2504 OF THIS SUBTITLE.

(2) THE SUSPENSION SHALL CONTINUE UNTIL THE LICENSEE MEETS THE REPORTING REQUIREMENTS OF § 13-2504 OF THIS SUBTITLE.

(B) DISQUALIFICATION.

EXCEPT AS PROVIDED IN SUBSECTION (A) OF THIS SECTION AND SUBJECT TO THE PROCEDURES PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE SHERIFF MAY NOT ISSUE A NEW LICENSE FOR 1 YEAR TO A LICENSEE THAT:

(1) HAS REFUSED TO FILE A REPORT REQUIRED UNDER § 13-2504 OF THIS SUBTITLE; OR

(2) HAS FAILED TO COMPLY WITH THIS SUBTITLE.

(C) PROCEDURES.

(1) THE SHERIFF SHALL NOTIFY THE LICENSEE OR APPLICANT FOR A LICENSE BY REGISTERED MAIL OF THE SHERIFF'S SUSPENSION OR REFUSAL TO ISSUE A LICENSE.

(2) THE LICENSEE OR APPLICANT MAY APPEAL THE DECISION IN WRITING TO THE SHERIFF WITHIN 30 DAYS AFTER RECEIVING THE NOTICE FROM THE SHERIFF.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 256(d)(5) and (i)(1) and (2)(i) and (ii).

In subsection (a) of this section, the reference to "[t]he sheriff" is added to clarify who has the obligation to suspend a license.

In subsection (c)(1) of this section, the former reference to "a declaration by the sheriff" is deleted as surplusage.

Defined term: "Sheriff" § 13-2501

13-2507. JUDICIAL REVIEW.

A PARTY MAY SEEK JUDICIAL REVIEW OF:

(1) THE SHERIFF'S SUSPENSION OF A LICENSE UNDER THIS SUBTITLE; OR

(2) THE SHERIFF'S REFUSAL TO ISSUE A LICENSE UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 256(i)(2)(iii).

Defined term: "Sheriff" § 13-2501

13-2508. ENFORCEMENT.

THIS SUBTITLE SHALL BE ENFORCED BY:

(1) THE SHERIFF;

(2) ANY MUNICIPAL POLICE OFFICER IN THE COUNTY;

(3) ANY OTHER LAW ENFORCEMENT OFFICER OF THE COUNTY; AND

(4) ANY PROSECUTOR OF THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 256(h).

In the introductory language of this section, the former reference to officials being "strictly charged" to enforce is deleted as implicit in the requirement that this subtitle "shall" be enforced by the listed officials.

In item (2) of this section, the reference to municipal police officers "in" the county is substituted for the former reference to municipal police officers "of" the county for accuracy.

In item (3) of this section, the reference "law enforcement officer" is substituted for the former obsolete reference "peace officer".

In item (4) of this section, the reference "prosecutor" is substituted for the former reference to "prosecuting ... officers" for clarity.

Defined term: "Sheriff" § 13-2501

SUBTITLE 26. WORCESTER COUNTY.

PART I. DEFINITIONS; GENERAL PROVISIONS.

13-2601. "COUNTY COMMISSIONERS" DEFINED.

IN THIS SUBTITLE, "COUNTY COMMISSIONERS" MEANS THE BOARD OF COUNTY COMMISSIONERS OF WORCESTER COUNTY.

REVISOR'S NOTE: This section is new language added to allow concise and consistent reference to the Board of County Commissioners of Worcester County.

13-2602. SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY IN WORCESTER COUNTY.

REVISOR'S NOTE: This section is new language added to clarify the applicability of this subtitle.

Former Art. 27, § 251A(m), which provided that former Art. 27, § 251A (revised as Part II of this subtitle) applied throughout Worcester County, is deleted in light of this section.

13-2603. RESERVED.

13-2604. RESERVED.

PART II. BINGO.

13-2605. "BOARD" DEFINED.

IN THIS PART, "BOARD" MEANS THE WORCESTER COUNTY BINGO BOARD.

REVISOR'S NOTE: This section is new language added to avoid repetition of the full title of the board and references to the "bingo board".

13-2606. QUALIFIED ORGANIZATIONS.

THE FOLLOWING ORGANIZATIONS MAY CONDUCT BINGO IN ACCORDANCE WITH THIS PART:

(1) A BONA FIDE RELIGIOUS ORGANIZATION THAT HAS CONDUCTED RELIGIOUS SERVICES AT A FIXED LOCATION IN THE COUNTY FOR AT LEAST 6 YEARS BEFORE APPLYING FOR A LICENSE UNDER THIS PART;

(2) A MUNICIPAL CORPORATION IN THE COUNTY;

(3) A VOLUNTEER FIRE COMPANY IN THE COUNTY;

(4) A LOCAL UNIT OF A NATIONWIDE BONA FIDE NONPROFIT ORGANIZATION OR CLUB THAT CONSISTS SOLELY OF MEMBERS WHO SERVED IN THE ARMED FORCES OF THE UNITED STATES; OR

(5) A NONPROFIT ORGANIZATION THAT:

(I) INTENDS TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE OR EDUCATIONAL PURPOSE THAT IS SPECIFICALLY DESCRIBED IN THE LICENSE APPLICATION FILED WITH THE BOARD; AND

(II) HAS OPERATED AS A NONPROFIT ORGANIZATION IN THE COUNTY FOR AT LEAST 5 YEARS BEFORE APPLYING FOR A LICENSE UNDER THIS PART.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251A(a).

The introductory language of this section is revised as authorization to certain qualified organizations to conduct bingo for clarity.

In the introductory language of this section, the former limitation "[n]othing in this subtitle [sic] shall be construed to make it unlawful" is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

Also in the introductory language of this section, the former reference to "operat[ing]" bingo is deleted in light of the reference to "conduct[ing]" bingo.

In item (1) of this section, the former reference to a municipal corporation in the County that is "subject to the provisions of Article XI-E of the Constitution of Maryland" is deleted because all municipal corporations in Worcester County are subject to Article XI-E of the Maryland Constitution.

In items (1) and (5)(ii) of this section, the reference to "applying for a license under this part" is substituted for the former reference to "the application to the Worcester County bingo board" for clarity.

In item (1) of this section, the reference to a religious "organization" is substituted for the former reference to a religious "group" for accuracy and consistency with § 13-2621(a)(3) of this subtitle.

In item (5)(i) of this section, the reference to a "license" application is added for clarity.

Also in item (5)(i) of this section, the reference to the license application "filed with" the Board is substituted for the former reference to the license application "to" the Board for accuracy and clarity.

Defined term: "Board" § 13-2605

13-2607. WORCESTER COUNTY BINGO BOARD.

(A) ESTABLISHED.

THERE IS A WORCESTER COUNTY BINGO BOARD.

(B) COMPOSITION.

THE BOARD CONSISTS OF THREE MEMBERS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE.

(C) QUALIFICATIONS OF MEMBERS.

EACH MEMBER OF THE BOARD SHALL:

(1) BE A REGISTERED VOTER OF THE COUNTY; AND

(2) BE AN OWNER OF REAL PROPERTY ACCORDING TO THE ASSESSMENT RECORDS OF THE COUNTY.

(D) SALARIES AND EXPENSES.

(1) EACH MEMBER OF THE BOARD IS ENTITLED TO:

(I) AN ANNUAL SALARY OF AT LEAST $1,000 AS DETERMINED BY THE COUNTY COMMISSIONERS; AND

(II) A REASONABLE TRAVEL AND EXPENSE ALLOWANCE.

(2) THE COUNTY COMMISSIONERS SHALL PAY THE COST OF THE PAYMENTS MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION AND ALL ADMINISTRATIVE EXPENSES OF THE BOARD FROM THE PROCEEDS PAID TO THE COUNTY COMMISSIONERS UNDER THIS PART.

(E) TENURE; VACANCIES.

(1) THE TERM OF A MEMBER IS 6 YEARS AND BEGINS ON JUNE 1.

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 2002.

(3) THE GOVERNOR SHALL FILL ANY VACANCY ON THE BOARD OCCURRING DURING THE TERM OF AN APPOINTED MEMBER FOR THE UNEXPIRED TERM WITH THE ADVICE AND CONSENT OF THE SENATE.

REVISOR'S NOTE: Subsection (a) of this section is standard language added to provide expressly for the establishment of the Worcester County Bingo Board.

Subsections (b), (c), and (d) of this section are new language derived without substantive change from former Art. 27, § 251A(c), (d), and the first sentence of (b).

Subsection (e)(1) of this section is new language derived without substantive change from the former reference to "terms ... for six years" in the second sentence of former Art. 27, § 251A(b).

Subsection (e)(2) of this section is standard language substituted for the first, second, and third phrases of the second sentence of former Art. 27, § 251A(b), which provided for the terms of the initial members of the board and were obsolete. This substitution is not intended to alter the term of any member of the board. *See* § _____of Ch. _____, Acts of 2002. Accordingly, in subsection (e)(1) of this section, the specific reference to "June 1" is added to conform to the practice of the board. The terms of the members serving on October 1, 2002, end as follows: (1) one in 2003; (2) one in 2005; and (3) one in 2007.

Subsection (e)(3) of this section is new language derived without substantive change from the third sentence of former Art. 27, § 251A(b).

In subsection (b) of this section, the reference to the board "consist[ing] of three members appointed by the Governor" is substituted for the former requirement that "[t]he Governor shall appoint ... three persons to be members of the" board to conform to similar provisions in other revised articles of the Code.

In the introductory language of subsection (c) of this section, the reference to each "member of" the board is substituted for the former reference to each "person appointed to" the board for consistency within this section.

In the introductory language of subsection (d)(1) of this section, the phrase "is entitled to" is substituted for the former phrase "shall be paid" to conform to similar provisions in other revised articles of the Code.

In subsection (d)(2) of this section, the reference to administrative "expenses" is substituted for the former reference to administrative "costs" for accuracy.

In subsection (e)(3) of this section, the reference to any vacancy "occurring during the term of an appointed member" is added for clarity and to conform to similar provisions in other revised articles of the Code.

Also in subsection (e)(3) of this section, the former reference to filling a vacancy "for any reason" is deleted in light of the reference to filling "any" vacancy.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (d)(2) of this section, it is unclear whether the term "proceeds" received by the county commissioners

refers only to proceeds received under § 13-2614 of this subtitle, or also to license fees received under § 13-2610(c) of this subtitle. If the latter is intended, another term such as "amounts" may be preferred, perhaps with an explicit cross-reference to all covered sources of funds.

Defined terms: "Board" § 13-2605

"County commissioners" § 13-2601

13-2608. POWERS AND DUTIES OF BOARD -- REGULATIONS.

(A) ADOPTION AUTHORIZED.

THE BOARD MAY ADOPT REASONABLE REGULATIONS TO ADMINISTER AND ENFORCE THIS PART.

(B) COPY.

A COPY OF THE REGULATIONS ADOPTED BY THE BOARD SHALL BE MADE AVAILABLE AT A REASONABLE COST.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251A(e).

In subsections (a) and (b) of this section, the former references to "rules" are deleted for consistency throughout this article. *See* General Revisor's Note to article.

In subsection (a) of this section, the former reference to the board "promulgat[ing]" regulations is deleted as implicit in the reference to the board "adopt[ing]" regulations.

Defined term: "Board" § 13-2605

13-2609. SAME -- SUPERVISION OF BINGO; RIGHT OF ENTRY.

(A) DUTY TO SUPERVISE.

(1) THE BOARD SHALL EXERCISE CONTROL AND SUPERVISION OVER ALL GAMES OF BINGO TO ENSURE THAT THE GAMES ARE CONDUCTED FAIRLY IN ACCORDANCE WITH THE PROVISIONS OF THE LICENSES ISSUED UNDER § 13-2610 OF THIS SUBTITLE, THE REGULATIONS ADOPTED BY THE BOARD, AND THIS PART.

(2) THE BOARD SHALL PREVENT BINGO FROM BEING CONDUCTED FOR A COMMERCIAL PURPOSE, FOR PRIVATE PROFIT, OR IN ANY MANNER OTHER THAN AS PROVIDED IN THIS PART.

(B) RIGHT OF ENTRY.

FOR PURPOSES OF INSPECTION, THE BOARD, ITS OFFICERS, AND ITS AGENTS MAY ENTER AT ANY TIME ANY PLACE WHERE:

(1) BINGO IS BEING OR WILL BE CONDUCTED; OR

(2) ANY EQUIPMENT THAT IS BEING OR WILL BE USED TO CONDUCT BINGO IS LOCATED.

REVISOR'S NOTE: This section is new language derived without substantive change from the second, third, and fourth sentences of former Art. 27, § 251A(h).

In subsections (a)(1) and (2) and (b)(1) of this section, the references to "bingo" are substituted for the former references to "games" for clarity. Correspondingly, in subsection (b)(2) of this section, the reference to equipment used to conduct "a game of bingo" is substituted for the former reference to equipment used in the conduct "thereof".

In subsection (a)(1) of this section, the reference to the license "issued under § 13-2610 of this subtitle" is added for clarity.

Also in subsection (a)(1) of this section, the phrase "to ensure that" is substituted for the former phrase "to the end that" for clarity.

Also in subsection (a)(1) of this section, the reference to regulations "adopted by" the board is substituted for the former reference to regulations "of" the board for consistency with § 13-2608 of this subtitle.

Also in subsection (a)(1) of this section, the former reference to "rules" is deleted for consistency throughout this article. *See* General Revisor's Note to article.

In subsection (b)(1) of this section, the reference to any place where "a bingo ... will be conducted" is substituted for the former reference to any place where "it is intended that any such games shall be conducted" for brevity. Correspondingly, in subsection (b)(2) of this section, the reference to equipment that "will be used" is substituted for the former reference to equipment "intended to be used".

Defined term: "Board" § 13-2605

13-2610. LICENSE TO CONDUCT BINGO.

(A) REQUIRED.

AN ORGANIZATION OR MUNICIPAL CORPORATION DESCRIBED IN § 13-2606 OF THIS SUBTITLE THAT INTENDS TO CONDUCT BINGO UNDER THIS PART MUST OBTAIN:

(1) AN ANNUAL LICENSE TO CONDUCT BINGO FOR MORE THAN 15 DAYS IN A YEAR; OR

(2) A TEMPORARY LICENSE TO CONDUCT BINGO FOR 15 DAYS OR FEWER IN A YEAR.

(B) APPLICATIONS FOR LICENSES.

(1) AN APPLICANT FOR A LICENSE SHALL SUBMIT TO THE BOARD AN APPLICATION ON THE FORM THAT THE BOARD BY REGULATION REQUIRES.

(2) THE APPLICATION FORM SHALL REQUIRE:

(I) THE NAME OF THE APPLICANT;

(II) THE NAME OF EACH PRINCIPAL OFFICER OF THE APPLICANT; AND

(III) A CERTIFICATION THAT NO PERSON WILL CONDUCT BINGO EXCEPT A PERSON WHO:

1. IS A SALARIED EMPLOYEE OR BONA FIDE MEMBER OF THE APPLICANT; AND

2. SHALL NOT RECEIVE ANY FORM OF COMMISSION OR BONUS.

(C) LICENSE FEES.

(1) AN APPLICANT SHALL PAY TO THE BOARD A LICENSE FEE OF:

(I) $100 FOR AN ANNUAL LICENSE; OR

(II) $3 FOR EACH DAY BINGO IS CONDUCTED FOR A TEMPORARY LICENSE.

(2) THE BOARD SHALL PAY TO THE COUNTY COMMISSIONERS ALL LICENSE FEES COLLECTED UNDER THIS PART.

(D) ISSUANCE OF LICENSE.

THE BOARD SHALL ISSUE A LICENSE TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS PART AND THE REGULATIONS ADOPTED UNDER THIS PART.

(E) LIMITATION ON ISSUANCE.

A LICENSE MAY NOT BE ISSUED TO AN APPLICANT TO CONDUCT BINGO OUTSIDE THE ELECTION DISTRICT IN WHICH THE MAIN OFFICE, HEADQUARTERS, OR USUAL MEETING PLACE OF THE APPLICANT IS LOCATED.

(F) APPROVAL OF LEASE REQUIRED.

IF AN APPLICANT CONDUCTS BINGO ON PREMISES THAT ARE LEASED BY THE APPLICANT, THE LEASE AGREEMENT MUST BE APPROVED BY THE BOARD BEFORE A LICENSE MAY BE ISSUED.

(G) REVOCATION OR SUSPENSION.

THE BOARD MAY DENY A LICENSE TO AN APPLICANT OR SUSPEND OR REVOKE A LICENSE IF THE APPLICANT OR LICENSEE HAS VIOLATED THIS PART OR ANY REGULATION ADOPTED UNDER THIS PART.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251A(g), the first, second, third, and fifth sentences of (f), the first sentence of (h), and the second and eighth sentences of (j).

The introductory language of subsection (a) of this section is revised to cross-reference the entities described in § 13-2606 of this subtitle to avoid needless repetition.

In subsections (a), (b)(2)(iii), and (f) of this section, the former references to "operat[ing]" a game of bingo are deleted as unnecessary in light of the references to "conduct[ing]" a game of bingo.

In subsection (a)(1) of this section, the reference to conducting a game of bingo for "more" than 15 days in a year is substituted for the former reference to conducting a game of bingo for "longer" than 15 days in a year for clarity.

Also in subsection (a)(1) of this section, the former reference to an annual license "covering bingo games over a period of one year" is deleted in light of the reference to an annual license "to conduct a game of bingo for more than 15 days in a year".

In subsection (a)(2) of this section, the requirement that certain entities "must obtain ... a temporary license" is added to state expressly that which was only implied in the former law.

In subsection (b)(1) of this section, the reference to "[a]n applicant for a license" is added for clarity.

Also in subsection (b)(1) of this section, the former requirement that the application be "in such detail as" the board requires is deleted as implicit in the requirement that the application be "on the form" the board requires.

In the introductory language of subsection (b)(2) of this section, the requirement that the application form "require" certain information is substituted for the former requirement that the application form "contain" certain information for accuracy.

In subsections (b)(2)(i) and (f) of this section, the references to an "applicant" are substituted for the former references to an "organization or municipal corporation" for brevity and consistency within this section. Correspondingly, in subsection (b)(2)(iii)1 of this section, the reference to the "applicant" is substituted for the former reference to the "organization or municipal corporation" and "said organization".

In subsection (b)(2)(ii) of this section, the reference to "the name of each principal officer of the applicant" is substituted for the former reference to "a list of its principal officers" for clarity.

In subsection (b)(2)(iii)1 of this section, the reference to a person who is a "salaried employee" of the applicant is substituted for the former reference to a person who is "employed by" the applicant "on a regular salary" for brevity.

In subsection (b)(2)(iii)2 of this section, the reference to "not receiv[ing]" any form of commission or bonus is substituted for the former reference to "not in any way [being] subject to the payment of" any form of commission or bonus for brevity.

In the introductory language of subsection (c)(1) of this section, the requirement that "[a]n applicant ... pay to the board a license fee of" is added to state expressly that which was only implied in the former references to the "cost" of licenses.

In subsection (c)(1)(i) and (ii) of this section, the former references to the "cost" of an annual or temporary license are deleted in light of the reference to the "fee" payable for these licenses in the introductory language of subsection (c)(1) of this section.

In subsections (d) and (g) of this section, the former references to "rules" are deleted for consistency throughout this article. *See* General Revisor's Note to article.

In subsection (d) of this section, the requirement that the board issue a license "to each applicant who meets" certain requirements is substituted for the former requirement that the board issue a license "[i]f the bingo board ascertains that the application conforms to" certain requirements for accuracy and to conform to similar provisions in other revised articles of the Code.

Also in subsection (d) of this section, the reference to regulations "adopted under this part" is substituted for the former reference to regulations "issued thereunder by the board" for accuracy and consistency with § 13-2608 of this subtitle.

Also in subsection (d) of this section, the former reference to issuing a license "as applied for" is deleted as implicit.

In subsection (e) of this section, the former reference to an applicant "qualified under the provisions of this section" is deleted because the prohibition on the issuance of a license under subsection (e) applies whether or not an applicant is otherwise qualified for a license.

In subsection (f) of this section, the former reference to premises "rented" by the applicant is deleted in light of the reference to premises "leased" by the applicant. Correspondingly, the former reference to a "rental" agreement is deleted in light of the reference to a "lease" agreement.

Also in subsection (f) of this section, the former requirement that the lease agreement "first" be approved is deleted in light of the requirement that the lease agreement be approved "before" a license may be issued.

In subsection (g) of this section, the reference to "deny[ing] a license to an applicant" is substituted for the former reference to "revok[ing] any application for a license" for accuracy and to conform to similar provisions in other revised articles of the Code.

Also in subsection (g) of this section, the former reference to regulations "promulgated" under this part is deleted as implicit in the reference to regulations "adopted" under this part.

Defined terms: "Board" § 13-2605

"County commissioners" § 13-2601

"Person" § 1-101

13-2611. CONDITIONS AND LIMITATIONS ON CONDUCT OF BINGO GAMES.

(A) ADMISSION CHARGE.

THE CHARGE FOR ADMISSION TO A PLACE IN ORDER TO PARTICIPATE IN BINGO CONDUCTED UNDER THIS PART MAY NOT EXCEED $1.

(B) VALUE OF PRIZE.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE VALUE OF A PRIZE IN MONEY, MERCHANDISE, OR SERVICES FOR ANY ONE GAME OF BINGO CONDUCTED UNDER THIS PART MAY NOT EXCEED $50.

(2) JACKPOT PRIZES MAY BE OFFERED IN A MAXIMUM AMOUNT OF $1,000.

(C) EMPLOYEES CONDUCTING BINGO.

A LICENSEE'S EMPLOYEES AND THE TERMS OF THEIR EMPLOYMENT MUST BE APPROVED BY THE BOARD BEFORE THEY MAY CONDUCT BINGO UNDER THIS PART.

(D) AGE OF PARTICIPANTS.

A MINOR MAY NOT BE ALLOWED TO PARTICIPATE IN BINGO CONDUCTED UNDER THIS PART.

(E) SUNDAY BINGO PROHIBITED.

BINGO MAY NOT BE CONDUCTED UNDER THIS PART ON SUNDAY.

(F) LOCATION.

BINGO MAY NOT BE CONDUCTED UNDER THIS PART IN A ROOM OR AREA WHERE ALCOHOLIC BEVERAGES ARE SOLD OR SERVED DURING THE GAME.

(G) NUMBER OF DAYS.

A LICENSEE UNDER THIS PART MAY NOT CONDUCT BINGO ON MORE THAN 125 DAYS IN A YEAR.

REVISOR'S NOTE: This section is new language derived without substantive change from the fourth sentence of former Art. 27, § 251A(f) and the first and third through seventh sentences of (j).

In subsection (a) of this section, the reference to a game of bingo "conducted under this part" is added for clarity and consistency within this part. Correspondingly, in subsections (c), (e), and (f) of this section, the references to a game of bingo conducted "under this part" are added.

Also in subsection (a) of this section, the former reference to admission to "any premises in order to engage or participate in" bingo is deleted as implicit in the reference to admission to "bingo".

In subsections (b)(1), (c), and (d) of this section, the former references to bingo "operat[ed]" under this part are deleted in light of the references to bingo "conduct[ed]" under this part. Correspondingly, in subsection (e) of this section, the former reference to the "operation" of bingo is deleted in light of the reference to the "conduct" of bingo.

In subsection (b)(1) of this section, the reference to a "money" prize is substituted for the former reference to a "cash" prize for consistency within this title.

In subsection (c) of this section, the reference to "[a] licensee's employees" is substituted for the former reference to "[a]ll such employees" for clarity.

In subsection (d) of this section, the defined term "minor" is substituted for the former reference to a "person under 18 years of age" for consistency within this article. *See* § 1-101 of this article.

Also in subsection (d) of this section, the former reference to "engag[ing]" in bingo is deleted in light of the reference to "participat[ing]" in bingo.

Subsection (e) of this section is revised as a prohibition on the conduct of

bingo, rather than as an effect of part provision, for clarity.

In subsection (f) of this section, the reference to "bingo" is substituted for the former reference to "games" for clarity and consistency within this part.

Also in subsection (f) of this section, the former reference to alcoholic beverages being sold or served during "the progress of" the game is deleted as surplusage.

Defined terms: "Board" § 13-2605

"Minor" § 1-101

13-2612. ADVERTISEMENTS.

(A) LIMITATION.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON MAY NOT ADVERTISE THE LOCATION OR TIME OF BINGO, OR THE PRIZES AWARDED OR TO BE AWARDED, BY:

(1) RADIO, TELEVISION, OR SOUND SYSTEMS;

(2) BILLBOARDS, POSTERS, OR HANDBILLS; OR

(3) ANY OTHER MEANS ADDRESSED TO THE PUBLIC.

(B) EXCEPTIONS.

(1) UNLESS OTHERWISE PROHIBITED BY COUNTY OR MUNICIPAL LAW, ONE SIGN NOT EXCEEDING 36 SQUARE FEET, STATING THAT BINGO WILL BE CONDUCTED, MAY BE DISPLAYED ON OR ADJACENT TO THE PREMISES WHERE BINGO WILL BE CONDUCTED.

(2) IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER § 13-2608 OF THIS SUBTITLE, NOTICE THAT BINGO WILL BE CONDUCTED MAY BE POSTED ON A BULLETIN BOARD OR INCLUDED ON A POSTER INSIDE A HOTEL, MOTEL, RESTAURANT, OR STORE THAT IS LOCATED IN THE ELECTION DISTRICT IN WHICH THE GAME WILL BE CONDUCTED.

REVISOR'S NOTE: This section is new language derived without substantive change from the ninth and tenth sentences of former Art. 27, § 251A(j).

Subsection (a) of this section is revised in the active voice to clarify that it is "a person" who is prohibited from advertising a game of bingo by certain methods of communication.

In the introductory language of subsection (a) and in subsection (b)(1) and (2) of this section, the references to "bingo" are substituted for the former references to a "game" for clarity and consistency within this part.

In the introductory language of subsection (a) of this section, the reference to the time "of bingo" is substituted for the former reference to the time "when it is to be or has been conducted" for brevity.

In subsection (a)(1) and (2) of this section, the former phrase "means of" is deleted as surplusage.

In subsection (a)(3) of this section, the former reference to the "general" public is deleted as surplusage.

In subsection (b)(1) of this section, the reference to a sign "stating that bingo will be conducted" is added to clarify the permitted contents of the sign authorized under this subsection.

Also in subsection (b)(1) of this section, the former reference to a sign not exceeding 36 square feet "in area" is deleted as implicit in the reference to "square feet".

In subsection (b)(2) of this section, the reference to regulations "adopted" under § 13-2608 of this subtitle is substituted for the former reference to regulations "promulgated" under that section for consistency with the terminology used in § 13-2608.

Also in subsection (b)(2) of this section, the former reference to "general" regulations is deleted as surplusage.

Also in subsection (b)(2) of this section, the former reference to "rules" is deleted for consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

13-2613. ACCOUNTING.

(A) STATEMENT OF RECEIPTS AND EXPENSES REQUIRED.

EACH LICENSEE UNDER THIS PART SHALL SUBMIT TO THE BOARD, AT MONTHLY INTERVALS OR AT ANY OTHER INTERVAL THAT THE BOARD SETS, A STATEMENT OF ITS GROSS RECEIPTS AND EXPENSES.

(B) CONTENTS.

FOR EACH GAME OF BINGO CONDUCTED BY THE LICENSEE, THE STATEMENT SHALL INCLUDE:

(1) THE AMOUNT OF GROSS RECEIPTS DERIVED FROM THE GAME;

(2) EACH ITEM OF EXPENSE INCURRED IN THE CONDUCT OF THE GAME;

(3) EACH ITEM OF EXPENDITURE MADE IN CONNECTION WITH THE GAME; AND

(4) THE NET PROFIT DERIVED FROM THE CONDUCT OF THE GAME.

REVISOR'S NOTE: This section is new language derived without substantive change from the first sentence of former Art. 27, § 251A(i) and the first, third, and fourth sentences of (k).

In subsection (a) of this section, the reference to "gross" receipts is added for consistency with subsection (b)(1) of this section.

Also in subsection (a) of this section, the reference to other "intervals" is substituted for the former reference to other "periods" for consistency with the reference to monthly "intervals" in this subsection.

In the introductory language of subsection (b) of this section, the phrase "[f]or each game of bingo conducted by the licensee" is added for clarity.

In subsection (b)(2) and (4) of this section, the references to the "conduct" of the game are substituted for the former references to the "operation" of the game for consistency within this part.

In subsection (b)(3) of this section, the reference to each item of expenditure made "in connection with the game" is added for clarity.

In subsection (b)(4) of this section, the reference to net profit "derived" from the conduct of the game is added for clarity and consistency within this part.

The first sentence of former Art. 27, § 251A(i) is deleted as redundant of this section.

Defined term: "Board" § 13-2605

13-2614. DISTRIBUTION AND USE OF PROCEEDS.

(A) PAYMENT TO COUNTY COMMISSIONERS.

(1) EACH LICENSEE SHALL PAY TO THE COUNTY COMMISSIONERS 3% OF THE GROSS RECEIPTS DERIVED FROM BINGO FOR EACH DAY THAT BINGO IS CONDUCTED BY THE LICENSEE UNDER THIS PART.

(2) THE LICENSEE SHALL PAY THE MONEY AT THE TIME THE LICENSEE SUBMITS TO THE BOARD THE STATEMENT REQUIRED UNDER § 13-2613 OF THIS SUBTITLE.

(B) NONPROFIT ORGANIZATIONS.

(1) AN ORGANIZATION DESCRIBED IN § 13-2606(5) OF THIS SUBTITLE MAY RETAIN UP TO ONE-HALF OF THE PROCEEDS DERIVED FROM BINGO CONDUCTED UNDER THIS PART FOR THE BENEFIT OF THE ORGANIZATION.

(2) THE ORGANIZATION SHALL DISTRIBUTE ANY REMAINING PROCEEDS FOR EDUCATIONAL OR CHARITABLE PURPOSES.

(C) PAYMENT TO MUNICIPAL CORPORATION.

IF BINGO IS CONDUCTED IN A MUNICIPAL CORPORATION IN THE COUNTY, THE COUNTY COMMISSIONERS SHALL PAY ONE-THIRD OF THE 3% OF THE GROSS RECEIPTS RECEIVED UNDER SUBSECTION (A) OF THIS SECTION TO THE MUNICIPAL CORPORATION, TO BE USED FOR ITS GENERAL PURPOSES.

(D) USE OF PROCEEDS BY COUNTY COMMISSIONERS.

(1) FROM THE PERCENTAGE OF THE GROSS RECEIPTS RETAINED BY THE COUNTY COMMISSIONERS, THE COUNTY COMMISSIONERS SHALL FIRST PAY THE EXPENSES NECESSARY TO ADMINISTER THIS PART.

(2) ALL ADDITIONAL FUNDS SHALL BE CREDITED BY THE COUNTY COMMISSIONERS TO THE GENERAL FUNDS OF THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251A(a-1), the second through fifth sentences of (i), and the second sentence of (k).

In subsections (a)(1) and (c) of this section, the former references to the "operation" of bingo and bingo being "operat[ed]" are deleted in light of the references to bingo being "conducted".

In subsection (a)(1) of this section, the reference to gross receipts "derived" from bingo is added for clarity and consistency within this part.

Also in subsection (a)(1) of this section, the reference to bingo conducted "under this part" is added for clarity and consistency within this part.

Also in subsection (a)(1) of this section, the reference to gross receipts "for each day that bingo is" conducted under this part is substituted for the former reference to gross receipts "for every day such games are operated and conducted" for clarity.

In subsection (a)(2) of this section, the requirement that payment be made "at the time the licensee submits to the board the statement required under § 13-2613 of this subtitle" is substituted for the former requirement that payment be made "[a]t the same time" for clarity.

In subsection (b)(1) of this section, the reference to proceeds "derived from bingo conducted under this part" is added for clarity.

In subsection (c) of this section, the reference to gross receipts "received under subsection (a) of this section" is added for clarity.

Also in subsection (c) of this section, the former reference to "the corporate

boundaries of" a municipal corporation is deleted as surplusage.

Also in subsection (c) of this section, the former reference to a municipal corporation in the county "which is subject to the provisions of Article XI-E of the Constitution" is deleted because all municipal corporations in Worcester County are subject to Article XI-E of the Maryland Constitution.

Defined terms: "Board" § 13-2605

"County commissioners" § 13-2601

13-2615. BOOKS AND REPORTS.

(A) LICENSEES.

EACH LICENSEE UNDER THIS PART SHALL MAINTAIN THE BOOKS AND REPORTS THAT THE BOARD REQUIRES FOR THE PURPOSES OF THIS PART.

(B) BOARD.

THE BOARD SHALL SUBMIT TO THE COUNTY COMMISSIONERS A DETAILED ANNUAL REPORT OF ALL STATEMENTS SUBMITTED TO THE BOARD.

REVISOR'S NOTE: This section is new language derived without substantive change from the fifth and sixth sentences of former Art. 27, § 251A(k).

In subsection (a) of this section, the reference to each licensee "under this part" is added for clarity and consistency within this part.

Also in subsection (a) of this section, the former reference to "keep[ing]" books and reports is deleted as included in the reference to "maintain[ing]" them.

In subsection (b) of this section, the requirement to "submit" a report is substituted for the former requirement to "make" a report for accuracy.

Defined terms: "Board" § 13-2605

"County commissioners" § 13-2601

13-2616. PROHIBITED ACTS; PENALTIES.

(A) VIOLATIONS BY LICENSEES.

(1) A LICENSEE MAY NOT:

(I) DIVERT OR PAY OUT ANY OF THE PROCEEDS OF BINGO CONDUCTED UNDER THIS PART IN ANY MANNER OTHER THAN AS REQUIRED BY THIS PART OR BY THE REGULATIONS ADOPTED UNDER THIS PART; OR

(II) VIOLATE ANY OTHER PROVISION OF THIS PART.

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

(B) WRONGFUL RECEIPT OF PROCEEDS.

(1) A PERSON MAY NOT RECEIVE ANY OF THE PROCEEDS OF BINGO CONDUCTED UNDER THIS PART EXCEPT FOR THE PURPOSES PROVIDED IN THIS PART.

(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 $500 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251A(l).

In subsections (a)(1) and (b)(1) of this section, the former references to any "portion" of the proceeds are deleted as surplusage.

In subsection (a)(1) of this section, the former reference to "rules" is deleted for consistency within this article. *See* General Revisor's Note to article.

Also in subsection (a)(1) of this section, the former reference to "in any manner" violating any other provision of this part is deleted as surplusage.

In subsection (a)(2) of this section, the reference to each "violation" is substituted for the former reference to each "offense" for consistency within this article. *See* General Revisor's Note to article.

In subsection (b)(1) of this section, the reference to bingo "conducted under this part" is substituted for the former reference to "any such" bingo for clarity.

In subsection (b)(2) of this section, the reference to imprisonment "not exceeding" 90 days is substituted for the former reference to imprisonment "for" 90 days to conform to the apparent legislative intent, expressed in the former provision that "such ... imprisonment [be] in the discretion of the court", to establish a maximum, and not a mandatory minimum, term of imprisonment.

Also in subsection (b)(2) of this section, the former phrase "such fine and imprisonment in the discretion of the court" is deleted as implicit in the establishment of maximum penalties.

Defined term: "Person" § 1-101

13-2617. RESERVED.

13-2618. RESERVED.

PART III. GAMING.

13-2619. DEFINITIONS.

(A) IN GENERAL.

IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 251B(a)(1)(i).

(B) GAMING DEVICE.

(1) "GAMING DEVICE" MEANS A PADDLE WHEEL, WHEEL OF FORTUNE, CHANCE BOOK, RAFFLE, OR ANY OTHER MECHANISM FOR PLAYING A GAME OF CHANCE.

(2) "GAMING DEVICE" DOES NOT INCLUDE BINGO.

REVISOR'S NOTE: Paragraph (1) of this subsection is new language derived without substantive change from the introductory language of former Art. 27, § 251B(a)(2), as it described gaming devices. Paragraph (1) is revised as a definition to provide an express definition of "gaming device".

Paragraph (2) of this subsection is new language added to clarify that bingo is not a "gaming device" regulated under this part. As to the provisions of law governing bingo in Worcester County, *see* Part II of this subtitle.

In paragraph (1) of this subsection, the phrase "any other mechanism for playing a game of chance" is substituted for the former phrase "by any other gaming device" for clarity.

(C) MULTIPLE GAMING DEVICE PERMIT.

"MULTIPLE GAMING DEVICE PERMIT" MEANS A PERMIT THAT ALLOWS THE USE OF TWO OR MORE GAMING DEVICES.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 251B(a)(1)(ii).

The reference to allowing "the use of" two or more gaming devices is added for clarity and accuracy.

The reference to "gaming devices" is substituted for the former reference to "devices specified in paragraph (2) of this subsection" for brevity.

(D) RAFFLE.

"RAFFLE" MEANS A LOTTERY USING PAPER CHANCES IN WHICH PRIZES ARE WON BY PERSONS WHO BUY CHANCES IN THE LOTTERY.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 251B(a)(1)(iii).

No changes are made.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the reference to "paper" chances may be overly specific.

Defined term: "Person" § 1-101

13-2620. EFFECT OF PART.

THIS PART DOES NOT AUTHORIZE GAMBLING USING A SLOT MACHINE OR COIN MACHINE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(l).

13-2621. GAMING PERMITS.

(A) QUALIFIED ORGANIZATIONS.

THE COUNTY COMMISSIONERS MAY ISSUE A PERMIT TO ANY OF THE FOLLOWING ORGANIZATIONS TO CONDUCT A FUNDRAISER AT WHICH MERCHANDISE OR MONEY PRIZES MAY BE AWARDED BY GAMING DEVICES:

(1) A BONA FIDE RELIGIOUS ORGANIZATION THAT HAS CONDUCTED RELIGIOUS SERVICES AT THE SAME LOCATION IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A PERMIT;

(2) A VOLUNTEER FIRE COMPANY THAT IS SUPPORTED BY THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE VOLUNTEER FIRE COMPANY OR AUXILIARY UNIT;

(3) A NATIONALLY CHARTERED VETERANS' ORGANIZATION OR AN AUXILIARY UNIT WHOSE MEMBERS ARE DIRECTLY ASSOCIATED WITH THE VETERANS' ORGANIZATION;

(4) A BONA FIDE NONPROFIT FRATERNAL, EDUCATIONAL, CIVIC, PATRIOTIC, OR CHARITABLE ORGANIZATION THAT INTENDS TO CONDUCT A FUNDRAISER FOR THE BENEFIT OF A CHARITY LOCATED IN THE COUNTY; OR

(5) A BONA FIDE NONPROFIT ORGANIZATION THAT:

(I) INTENDS TO RAISE MONEY FOR AN EXCLUSIVELY CHARITABLE, ATHLETIC, OR EDUCATIONAL PURPOSE THAT IS SPECIFICALLY DESCRIBED IN THE PERMIT APPLICATION; AND

(II) HAS OPERATED AS A NONPROFIT ORGANIZATION IN THE COUNTY FOR AT LEAST 3 YEARS BEFORE APPLYING FOR A PERMIT.

(B) DETERMINATION.

THE COUNTY COMMISSIONERS SHALL DETERMINE WHETHER AN ORGANIZATION QUALIFIES FOR A PERMIT UNDER THIS SECTION.

(C) ORGANIZATION IN COUNTY REQUIRED.

AN ORGANIZATION MUST BE ORGANIZED IN AND SERVE THE RESIDENTS OF THE COUNTY TO BE ELIGIBLE FOR A PERMIT UNDER THIS SECTION.

(D) BONA FIDE CHARITY.

AN ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE IS A BONA FIDE CHARITY UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(a)(2), (3), and (4).

Subsection (a) of this section is restated as an affirmative grant of authority to certain organizations to conduct a fundraiser for clarity.

In the introductory language of subsection (a) of this section, the reference to a "fundraiser" is substituted for the former reference to a "fund-raising affair" for consistency with the terminology used throughout this part.

Also in the introductory language of subsection (a) of this section, the reference to "gaming devices" is substituted for the former reference to "devices commonly known as paddle wheels, wheels of fortune, chance books, raffles, or ... any other gaming device" for brevity.

Also in the introductory language of subsection (a) of this section, the former limitation "[n]otwithstanding any other provision of this article," is deleted in light of § 13-101 of this title and the reorganization of material derived from the former "Gaming" subheading of Article 27 in Titles 12 and 13 of this article.

In subsection (a)(2) of this section, the reference to a volunteer fire company unit "that is supported by the county or a municipal corporation in the county" is substituted for the former reference to a "county or municipally supported" volunteer fire company or auxiliary unit for clarity and accuracy.

In subsection (a)(3) of this section, the reference to members who are

directly associated with the organization "or auxiliary unit" is added for consistency within this subsection.

In subsection (a)(5)(ii) of this section, the reference to operating "as a nonprofit organization" is substituted for the former reference to operating "on a nonprofit basis" for clarity and consistency with § 13-2606(5)(ii) of this subtitle.

In subsection (c) of this section, the former reference to an organization "under paragraph (2) of this subsection" is deleted as implicit.

In subsection (d) of this section, the former reference to an "institution, association, society, or corporation" is deleted as included in the comprehensive reference to an "organization".

Defined terms: "County commissioners" § 13-2601

"Gaming device" § 13-2619

13-2622. REGULATION BY COUNTY COMMISSIONERS.

THE COUNTY COMMISSIONERS MAY:

(1) ADOPT REGULATIONS CONCERNING THE PERMIT APPLICATION AND THE ISSUANCE OF PERMITS UNDER THIS PART;

(2) SET A FEE BY RESOLUTION FOR EACH KIND OF PERMIT ISSUED UNDER THIS PART;

(3) REGULATE THE NUMBER OF PERMITS ISSUED TO ORGANIZATIONS EACH YEAR; AND

(4) DENY A PERMIT TO AN ORGANIZATION FOR UP TO 3 YEARS IF THE ORGANIZATION VIOLATES THIS PART OR THE REGULATIONS ADOPTED UNDER THIS PART.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(b).

In item (1) of this section, the reference to the issuance of permits "under this part" is added for clarity. Correspondingly, in item (2) of this section, the reference to each permit "issued under this part" is added.

In item (2) of this section, the reference to each "kind of" permit is added for clarity.

In item (3) of this section, the former reference to the number of permits "which may be" issued to organizations is deleted as surplusage.

Defined term: "County commissioners" § 13-2601

13-2623. MULTIPLE GAMING DEVICE PERMITS -- LIMITATIONS.

(A) NUMBER PER YEAR.

THE COUNTY COMMISSIONERS MAY NOT ISSUE MORE THAN TWO MULTIPLE GAMING DEVICE PERMITS TO AN ORGANIZATION IN ANY 1 YEAR.

(B) NUMBER PER FACILITY.

THE COUNTY COMMISSIONERS MAY NOT ISSUE:

(1) MORE THAN EIGHT MULTIPLE GAMING DEVICE PERMITS FOR FUNDRAISERS TO BE HELD IN ANY ONE FACILITY IN ANY 1 YEAR; OR

(2) MORE THAN THREE MULTIPLE GAMING DEVICE PERMITS FOR FUNDRAISERS TO BE HELD IN ANY ONE FACILITY IN ANY 27-DAY PERIOD.

(C) TIME LIMIT.

A MULTIPLE GAMING DEVICE PERMIT ISSUED UNDER THIS PART IS VALID FOR ONLY ONE FUNDRAISER LASTING NOT MORE THAN 6 HOURS.

(D) OCEAN CITY.

THE COUNTY COMMISSIONERS MAY NOT ISSUE A MULTIPLE GAMING DEVICE PERMIT FOR USE IN OCEAN CITY OR ON REAL PROPERTY THAT IS OWNED BY OCEAN CITY AND LOCATED IN THE COUNTY.

(E) CLASS B OR D ALCOHOLIC BEVERAGES LICENSED PREMISES.

THE COUNTY COMMISSIONERS MAY NOT ISSUE A MULTIPLE GAMING DEVICE PERMIT TO HOLD A FUNDRAISER ON PREMISES THAT ARE LICENSED UNDER A CLASS B OR CLASS D ALCOHOLIC BEVERAGES LICENSE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(c), (d), (g), and (h).

Subsections (b), (d), and (e) of this section are revised in the active voice to clarify that it is the county commissioners who are prohibited from issuing multiple gaming device permits under certain circumstances.

In subsection (b)(1) and (2) of this section, the references to multiple gaming device permits "for fundraisers" are added for clarity.

In subsection (c) of this section, the reference to a fundraiser lasting "not more than" 6 hours is added for clarity and accuracy.

Also in subsection (c) of this section, the reference to a "fundraiser" is substituted for the former reference to an "event" for consistency with the terminology used throughout this part.

Also in subsection (c) of this section, the former reference to a multiple gaming device permit issued "for a fund-raiser at which 2 or more gaming devices will be used" is deleted in light of the use of the defined term "multiple gaming device permit".

In subsection (d) of this section, the reference to use "on" real property is substituted for the former reference to use "within the boundaries of" real property for brevity.

Also in subsection (d) of this section, the former reference to use in "the corporate limits of" Ocean City is deleted as surplusage.

In subsection (e) of this section, the prohibition against "issu[ing]" a multiple gaming device permit is substituted for the former prohibition against "approv[ing]" a multiple gaming device permit for consistency with the terminology used throughout this part.

Defined terms: "County commissioners" § 13-2601

"Multiple gaming device permit" § 13-2619

13-2624. SAME -- USE OF FUNDS.

AT LEAST ONE-HALF OF THE FUNDS DERIVED FROM A FUNDRAISER FOR WHICH A MULTIPLE GAMING DEVICE PERMIT HAS BEEN ISSUED UNDER THIS PART SHALL BE USED FOR A CIVIC, CHARITABLE, OR EDUCATIONAL PURPOSE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(f).

The reference to funds derived from a "fundraiser for which a multiple gaming device permit has been issued under this part" is substituted for the former reference to funds derived from a "multiple gaming device fund-raiser that permits the use of 2 or more gaming devices" for clarity.

Defined term: "Multiple gaming device permit" § 13-2619

13-2625. RAFFLES.

(A) TIME LIMIT.

A RAFFLE CONDUCTED UNDER A PERMIT ISSUED UNDER THIS PART MAY NOT LAST MORE THAN 1 YEAR FROM THE DATE THE PERMIT IS ISSUED TO THE DATE THE LAST PRIZE IS AWARDED.

(B) NUMBER OF PERMITS.

THE COUNTY COMMISSIONERS MAY REGULATE THE NUMBER OF PERMITS TO CONDUCT A RAFFLE THAT AN ORGANIZATION MAY RECEIVE IN A YEAR.

(C) NOT A MULTIPLE GAMING DEVICE.

A RAFFLE IS NOT A MULTIPLE GAMING DEVICE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(a)(5) and (j).

In subsection (b) of this section, the reference to "permits to conduct a raffle" is substituted for the former reference to "raffle permits" for consistency with subsection (a) of this section.

Defined terms: "County commissioners" § 13-2601

"Raffle" § 13-2619

13-2626. CONDUCT OF FUNDRAISERS.

(A) IN GENERAL.

(1) (I) A FUNDRAISER CONDUCTED UNDER THIS PART SHALL BE MANAGED AND OPERATED ONLY BY MEMBERS OF THE ORGANIZATION THAT RECEIVES THE PERMIT FOR THE FUNDRAISER.

(II) A PERSON MAY NOT BE COMPENSATED FOR THE MANAGEMENT OR OPERATION OF ANY GAMING ACTIVITY AUTHORIZED BY THE PERMIT.

(2) EACH ORGANIZATION THAT RECEIVES A PERMIT FOR A FUNDRAISER UNDER THIS PART SHALL DESIGNATE AN INDIVIDUAL WHO IS RESPONSIBLE FOR COMPLYING WITH THE TERMS AND CONDITIONS OF THE PERMIT AND THIS PART.

(B) LOCATION.

AN ORGANIZATION THAT RECEIVES A PERMIT FOR A FUNDRAISER UNDER THIS PART SHALL CONDUCT THE FUNDRAISER IN:

(1) A STRUCTURE THAT IS OWNED, LEASED, OR OCCUPIED BY THE ORGANIZATION;

(2) A STRUCTURE THAT IS OWNED, LEASED, OR OCCUPIED BY AN ORGANIZATION THAT WOULD QUALIFY FOR A PERMIT UNDER § 13-2621 OF THIS SUBTITLE; OR

(3) A PUBLIC LOCATION THAT IS DESCRIBED IN THE PERMIT APPLICATION AND APPROVED BY THE STATE'S ATTORNEY FOR THE COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(e) and (i).

In subsection (a)(1)(i) of this section, and the introductory language of subsection (b) of this section, the references to a permit "for the fundraiser" are added for clarity.

In subsection (a)(2) of this section, the reference to each organization "that receives a permit for a fundraiser under this part" is added for clarity.

Also in the introductory language of subsection (b) of this section, the reference to an organization that "receives" a permit is substituted for the former reference to an organization that "is issued" a permit for consistency within this section.

In subsection (b)(1) of this section, the former reference to the organization "receiving the permit" is deleted in light of the reference in the introductory language of subsection (b) to "[a]n organization that receives a permit".

Defined term: "Person" § 1-101

13-2627. ACCOUNTING.

WITHIN 30 DAYS AFTER A FUNDRAISER CONDUCTED UNDER THIS PART, THE ORGANIZATION THAT RECEIVED THE PERMIT FOR THE FUNDRAISER SHALL SUBMIT TO THE COUNTY COMMISSIONERS:

(1) AN ACCOUNTING OF ALL FUNDS RECEIVED OR PLEDGED;

(2) AN ACCOUNTING OF ALL EXPENSES PAID OR INCURRED; AND

(3) A STATEMENT UNDER OATH OF THE APPLICATION OF THE NET PROFITS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(k).

In the introductory language of this section, the reference to a fundraiser "conducted under this part" is added for clarity.

Also in the introductory language of this section, the reference to the organization that "received the permit for the fundraiser" is substituted for the former reference to the organization that "is issued a permit under this section" for consistency with § 13-2626 of this subtitle.

Also in the introductory language of this section, the reference to "submit[ting]" an accounting is substituted for the former reference to "send[ing]" an accounting for consistency within this title.

Defined term: "County commissioners" § 13-2601

13-2628. PENALTY.

(A) VIOLATION OF PART.

A PERSON WHO VIOLATES THIS PART IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(B) SEPARATE VIOLATION.

EACH DAY ON WHICH A VIOLATION OF THIS PART OCCURS IS A SEPARATE VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 251B(m).

In subsection (a) of this section, the former reference to an "organization" is deleted as included in the defined term "person". *See* § 1-101 of this article.

In subsection (b) of this section, the reference to each day "on which a violation of this part occurs" is substituted for the former reference to each day "of violation" for clarity and consistency with similar provisions throughout this article.

Also in subsection (b) of this section, the reference to a separate "violation" is substituted for the former reference to a separate "offense" for consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

TITLE 14. GENERAL SENTENCING PROVISIONS.

SUBTITLE 1. SENTENCING.

14-101. MANDATORY SENTENCES FOR CRIMES OF VIOLENCE.

(A) "CRIME OF VIOLENCE" DEFINED.

IN THIS SECTION, "CRIME OF VIOLENCE" MEANS:

(1) ABDUCTION;

(2) ARSON IN THE FIRST DEGREE;

(3) KIDNAPPING;

(4) MANSLAUGHTER, EXCEPT INVOLUNTARY MANSLAUGHTER;

(5) MAYHEM;

(6) MAIMING, AS PREVIOUSLY PROSCRIBED UNDER ARTICLE 27, §§ 385 AND 386 OF THE CODE;

(7) MURDER;

(8) RAPE;

(9) ROBBERY UNDER § 3-402 OR § 3-403 OF THIS ARTICLE;

(10) CARJACKING;

(11) ARMED CARJACKING;

(12) SEXUAL OFFENSE IN THE FIRST DEGREE;

(13) SEXUAL OFFENSE IN THE SECOND DEGREE;

(14) USE OF A HANDGUN IN THE COMMISSION OF A FELONY OR OTHER CRIME OF VIOLENCE;

(15) AN ATTEMPT TO COMMIT ANY OF THE CRIMES DESCRIBED IN ITEMS (1) THROUGH (14) OF THIS SUBSECTION;

(16) ASSAULT IN THE FIRST DEGREE;

(17) ASSAULT WITH INTENT TO MURDER;

(18) ASSAULT WITH INTENT TO RAPE;

(19) ASSAULT WITH INTENT TO ROB;

(20) ASSAULT WITH INTENT TO COMMIT A SEXUAL OFFENSE IN THE FIRST DEGREE; AND

(21) ASSAULT WITH INTENT TO COMMIT A SEXUAL OFFENSE IN THE SECOND DEGREE.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY IF A PERSON IS SENTENCED TO DEATH.

(C) FOURTH CONVICTION OF CRIME OF VIOLENCE.

(1) EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION, ON CONVICTION FOR A FOURTH TIME OF A CRIME OF VIOLENCE, A PERSON WHO HAS SERVED THREE SEPARATE TERMS OF CONFINEMENT IN A CORRECTIONAL FACILITY AS A RESULT OF THREE SEPARATE CONVICTIONS OF ANY CRIME OF VIOLENCE SHALL BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

(2) NOTWITHSTANDING ANY OTHER LAW, THE PROVISIONS OF THIS SUBSECTION ARE MANDATORY.

(D) THIRD CONVICTION OF CRIME OF VIOLENCE.

(1) EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION, ON CONVICTION FOR A THIRD TIME OF A CRIME OF VIOLENCE, A PERSON SHALL BE SENTENCED TO IMPRISONMENT FOR THE TERM ALLOWED BY LAW BUT NOT LESS THAN 25 YEARS, IF THE PERSON:

(I) HAS BEEN CONVICTED OF A CRIME OF VIOLENCE ON TWO PRIOR SEPARATE OCCASIONS:

1. IN WHICH THE SECOND OR SUCCEEDING CRIME IS COMMITTED AFTER THERE HAS BEEN A CHARGING DOCUMENT FILED FOR THE PRECEDING OCCASION; AND

2. FOR WHICH THE CONVICTIONS DO NOT ARISE FROM A SINGLE INCIDENT; AND

(II) HAS SERVED AT LEAST ONE TERM OF CONFINEMENT IN A CORRECTIONAL FACILITY AS A RESULT OF A CONVICTION OF A CRIME OF VIOLENCE.

(2) THE COURT MAY NOT SUSPEND ALL OR PART OF THE MANDATORY 25-YEAR SENTENCE REQUIRED UNDER THIS SUBSECTION.

(3) A PERSON SENTENCED UNDER THIS SUBSECTION IS NOT ELIGIBLE FOR PAROLE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE.

(E) SECOND CONVICTION OF CRIME OF VIOLENCE.

(1) ON CONVICTION FOR A SECOND TIME OF A CRIME OF VIOLENCE COMMITTED ON OR AFTER OCTOBER 1, 1994, A PERSON SHALL BE SENTENCED TO IMPRISONMENT FOR THE TERM ALLOWED BY LAW, BUT NOT LESS THAN 10 YEARS, IF THE PERSON:

(I) HAS BEEN CONVICTED ON A PRIOR OCCASION OF A CRIME OF VIOLENCE, INCLUDING A CONVICTION FOR A CRIME COMMITTED BEFORE OCTOBER 1, 1994; AND

(II) SERVED A TERM OF CONFINEMENT IN A CORRECTIONAL FACILITY FOR THAT CONVICTION.

(2) THE COURT MAY NOT SUSPEND ALL OR PART OF THE MANDATORY 10-YEAR SENTENCE REQUIRED UNDER THIS SUBSECTION.

(F) COMPLIANCE WITH MARYLAND RULES.

IF THE STATE INTENDS TO PROCEED AGAINST A PERSON AS A SUBSEQUENT OFFENDER UNDER THIS SECTION, IT SHALL COMPLY WITH THE PROCEDURES SET FORTH IN THE MARYLAND RULES FOR THE INDICTMENT AND TRIAL OF A SUBSEQUENT OFFENDER.

(G) ELIGIBILITY FOR PAROLE AFTER AGE 65.

(1) A PERSON SENTENCED UNDER THIS SECTION MAY PETITION FOR AND BE GRANTED PAROLE IF THE PERSON:

(I) IS AT LEAST 65 YEARS OLD; AND

(II) HAS SERVED AT LEAST 15 YEARS OF THE SENTENCE IMPOSED UNDER THIS SECTION.

(2) THE MARYLAND PAROLE COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBSECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 643B(b) through (g) and the first sentence of (a).

In subsection (a)(5) of this section, the phrase "as previously proscribed under [§] 384 ... of this article", which formerly modified "mayhem", is deleted as unnecessary and inaccurate because former Art. 27, § 384 did not proscribe mayhem but merely stated the penalties for it. Similarly, in subsection (a)(16) through (21) of this section, the phrase "as these crimes were previously proscribed under former § 12 of this article", which formerly modified "assault with intent to murder, assault with intent to rape, assault with intent to rob, assault with intent to commit a sexual offense in the first degree, and assault with intent to commit a sexual offense in the second degree", is deleted as unnecessary and inaccurate because Art. 27, § 12 did not proscribe those crimes but merely stated the penalties for them.

In subsection (a)(6) of this section, the phrase "as previously proscribed under Article 27, §§ 385 and 386 of the Code", which modifies "maiming", is retained because these former provisions included specific elements of the crimes of maiming.

In subsections (d)(1)(i) and (e)(1)(i) of this section, the references to a "crime" are substituted for the former references to an "offense" for consistency within this article. *See* General Revisor's Note to article.

In subsection (d)(3) of this section, the reference to a person "sentenced under this subsection" is added for clarity.

Defined terms: "Correctional facility" § 1-101

"Person" § 1-101

14-102. SENTENCING FOR CRIMES WITH MINIMUM AND MAXIMUM PENALTIES.

(A) IN GENERAL.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF A LAW SETS A MAXIMUM AND A MINIMUM PENALTY FOR A CRIME, THE COURT MAY IMPOSE INSTEAD OF THE MINIMUM PENALTY A LESSER PENALTY OF THE SAME CHARACTER.

(B) EXCEPTIONS.

THIS SECTION DOES NOT AFFECT:

(1) A MAXIMUM PENALTY FIXED BY LAW; OR

(2) THE PUNISHMENT FOR ANY CRIME FOR WHICH THE STATUTE PROVIDES ONE AND ONLY ONE PENALTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 643.

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 phrase "provided, however" in subsection (b) of this section.

Also in subsection (a) of this section, the phrase "if a law" is substituted for the former phrase "[i]n all cases where the law prescribing a punishment" for brevity.

Also in subsection (a) of this section, the reference to the "court" is substituted for the former reference to the "several judges of the circuit courts of the counties and of the District Court of Maryland" for brevity.

Also in subsection (a) of this section, the reference to the "minimum penalty" is substituted for the former reference to the "minimum penalty so prescribed" for brevity.

14-103. BENEFIT OF CLERGY ABOLISHED.

ANY CLAIM TO DISPENSATION FROM PUNISHMENT BY BENEFIT OF CLERGY IS ABOLISHED.

REVISOR'S NOTE: This section formerly was Art. 27, § 626.

No changes are made.

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 Law Article Review Committee conformed the language and organization of this article to that of previously enacted revised articles to the extent possible.

It is the manifest intent both of the General Assembly and the Criminal Law Article Review Committee that this bulk revision of the substantive criminal law of the State render no substantive change. The guiding principle of the preparation of this article is that stated in *Welch v. Humphrey*, 200 Md. 410, 417 (1952):

> [T]he principal function of a Code is to reorganize the statutes and state them in simpler form. Consequently any changes made in them by a Code are presumed to be for the purpose of clarity rather than change of meaning. Therefore, even a change in the phraseology of a statute by a codification thereof will not ordinarily modify the law, unless the change is so radical and material that the

intention of the Legislature to modify the law appears unmistakably from the language of the Code. (citations omitted)

Accordingly, except to the extent that changes, which are noted in Revisor's Notes, clarify the former law, the enactment of this article in no way is intended to make any change to the substantive criminal law of Maryland.

In this article, as in other revised articles, the word "regulation" is substituted for the 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.

Also throughout this article, to be consistent 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. Regulations of State units, in any event, are subject to Title 10, Subtitle 1 of the State Government Article.

Also throughout this article, the term "unit" is substituted for former references to State entities such as an "agency", "department", "administration", "commission", and "office" except when a former reference indicated a specific entity, or 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.

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.

The forms of standard charging documents formerly contained in Article 27 were intended to provide a simple, clear method of charging the relevant crimes without the procedural difficulties attendant in pleading at common law. The revision of those charging documents merely states the same substance in more modern language.

References to a person found guilty of a misdemeanor being "subject to § 5-106(b) of the Courts Article" are substituted for the former references to a person being "subject to imprisonment in the penitentiary" for accuracy and consistency with the Criminal Procedure 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). The only remaining substantive effect of a reference to imprisonment "in the penitentiary" applies to "penitentiary misdemeanors", which: (1) are not subject to the 1-year limitation period for other misdemeanors; and (2) are subject to the right of in banc review under Md. Constitution, Art. IV, § 22. Section 5-106(b) of the Courts Article specifically addresses these two characteristics of penitentiary misdemeanors.

The former law used the terms "crime" and "offense" interchangeably to mean a felony or a misdemeanor under the laws of the State, with no consistent rationale for choosing one or the other. In order to provide uniform language in this revision and for consistency with the Criminal Procedure Article, the Criminal Law Article Review

Committee chose to use the term "crime" to mean a particular act prohibited as a felony or misdemeanor, and the term "violation" to refer to a particular instance of a crime. In a few instances, the term "offense" is retained because of common usage, such as the term "sexual offense", which is revised in Title 3, Subtitle 3 of this article.

The common-law distinction in pleading between charging a principal of a crime and an accessory before the fact to the crime has been abolished for most purposes by statute, in response to the holding of the Court of Appeals in *State v. Sowell*, 353 Md. 713 (1999). *See* CP § 4-204, enacted by Ch. 339, Acts of 2000. Accordingly, since most of the former references to an "accessory" in the material revised in this article referred only to accessories before the fact, and not to accessories after the fact, in those instances the references to an "accessory" are deleted. *See, e.g.*, § 3-503(a)(1) of this article; *cf.* § 8-408(c)(3) of this article.

Several provisions are repealed as unconstitutional in accordance with federal and State case law. Former Art. 27, § 20, which prohibited blasphemy, violated the Establishment and Free Exercise Clauses of the First Amendment of the United States Constitution. *State v. West*, 9 Md. App. 270 (1970). Former Art. 27, §§ 152 and 153, which prohibited employing or allowing "female sitters", violated Article 46 of the Maryland Declaration of Rights. *Turner v. State*, 299 Md. 565 (1984). Former Art. 27, §§ 558, 559, and 560, which prohibited "common thieves", a criminal sanction on the basis of status or reputation, would have constituted "a cruel or unusual punishment in violation of the Fourteenth Amendment" to the United States Constitution. *Robinson v. California*, 370 U.S. 660 (1962). *See* Letter of Advice from Attorney General J. Joseph Curran, Jr. to Judge Alan M. Wilner, pp. 1-2 (October 17, 2000).

The Committee considered several provisions involving minor penalties to be more suitable for revision in other articles relating to the same substantive law, or in the case of provisions applicable to one county or a few counties, in the Public Local Laws.

Former Art. 27, § 21, as it established speed limits on Seneca Creek in Montgomery County and on specified portions of the Monocacy River, respectively, is revised in NR §§ 8-725.5 and 8-725.6, respectively.

Former Art. 27, § 21, as it prohibited reckless boating, is revised in NR § 8-738.1.

Former Art. 27, § 79A, concerning debt adjusting, is revised in CL § 14-1316.

Former Art. 27, § 111A, concerning enclosed livestock, is revised in AG § 3-701.

Former Art. 27, § 120B, which prohibited the opening of food containers in stores, is revised in HG § 21-259.1.

Former Art. 27, § 134, concerning receiving consigned goods from a transporter, is revised in CL § 14-1317.

Former Art. 27, § 158A, as it prohibited fortune telling in Caroline County, is revised in § 109 of the Public Local Laws of Caroline County.

Former Art. 27, § 158A, as it prohibited fortune telling in Carroll County, is revised in § 4-103 of the Public Local Laws of Carroll County.

Former Art. 27, § 158A, as it prohibited fortune telling in Talbot County, is revised in § 8A-1 of the Public Local Laws of Talbot County.

Former Art. 27, § 159, concerning adulterated and mislabeled beer and related products, is revised in Art. 2B, § 22-201 of the Code.

Former Art. 27, §§ 170 through 172, concerning consignment of farm articles and products, are revised in AG §§ 1-301 through 1-306.

Former Art. 27, § 172, as it related to consignment of goods other than farm articles and products, is revised in CL § 11-810.

Former Art. 27, §§ 181 through 190, concerning registration of and prohibited acts related to organizational insignia, are revised in BR §§ 19-201 through 19-207.

Former Art. 27, §§ 195 and 198, concerning false advertising and related practices, are revised in CL §§ 14-2901 through 14-2903.

Former Art. 27, § 233B, which prohibited racing horses under a false name, is revised in BR § 11-1002.

Former Art. 27, § 233C, which prohibited fraud in pari-mutuel betting, is revised in BR § 11-1003.

Former Art. 27, §§ 297C and 297D, concerning the Drug and Alcohol Grants Program and Fund, are revised in HG §§ 8-901 and 8-902.

Former Art. 27, §§ 333A through 333D and AG § 4-123.1, concerning humane slaughter of livestock, are consolidated and revised in AG § 4-123.1.

Former Art. 27, §§ 336 and 336A, concerning required injury reports, are revised in HG §§ 20-701 through 20-703.

Former Art. 27, § 399 and FL § 5-503, concerning the authority of Maryland corporations for the care of minor children, are consolidated and revised in FL § 5-503.

Former Art. 27, § 399A, concerning alcoholic beverages in Worcester County, is revised in Art. 2B, § 18-104 of the Code.

Former Art. 27, §§ 400 through 403A, concerning alcoholic beverages crimes and citations, are revised in Art. 2B, §§ 22-101 through 22-108 of the Code.

Former Art. 27, § 434, which required the use of a ship-to-shore communication device on certain vessels operated on waters of the State, is revised in NR § 8-740.1.

Former Art. 27, § 465A, which prohibited certain real estate settlement practices, is revised in RP § 14-127.

Former Art. 27, § 469, concerning junkyards and related facilities, is revised in EN §§ 5-10A-01 through 5-10A-03.

Former Art. 27, §§ 471 through 480A, concerning registration of and prohibited acts related to returnable containers and returnable textiles, are revised in BR §§ 19-301 through 19-307.

Former Art. 27, § 482, which prohibited throwing certain waste materials into certain waters of the State, is revised in NR § 8-726.1.

Former Art. 27, § 484, which prohibited damaging or interfering with the use of a public wharf or landing, is revised in NR § 8-724.1.

Former Art. 27, § 582, which prohibited operating a vessel with number, name, or home port concealed, is revised in NR § 8-713.1.

A few provisions concerning transition from prior law are transferred to the Session Laws.

Former Art. 27, § 281(i), concerning initial registration of manufacturers, distributors, and dispensers of controlled dangerous substances engaged in those activities before July 1, 1970, is transferred to the Session Laws.

Former Art. 27, § 302(a) through (c), concerning controlled dangerous substances proceedings commencing before July 1, 1970, are transferred to the Session Laws.

In some instances, the staff of the Department of Legislative Services has created "Special Revisor's Notes" to reflect the substantive effect of legislation enacted during the 2002 Session on some provisions of this article.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Criminal Law

13-2430.

(a) A person with a wholesaler's license may not sell a tip jar packet to a person who does not have a tip jar license.

(b) Before selling a tip jar packet, a person with a wholesaler's license shall:

(1) obtain a gaming sticker from the agency; and

(2) affix the gaming sticker to the tip jar packet in the manner the county commissioners require.

[(c) A person with a wholesaler's license may not charge a fee for a gaming sticker to a volunteer fire company or a volunteer rescue company.]

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(o), as abrogated under Chapter 479, § 4 of the Acts of the General Assembly of 2000.

Former subsection (c), which prohibited a person with a wholesaler's license from charging a fee to a volunteer fire company or a volunteer rescue company, is abrogated.

13-2435.

(a) In this section, "gross profits" means the total proceeds from the operation of a tip jar less the amount of money winnings or value of prizes distributed.

(b) There is a Washington County Gaming Fund.

(c) (1) The county commissioners shall establish:

(i) the method and time of deposits to the fund; and

(ii) other procedures necessary to carry out subsections (d) and (e) of this section.

(2) In accordance with a written agreement between the county commissioners and the gaming commission, the gaming commission may use money from the fund to reimburse the county commissioners for the costs to the county for administering Part III of this subtitle.

(d) (1) This subsection only applies to a person who qualifies for a tip jar license under § 13-2420(b)(7), (8), or (9) of this subtitle.

(2) Subject to paragraphs (3) and (4) of this subsection, a person subject to this subsection shall deposit with a financial institution designated by the gaming commission, to the credit of the fund, the gross profits from each tip jar that the person operates.

(3) The gross profits from a tip jar may not exceed $250.

(4) To offset the costs of operating a tip jar, a person with a tip jar license may retain the lesser of $45 or 50% of the gross profits from each tip jar game.

(e) (1) This subsection only applies to a person who qualifies for a tip jar license under § 13-2420(b)(1) through (6) of this subtitle.

(2) A person subject to this subsection shall deposit with a financial institution designated by the gaming commission, to the credit of the fund, 15% of the gross profits earned through the operation of tip jars during the 12-month period ending June 30.

(3) If a person fails to contribute the full amount required under paragraph (2) of this subsection, the person shall deposit the balance required during the next year.

(f) [(1) Subject to paragraph (2) of this subsection, and after] AFTER THE REIMBURSEMENT UNDER SUBSECTION (C)(2) OF THIS SECTION, EACH YEAR THE GAMING COMMISSION SHALL DISTRIBUTE:

[(i)] (1) [50%] 40% of the money deposited in the fund to the Washington County Volunteer Fire and Rescue Association; and

[(ii)] (2) subject to any restrictions that the county commissioners adopt by regulation, [50%] 60% of the money deposited in the fund to bona fide charitable organizations in the county.

[(2) The gaming commission may not distribute more than $50,000 to each applicant per application.]

[(g) Every 6 months, on or before January 31 and July 31, the gaming commission shall report to the county delegation on how recipients of moneys from the fund have been affected by the formula for distributing those moneys specified under this section.]

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 255C(q), as abrogated under Chapter 479, § 4 of the Acts of the General Assembly of 2000.

Former CR § 13-2435(f)(1)(i) required 50% of the moneys deposited in the fund to be distributed to the Washington County Volunteer Fire and Rescue Association. Similarly, former subsection (f)(1)(ii) required 50% of the moneys deposited in the fund to be distributed to charitable organizations in the county.

Former CR § 13-2435(f)(2) prohibited the gaming commission from distributing more than $50,000 to a single applicant based on one application.

Former CR § 13-2435(g) of this section required the gaming commission to report every 6 months to the Washington County delegation on how recipients of moneys from the fund were affected by the 50-50 formula for distributing moneys.

SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article 1 - Rules of Interpretation

25.

(a) Unnumbered revised articles of the Annotated Code of Maryland may be cited as stated in this section.

(b) A section of the Agriculture Article may be cited as: "§ ___ of the Agriculture Article".

(c) A section of the Business Occupations and Professions Article may be cited as: "§ ___ of the Business Occupations and Professions Article".

(d) A section of the Business Regulation Article may be cited as: "§ ___ of the Business Regulation Article".

(e) A section of the Commercial Law Article may be cited as: "§ ___ of the Commercial Law Article".

(f) A section of the Corporations and Associations Article may be cited as: "§ ___ of the Corporations and Associations Article".

(g) A section of the Correctional Services Article may be cited as: "§ ___ of the Correctional Services Article".

(h) A section of the Courts and Judicial Proceedings Article may be cited as: "§ ___ of the Courts Article".

(I) A SECTION OF THE CRIMINAL LAW ARTICLE MAY BE CITED AS: "§ ___ OF THE CRIMINAL LAW ARTICLE".

[(i)] (J) A section of the Criminal Procedure Article may be cited as: "§ ___ of the Criminal Procedure Article".

[(j)] (K) A section of the Education Article may be cited as: "§ ___ of the Education Article".

[(k)] (L) A section of the Environment Article may be cited as: "§ ___ of the Environment Article".

[(l)] (M) A section of the Estates and Trusts Article may be cited as: "§ ___ of the Estates and Trusts Article".

[(m)] (N) A section of the Family Law Article may be cited as: "§ ___ of the Family Law Article".

[(n)] (O) A section of the Financial Institutions Article may be cited as: "§ ___ of the Financial Institutions Article".

[(o)] (P) A section of the Health - General Article may be cited as: "§ ___ of the Health - General Article".

[(p)] (Q) A section of the Health Occupations Article may be cited as: "§ ___ of the Health Occupations Article".

[(q)] (R) A section of the Insurance Article may be cited as: "§ ___ of the Insurance Article".

[(r)] (S) A section of the Labor and Employment Article may be cited as: "§ ___ of the Labor and Employment Article".

[(s)] (T) A section of the Natural Resources Article may be cited as: "§ ___ of the Natural Resources Article".

[(t)] (U) A section of the Public Utility Companies Article may be cited as: "§ ___ of the Public Utility Companies Article".

[(u)] (V) A section of the Real Property Article may be cited as: "§ ___ of the Real Property Article".

[(v)] (W) A section of the State Finance and Procurement Article may be cited as: "§ ___ of the State Finance and Procurement Article".

[(w)] (X) A section of the State Government Article may be cited as: "§ ___ of the State Government Article".

[(x)] (Y) A section of the State Personnel and Pensions Article may be cited as: "§ ___ of the State Personnel and Pensions Article".

[(y)] (Z) A section of the Tax - General Article may be cited as: "§ ___ of the Tax - General Article".

[(z)] (AA) A section of the Tax - Property Article may be cited as: "§ ___ of the Tax - Property Article".

[(aa)] (BB) A section of the Transportation Article may be cited as: "§ ___ of the Transportation Article".

33. "ASSAULT" IN ANY DEGREE.

EXCEPT AS USED IN TITLE 3, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE, THE TERM "ASSAULT" MEANS ASSAULT IN ANY DEGREE UNLESS A SPECIFIC DEGREE OF ASSAULT IS SPECIFIED.

REVISOR'S NOTE: Chapter ____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 12A-7(a).

The former reference to a specific degree "or degrees" of assault is deleted in light of § 8 of this article, which provides that the singular generally includes the plural.

The phrase "[e]xcept as used in Title 3, Subtitle 2 of the Criminal Law Article" is substituted for the former phrase "when used elsewhere in the Code" for clarity. Although CR Title 3, Subtitle 2 contains provisions derived, in part, from material outside of that contained in the former "Assault" subheading in Article 27, the material in that subtitle that was not derived from the former "Assault" subheading does not use the term "assault". No substantive change is intended.

Article 2B - Alcoholic Beverages

18-104. WORCESTER COUNTY -- UNLICENSED PREMISES.

(A) EXCEPTIONS -- PROPERTY.

THIS SECTION DOES NOT APPLY TO:

(1) THE ROOM OF A REGISTERED GUEST IN A HOTEL, MOTEL, OR HOSPICE;

(2) THE PROPERTY OF A VOLUNTEER FIRE COMPANY; OR

(3) ANY OF THE FOLLOWING ENTITIES IN CONTINUOUS EXISTENCE IN WORCESTER COUNTY SINCE OCTOBER 1, 1989:

(I) A CATERING ESTABLISHMENT;

(II) A COMMUNITY OR CIVIC ASSOCIATION;

(III) A SWIM CLUB;

(IV) A BONA FIDE SOCIAL, CIVIC, NONPROFIT, CHARITABLE, FRATERNAL, PATRIOTIC, EDUCATIONAL, OR PUBLIC SERVICE ORGANIZATION; OR

(V) A BONA FIDE RELIGIOUS INSTITUTION.

(B) PROHIBITED.

IN WORCESTER COUNTY, ALCOHOLIC BEVERAGES MAY NOT BE BROUGHT ONTO ANY PREMISES AND CONSUMED OR TRANSFERRED EXCEPT IN A MANNER SPECIFICALLY ALLOWED OR PROVIDED FOR IN THIS ARTICLE.

(C) PENALTY.

AN OWNER, OPERATOR, MANAGER, OR EMPLOYEE OF PREMISES SUBJECT TO THIS SECTION WHO ALLOWS ALCOHOLIC BEVERAGES TO BE CONSUMED IN VIOLATION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000 FOR EACH VIOLATION.

(D) REGULATIONS.

THE WORCESTER COUNTY BOARD OF LICENSE COMMISSIONERS SHALL ADOPT UNIFORM REGULATIONS FOR IMPLEMENTING THIS SECTION.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 399A.

In subsection (b) of this section, the reference to consumption or transfer of alcoholic beverages in a manner specifically allowed or provided for in "this

article" is retained. Although "this article" formerly referred to "Article 27 - Crimes and Punishments", rather than to this article, "Article 2B - Alcoholic Beverages", it is this article that governs the consumption and transfer of alcoholic beverages in Worcester County, not Article 27. Furthermore, the only other provisions of Article 27 that specifically dealt with alcoholic beverages are also recodified in Article 2B by the same enactment that recodified this provision. No substantive change is intended. *See* Letter of Advice from Attorney General J. Joseph Curran to Judge Alan M. Wilner, p. 11 (July 11, 2001).

Defined term: "Alcoholic beverages" § 1-102

TITLE 22. ALCOHOLIC BEVERAGE CRIMES.

SUBTITLE 1. GENERAL PROVISIONS.

22-101. MISREPRESENTATION OF AGE.

AN INDIVIDUAL MAY NOT KNOWINGLY AND WILLFULLY MAKE A MISREPRESENTATION OR FALSE STATEMENT AS TO THE AGE OF THAT INDIVIDUAL OR ANOTHER TO ANY PERSON LICENSED TO SELL ALCOHOLIC BEVERAGES OR ENGAGED IN THE SALE OF ALCOHOLIC BEVERAGES, FOR THE PURPOSE OF UNLAWFULLY OBTAINING, PROCURING, OR HAVING UNLAWFULLY FURNISHED AN ALCOHOLIC BEVERAGE TO AN INDIVIDUAL.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 400.

The references to an "individual" are substituted for the former references to a "person" because only an individual may make a misrepresentation about the age of the individual or may be furnished with an alcoholic beverage.

The former reference to "inducing to unlawfully furnish" an alcoholic beverage to a person is deleted as included in the reference to "procuring" the beverage.

Defined term: "Person" § 1-102

22-102. UNDERAGE POSSESSION.

AN INDIVIDUAL UNDER THE AGE OF 21 YEARS MAY NOT POSSESS OR HAVE UNDER THE INDIVIDUAL'S CHARGE OR CONTROL AN ALCOHOLIC BEVERAGE UNLESS THE INDIVIDUAL IS A BONA FIDE EMPLOYEE OF THE LICENSE HOLDER AND THE ALCOHOLIC BEVERAGE IS IN THE POSSESSION OR UNDER THE CHARGE OR CONTROL OF THE INDIVIDUAL IN THE COURSE OF THE INDIVIDUAL'S EMPLOYMENT AND DURING REGULAR WORKING HOURS.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 400A.

The references to an "individual" are substituted for the former references to a "person" because only an individual may be under the age of 21 years and have possession, charge, or control of an alcoholic beverage.

The former reference to a license holder "as defined in Article 2B" is deleted as surplusage.

Defined terms: "Alcoholic beverages" § 1-102

"License holder" § 1-102

22-103. FALSE DOCUMENTATION.

AN INDIVIDUAL UNDER THE AGE OF 21 YEARS MAY NOT POSSESS A CARD OR DOCUMENT THAT FALSELY IDENTIFIES THE AGE OF THE INDIVIDUAL UNDER CIRCUMSTANCES THAT REASONABLY INDICATE AN INTENTION TO VIOLATE THE PROVISIONS OF THIS SUBTITLE.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which formerly was Art. 27, § 400B.

The reference to this "subtitle" is substituted for the former reference to this "subheading" to reflect the reorganization of material derived from the former "Alcoholic Beverages Offenses and Misrepresentation of Age" subheading of Article 27 in this subtitle.

No other changes are made.

22-104. OBTAINING FOR UNDERAGE CONSUMPTION.

AN INDIVIDUAL MAY NOT OBTAIN AN ALCOHOLIC BEVERAGE FROM ANY PERSON LICENSED TO SELL ALCOHOLIC BEVERAGES FOR CONSUMPTION BY ANOTHER WHO THE INDIVIDUAL OBTAINING THE BEVERAGE KNOWS IS UNDER THE AGE OF 21 YEARS.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 401.

The references to an "individual" are substituted for the former references to a "person" because only an individual may be under the age of 21 years and consume an alcoholic beverage.

Defined term: "Alcoholic beverages" § 1-102

22-105. FURNISHING FOR OR ALLOWING UNDERAGE CONSUMPTION.

(A) PROHIBITED -- FURNISHING ALCOHOL.

EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A PERSON MAY NOT FURNISH AN ALCOHOLIC BEVERAGE TO AN INDIVIDUAL IF:

(1) THE PERSON FURNISHING THE ALCOHOLIC BEVERAGE KNOWS THAT THE INDIVIDUAL IS UNDER THE AGE OF 21 YEARS; AND

(2) THE ALCOHOLIC BEVERAGE IS FURNISHED FOR THE PURPOSE OF CONSUMPTION BY THE INDIVIDUAL UNDER THE AGE OF 21 YEARS.

(B) SAME -- ALLOWING POSSESSION OR CONSUMPTION OF ALCOHOL.

EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN ADULT MAY NOT KNOWINGLY AND WILLFULLY ALLOW AN INDIVIDUAL UNDER THE AGE OF 21 YEARS ACTUALLY TO POSSESS OR CONSUME AN ALCOHOLIC BEVERAGE AT A RESIDENCE, OR WITHIN THE CURTILAGE OF A RESIDENCE THAT THE ADULT OWNS OR LEASES AND IN WHICH THE ADULT RESIDES.

(C) EXCEPTIONS.

(1) THE PROHIBITION SET FORTH IN SUBSECTION (A) OF THIS SECTION DOES NOT APPLY IF THE PERSON FURNISHING THE ALCOHOLIC BEVERAGE AND THE INDIVIDUAL TO WHOM THE ALCOHOLIC BEVERAGE IS FURNISHED:

(I) ARE MEMBERS OF THE SAME IMMEDIATE FAMILY, AND THE ALCOHOLIC BEVERAGE IS FURNISHED AND CONSUMED IN A PRIVATE RESIDENCE OR WITHIN THE CURTILAGE OF THE RESIDENCE; OR

(II) ARE PARTICIPANTS IN A RELIGIOUS CEREMONY.

(2) THE PROHIBITION SET FORTH IN SUBSECTION (B) OF THIS SECTION DOES NOT APPLY IF THE ADULT ALLOWING THE POSSESSION OR CONSUMPTION OF THE ALCOHOLIC BEVERAGE AND THE INDIVIDUAL UNDER THE AGE OF 21 YEARS WHO POSSESSES OR CONSUMES THE ALCOHOLIC BEVERAGE:

(I) ARE MEMBERS OF THE SAME IMMEDIATE FAMILY, AND THE ALCOHOLIC BEVERAGE IS POSSESSED AND CONSUMED IN A PRIVATE RESIDENCE, OR WITHIN THE CURTILAGE OF THE RESIDENCE, OF THE ADULT; OR

(II) ARE PARTICIPANTS IN A RELIGIOUS CEREMONY.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 401A.

In subsections (a) and (c)(1) of this section, the references to an "individual" are substituted for the former references to a "person" because only an individual may be under the age of 21 years and be furnished an alcoholic beverage.

Defined terms: "Alcoholic beverages" § 1-102

"Person" § 1-102

22-106. UNREGISTERED KEG.

(A) PROHIBITED -- POSSESSION; ALTERING REGISTRATION FORM.

EXCEPT FOR A PERSON LICENSED AS AN ALCOHOLIC BEVERAGES LICENSEE UNDER THIS ARTICLE WHO POSSESSES A KEG IN THE COURSE OF THAT PERSON'S BUSINESS, A PERSON MAY NOT KNOWINGLY:

(1) POSSESS A KEG THAT HAS NOT BEEN REGISTERED UNDER OR DOES NOT HAVE A REGISTRATION FORM AFFIXED TO IT AS REQUIRED BY § 21-106 OF THIS ARTICLE; OR

(2) REMOVE, ALTER, OR OBLITERATE, OR ALLOW TO BE REMOVED, ALTERED, OR OBLITERATED, A REGISTRATION FORM THAT IS AFFIXED TO A KEG.

(B) SAME -- ALLOWING UNDERAGE CONSUMPTION.

A PERSON MAY NOT ALLOW AN INDIVIDUAL UNDER THE AGE OF 21 YEARS TO CONSUME ANY OF THE CONTENTS OF A KEG PURCHASED BY THAT PERSON.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 401B.

In the introductory language of subsection (a) of this section, the reference to "this article" is substituted for the former reference to "Article 2B of the Code" to reflect the reorganization of material derived from the former "Alcoholic Beverages Offenses and Misrepresentation of Age" subheading of Article 27 in this article. Similarly, in subsection (a)(1) of this section, the reference to "§ 21-106 of this article" is substituted for the former reference to "Article 2B, § 21-106 of the Code".

Defined terms: "Alcoholic beverages" § 1-102

"Licensee" § 1-102

"Person" § 1-102

22-107. CITATION.

(A) IN GENERAL.

A PERSON WHO VIOLATES §§ 22-101 THROUGH 22-106 OF THIS SUBTITLE SHALL BE ISSUED A CITATION UNDER THIS SECTION.

(B) WHO MAY ISSUE.

A CITATION FOR A VIOLATION OF §§ 22-101 THROUGH 22-106 OF THIS SUBTITLE MAY BE ISSUED BY:

(1) A POLICE OFFICER AUTHORIZED TO MAKE ARRESTS;

(2) IN STATE FORESTRY RESERVATIONS, STATE PARKS, HISTORIC MONUMENTS, AND RECREATION AREAS, A FOREST OR PARK WARDEN UNDER § 5-206(A) OF THE NATURAL RESOURCES ARTICLE; AND

(3) IN ANNE ARUNDEL COUNTY, FREDERICK COUNTY, HARFORD COUNTY, MONTGOMERY COUNTY, AND PRINCE GEORGE'S COUNTY, AND ONLY IN THE INSPECTOR'S JURISDICTION, AN ALCOHOLIC BEVERAGES INSPECTOR WHO INVESTIGATES LICENSE VIOLATIONS UNDER THIS ARTICLE IF THE INSPECTOR:

(I) HAS SUCCESSFULLY COMPLETED AN APPROPRIATE PROGRAM OF TRAINING IN THE PROPER USE OF ARREST AUTHORITY AND PERTINENT POLICE PROCEDURES AS REQUIRED BY THE BOARD OF LICENSE COMMISSIONERS; AND

(II) DOES NOT CARRY FIREARMS IN THE PERFORMANCE OF THE INSPECTOR'S DUTIES.

(C) ISSUANCE ON PROBABLE CAUSE.

A PERSON AUTHORIZED UNDER THIS SECTION TO ISSUE A CITATION SHALL ISSUE IT IF THE PERSON HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON CHARGED IS COMMITTING OR HAS COMMITTED A CODE VIOLATION.

(D) FORM AND CONTENTS.

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE FORM OF CITATION SHALL BE AS PRESCRIBED BY THE DISTRICT COURT AND SHALL BE UNIFORM THROUGHOUT THE STATE.

(2) THE CITATION SHALL CONTAIN:

(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;

(II) THE STATUTE ALLEGEDLY VIOLATED;

(III) THE LOCATION, DATE, AND TIME THAT THE VIOLATION OCCURRED;

(IV) THE FINE THAT MAY BE IMPOSED;

(V) A NOTICE STATING THAT PREPAYMENT OF THE FINE IS NOT ALLOWED;

(VI) A NOTICE THAT THE DISTRICT COURT SHALL PROMPTLY SEND THE PERSON CHARGED A SUMMONS TO APPEAR FOR TRIAL;

(VII) THE SIGNATURE OF THE PERSON ISSUING THE CITATION; AND

(VIII) A SPACE FOR THE PERSON CHARGED TO SIGN THE CITATION.

(E) REQUEST FOR TRIAL; SCHEDULING.

(1) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE CITATION AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE DISTRICT HAVING VENUE.

(2) THE DISTRICT COURT SHALL PROMPTLY SCHEDULE THE CASE FOR TRIAL AND SUMMON THE DEFENDANT TO APPEAR. FAILURE OF THE DEFENDANT TO RESPOND TO THE SUMMONS IS CONTEMPT OF COURT.

(F) CODE VIOLATION; DISPOSITION.

(1) FOR PURPOSES OF THIS SECTION, A VIOLATION OF §§ 22-101 THROUGH 22-106 OF THIS SUBTITLE IS A CODE VIOLATION AND IS A CIVIL OFFENSE.

(2) A PERSON CHARGED WHO IS UNDER THE AGE OF 18 YEARS SHALL BE SUBJECT TO THE PROCEDURES AND DISPOSITIONS PROVIDED IN TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.

(3) A PERSON CHARGED WHO IS AT LEAST 18 YEARS OLD SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION.

(4) ADJUDICATION OF A CODE VIOLATION IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE, AND IT DOES NOT IMPOSE ANY OF THE CIVIL DISABILITIES ORDINARILY IMPOSED BY A CRIMINAL CONVICTION.

(G) BURDEN OF PROOF; PROCEDURE.

IN ANY PROCEEDING FOR A CODE VIOLATION:

(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE DEFENDANT TO THE SAME EXTENT AS IS REQUIRED BY LAW IN THE TRIAL OF CRIMINAL CAUSES, AND IN ANY SUCH PROCEEDING, THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF CRIMINAL CAUSES;

(2) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS RECEIVED A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE DEFENDANT UNDERSTANDS THOSE CHARGES;

(3) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR WITNESSES ON BEHALF OF THE DEFENDANT, OR TO TESTIFY ON THE DEFENDANT'S OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;

(4) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY COUNSEL OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE DEFENDANT; AND

(5) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT GUILTY, AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:

(I) GUILTY OF A CODE VIOLATION;

(II) NOT GUILTY OF A CODE VIOLATION; OR

(III) BEFORE RENDERING JUDGMENT, THE COURT MAY PLACE THE DEFENDANT ON PROBATION IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW IN THE TRIAL OF A CRIMINAL CASE.

(H) AMOUNT OF FINE.

(1) IF THE DISTRICT COURT FINDS THAT A PERSON HAS COMMITTED A CODE VIOLATION, THE COURT SHALL REQUIRE THE PERSON TO PAY:

(I) A FINE NOT EXCEEDING $500; OR

(II) IF THE VIOLATION IS A REPEAT VIOLATION, A FINE NOT EXCEEDING $1,000.

(2) THE CHIEF JUDGE OF THE DISTRICT COURT MAY NOT ESTABLISH A SCHEDULE FOR THE PREPAYMENT OF FINES.

(I) SUSPENSION OF FINE; FAILURE TO PAY.

WHEN A DEFENDANT HAS BEEN FOUND GUILTY OF A CODE VIOLATION AND A FINE HAS BEEN IMPOSED BY THE COURT:

(1) THE COURT MAY DIRECT THAT THE PAYMENT OF THE FINE BE SUSPENDED OR DEFERRED UNDER CONDITIONS THAT THE COURT MAY ESTABLISH; AND

(2) IF THE DEFENDANT WILLFULLY FAILS TO PAY THE FINE IMPOSED BY THE COURT, THAT WILLFUL FAILURE MAY BE TREATED AS A CRIMINAL CONTEMPT OF COURT, FOR WHICH THE DEFENDANT MAY BE PUNISHED BY THE COURT AS PROVIDED BY LAW.

(J) COSTS; CRIMINAL INJURIES COMPENSATION FUND.

(1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE PROCEEDINGS IN THE DISTRICT COURT AND FOR PAYMENT TO THE CRIMINAL INJURIES COMPENSATION FUND.

(2) THE COURT COSTS IN A CODE VIOLATION CASE IN WHICH COSTS ARE IMPOSED ARE $5.

(K) NOTICE TO MOTOR VEHICLE ADMINISTRATION.

(1) IN THIS SUBSECTION "DRIVER'S LICENSE" MEANS A LICENSE OR PERMIT TO DRIVE A MOTOR VEHICLE THAT IS ISSUED UNDER THE LAWS OF THIS STATE OR ANY OTHER JURISDICTION.

(2) THIS SUBSECTION APPLIES ONLY TO:

(I) A PERSON WHO IS AT LEAST 18 BUT UNDER 21 YEARS OF AGE; OR

(II) A MINOR IF THE MINOR IS SUBJECT TO THE JURISDICTION OF THE COURT.

(3) IF A PERSON IS FOUND GUILTY OF A CODE VIOLATION UNDER § 22-101 OF THIS SUBTITLE THAT INVOLVED THE USE OF A DRIVER'S LICENSE OR A DOCUMENT PURPORTING TO BE A DRIVER'S LICENSE, THE COURT SHALL NOTIFY THE MOTOR VEHICLE ADMINISTRATION OF THE VIOLATION.

(4) THE CHIEF JUDGE OF THE DISTRICT COURT, IN CONJUNCTION WITH THE MOTOR VEHICLE ADMINISTRATOR, SHALL ESTABLISH UNIFORM PROCEDURES FOR REPORTING CODE VIOLATIONS DESCRIBED IN THIS SUBSECTION.

(L) APPEAL.

(1) A DEFENDANT WHO HAS BEEN FOUND GUILTY OF A CODE VIOLATION HAS THE RIGHT TO APPEAL OR TO FILE A MOTION FOR A NEW TRIAL OR A MOTION FOR A REVISION OF A JUDGMENT PROVIDED BY LAW IN THE TRIAL OF A CRIMINAL CASE.

(2) A MOTION SHALL BE MADE IN THE SAME MANNER AS PROVIDED IN THE TRIAL OF CRIMINAL CASES, AND THE COURT, IN RULING ON THE MOTION HAS THE SAME AUTHORITY PROVIDED IN THE TRIAL OF CRIMINAL CASES.

(M) AUTHORITY OF STATE'S ATTORNEY.

(1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A CODE VIOLATION IN THE SAME MANNER AS PROSECUTION OF A VIOLATION OF THE CRIMINAL LAWS OF THIS STATE.

(2) IN A CODE VIOLATION CASE THE STATE'S ATTORNEY MAY:

(I) ENTER A NOLLE PROSEQUI IN OR PLACE THE CASE ON THE STET DOCKET; AND

(II) EXERCISE AUTHORITY IN THE SAME MANNER AS PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THIS STATE.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, §§ 402 and 403.

In subsections (a) and (b) of this section, the references to this "subtitle" are substituted for the former references to this "subheading" to reflect the reorganization of material derived from the former "Alcoholic Beverages Offenses and Misrepresentation of Age" subheading of Article 27 in this subtitle. Similarly, in subsection (b) of this section, the reference to "this section" is substituted for the former reference to "§ 403 of this

subheading".

In subsection (b)(2) of this section, the reference to the exercise of authority by a forest or park warden in State "reservations" is substituted for the former archaic reference to the exercise of that authority in State "preservations" for consistency with NR § 5-206, which establishes the authority and jurisdiction of State forest and park wardens.

In subsection (b)(3) of this section, the reference to "this article" is substituted for the former reference to "Article 2B of the Code" to reflect the reorganization of material derived from the former "Alcoholic Beverages Offenses and Misrepresentation of Age" subheading of Article 27 in this article. Although "this article" is defined in § 1-102(a)(25) of this article to include portions of the Tax-General Article derived from Article 2B, none of those provisions affects any provision revised in this subtitle. No substantive change is intended.

In subsection (c) of this section, the references to a "person authorized under this section to issue a citation" and the "person" are substituted for the former references to a "law enforcement officer" and the "officer" for clarity and accuracy.

In subsection (e)(2) of this section, the reference to "[f]ailure of the defendant to appear" is substituted for the former reference to the "defendant's failure to respond to the summons" for clarity and accuracy.

In subsections (a), (b), and (f)(1) of this section, the references to "§§ 22-101 through 22-106 of this subtitle" are substituted for the former references to "this subheading" to reflect the reorganization of material derived from the former "Alcoholic Beverages Offenses and Misrepresentation of Age" subheading of Article 27 in this article. The references exclude a violation of § 22-108 of this subtitle as a Code violation rather than as a crime, because that section is expressly stated as a statutory misdemeanor rather than as a civil offense, and is charged as a crime rather than as a Code violation. No substantive change is intended.

For specific provisions on contempt of court, *see* Md. Rules 15-203 *et seq.*

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the jurisdiction of State forest and park wardens granted under NR § 5-206(b) extends to property beyond that described in subsection (b)(2) of this section, including but not limited to public and private property adjoining State property managed by the Department of Natural Resources, federal park property in the State, waters of the State within one mile of the shoreline of all properties owned by the Department, and any property in Maryland for the purpose of executing a warrant that has resulted from law enforcement activities on property on which a forest, park, and wildlife ranger may exercise law enforcement powers. The General Assembly may wish to address the

disparity between the grant of jurisdiction to forest and park wardens under this subtitle and NR § 5-206(b).

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the contempt provision of subsection (e)(2) of this section appears not to comport with the minimum legal standards for contempt. The provision treats as contempt the mere failure to respond to a summons, rather than a "willful" failure. Contempt generally requires a willful action in defiance of legal process, and some means of purging the contempt. The General Assembly may wish to address this deficiency.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that it is unclear whether the "repeat" violation in subsection (h)(2) of this section refers to a subsequent violation of the same section, or of this subtitle, or to any violation involving the use of alcoholic beverages. The General Assembly may wish to address the scope of repeat violations under this provision.

Defined term: "Person" § 1-102

22-108. FAILURE TO PROVIDE PROOF OF AGE; JURISDICTION.

(A) PROHIBITED.

A PERSON BEING ISSUED A CITATION UNDER §§ 22-101 THROUGH 22-107 OF THIS SUBTITLE OR § 26-103 OF THE EDUCATION ARTICLE MAY NOT FAIL OR REFUSE TO FURNISH PROOF OF IDENTIFICATION AND AGE ON REQUEST OF THE PERSON ISSUING THE CITATION.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $50.

(C) JURISDICTION.

(1) THE JUVENILE COURT HAS JURISDICTION OVER A MINOR WHO IS WITHIN THE AGE OF JUVENILE COURT JURISDICTION.

(2) IF THERE IS A WAIVER OF JUVENILE JURISDICTION WITH RESPECT TO A MINOR WHO IS OTHERWISE SUBJECT TO JUVENILE COURT JURISDICTION, THE DISTRICT COURT HAS JURISDICTION OVER THE MATTER, NOTWITHSTANDING ANY CONTRARY PROVISION OF § 4-301 OF THE COURTS ARTICLE.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 403A.

In subsection (a) of this section, the reference to "§§ 22-101 through 22-107 of this subtitle" is substituted for the former reference to "§§ 400

through 403 of this article" to reflect the reorganization of material derived from the former "Alcoholic Beverages Offenses and Misrepresentation of Age" subheading of Article 27 in this subtitle.

Defined term: "Person" § 1-102

SUBTITLE 2. BEVERAGE MISREPRESENTATION.

22-201. BEVERAGE MISREPRESENTATION.

(A) PROHIBITED -- MANUFACTURE OR SALE OF IMPROPERLY BREWED MALT PRODUCT.

A PERSON MAY NOT MANUFACTURE, SELL OR OFFER FOR SALE, OR ORDER OR ALLOW AN EMPLOYEE OR OTHER PERSON TO SELL OR OFFER FOR SALE EITHER AT WHOLESALE OR RETAIL ANY MALT EXTRACT, BEER, PORTER, ALE, OR STOUT UNLESS IT HAS BEEN BREWED AND FERMENTED AS SUCH.

(B) SAME -- SALE OF ADULTERATED BEER OR MISLABELED BEVERAGE.

A PERSON MAY NOT SELL OR OFFER FOR SALE, OR ORDER OR ALLOW AN EMPLOYEE OR OTHER PERSON TO SELL OR OFFER FOR SALE:

(1) BEER TO WHICH COLORING MATTER OR PORTERINE HAS BEEN ADDED REPRESENTING THE BEER TO BE MALT EXTRACT OR PORTER OR ANOTHER BEVERAGE; OR

(2) ANY MALT OR LIQUOR OTHER THAN BY ITS PROPER NAME.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 159.

In subsection (b) of this section, the former reference to a "corporation or officer thereof" is deleted as included in the comprehensive reference to a "person". *See* Art. 1, § 15. Similarly, in subsection (c) of this section, the former reference to a "corporation or officer or agent thereof" is deleted as included in the comprehensive reference to a "person".

In subsection (b)(2) of this section, the reference to a "liquor" is substituted for the former archaic reference to a "spiritous liquor" for style.

In subsection (c) of this section, the former phrase "in the discretion of the court having jurisdiction" is deleted as implicit in the establishment of

maximum penalties.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (b)(2) of this section, the references to "malt" and "liquor", revising the former references to "malt" and "spiritous liquor", do not include "wine", which is defined as a fermented beverage in § 1-102(a)(28) of this article.

Defined terms: "Beer" § 1-102

"Person" § 1-102

Article 24 - Political Subdivisions - Miscellaneous Provisions

11-509.

(E) DOGS IN HEAT IN CERTAIN COUNTIES -- EXCLUDED.

THIS SECTION DOES NOT APPLY TO A VIOLATION OF § 11-512, § 11-513, OR § 11-514 OF THIS SUBTITLE.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this subsection to provide that §§ 11-512 through 11-514 of this subtitle, which are derived from former Art. 27, §§ 70 through 70B, are not subject to the general penalty provided in this section.

11-512. DOG IN HEAT -- CECIL, DORCHESTER, FREDERICK, TALBOT, AND WICOMICO COUNTIES.

(A) IN GENERAL.

(1) IN CECIL, DORCHESTER, FREDERICK, TALBOT, AND WICOMICO COUNTIES, THE OWNER OR CUSTODIAN OF A FEMALE DOG THAT IS IN HEAT MAY NOT KNOWINGLY ALLOW THE DOG TO RUN AT LARGE.

(2) IN CECIL, DORCHESTER, FREDERICK, AND WICOMICO COUNTIES, THE OWNER OR CUSTODIAN OF A FEMALE DOG THAT IS IN HEAT SHALL CONFINE THE DOG.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $25.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 70.

In subsection (a) of this section, the former reference to being "in oestrus or in a condition commonly known as ... `in season'" is deleted in light of the

reference to being "in heat".

Defined term: "Person" § 1-101

11-513. SAME -- HARFORD COUNTY.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES IN HARFORD COUNTY.

(B) PROHIBITED.

THE OWNER OF A FEMALE DOG THAT IS IN HEAT MAY NOT ALLOW THE DOG TO BE OUT OF DOORS EITHER LOOSE OR ON A LEASH.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION:

(1) FOR A FIRST VIOLATION, IS SUBJECT TO A FINE OF $25; AND

(2) FOR EACH SUBSEQUENT VIOLATION, IS SUBJECT TO A FINE OF NOT LESS THAN $100 AND NOT EXCEEDING $200.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 70A.

In subsection (b) of this section, the former reference to being "in oestrus or a condition commonly known as ... `in season'" is deleted in light of the reference to being "in heat".

In subsection (c)(2) of this section, the reference to each "subsequent" violation is substituted for the former reference to "a second" conviction for accuracy and consistency with the Criminal Law Article. *See* General Revisor's Note to the Criminal Law Article.

Defined term: "Person" § 1-101

11-514. SAME -- HOWARD AND ST. MARY'S COUNTIES.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES IN HOWARD AND ST. MARY'S COUNTIES.

(B) IN GENERAL.

THE OWNER OR CUSTODIAN OF A FEMALE DOG THAT IS IN HEAT SHALL:

(1) ADEQUATELY AND SECURELY CONFINE THE DOG;

(2) PREVENT THE DOG FROM CONTACTING ROAMING DOGS;

(3) PROTECT THE DOG FROM OTHER DOGS THAT ARE ATTRACTED TO THE PREMISES; AND

(4) PROTECT THE DOG FROM MIGRATING DOGS.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF NOT LESS THAN $10 AND NOT EXCEEDING $50.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 70B.

In subsection (b) of this section, the former reference to being "in oestrus or in a condition commonly known as `in heat'" is deleted in light of the reference to being "in heat".

Also in subsection (b) of this section, the former reference to "[a]dequate is understood to mean - beginning soon enough and continuing long enough (this period is generally accepted to be twenty-one days)", is deleted as ambiguous in light of the reference to being "in heat" and the references requiring a dog to be confined and protected whenever the dog is in that condition.

Defined term: "Person" § 1-101

Article - Agriculture

Title 1. [Definitions] DEFINITIONS; GENERAL PROVISIONS.

SUBTITLE 3. CONSIGNMENT OF FARM PRODUCTS.

1-301. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this subsection, which is new language added as the standard introductory language to a definition section.

(B) CARRIER.

"CARRIER" INCLUDES A TRANSPORTATION AGENT.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this subsection, which is new language added to avoid repetition of the phrase "carrier or transportation agent".

(C) CONSIGNEE.

(1) "CONSIGNEE" MEANS A PERSON SELLING FARM PRODUCTS ON COMMISSION.

(2) "CONSIGNEE" INCLUDES AN AGENT, FACTOR, AND COMMISSION MERCHANT.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this subsection, which is new language derived without substantive change from the references to a "factor", "commission merchant", "consignee", and "agent" in former Art. 27, § 170.

1-302. CONTAINER DEPOSIT.

(A) DEPOSIT REQUIRED.

A CONSIGNEE OF A FARM PRODUCT OF A PERSON IN THE STATE SHALL REQUIRE THE PURCHASER OF THE FARM PRODUCT TO DEPOSIT WITH THE CONSIGNEE AT THE TIME OF SALE THE FULL MARKET VALUE, AS DETERMINED BY THE CONSIGNEE, OF EACH CONTAINER USED TO HOLD AND TRANSPORT THE FARM PRODUCT.

(B) REFUND.

IF THE PURCHASER RETURNS THE CONTAINER TO THE CONSIGNEE WITHIN 5 DAYS IN THE SAME CONDITION AS THE PURCHASER ORIGINALLY RECEIVED IT, THE CONSIGNEE SHALL REFUND THE DEPOSIT TO THE PURCHASER.

(C) FORFEITURE.

IF THE PURCHASER FAILS TO RETURN THE CONTAINER TO THE CONSIGNEE WITHIN 5 DAYS, THE PURCHASER FORFEITS THE RIGHT TO THE RETURN OF THE DEPOSIT AND THE CONSIGNEE SHALL PAY THE DEPOSIT TO THE OWNER OF THE CONTAINER AT THE NEXT SETTLEMENT OF ACCOUNTS.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is new language derived without substantive change from the first sentence and the second sentence of former Art. 27, § 170, as it related to container deposit.

In subsection (a) of this section, the reference to "hold[ing]" a farm product is substituted for the former reference to "pack[ing]" a farm product for accuracy.

Defined term: "Consignee" § 1-301

1-303. RETURNED CONTAINER.

(A) DELIVERY TO CARRIER.

IF THE PURCHASER RETURNS THE CONTAINER TO THE CONSIGNEE:

(1) THE CONSIGNEE SHALL DELIVER THE CONTAINER WITHIN 48 HOURS TO THE CARRIER THAT DELIVERED THE CONTAINER TO THE PLACE OF SALE; AND

(2) THE CONSIGNEE SHALL OBTAIN A RECEIPT FOR THE CONTAINER FROM THE CARRIER.

(B) RESPONSIBILITY AFTER DELIVERY.

AFTER THE CONSIGNEE DELIVERS THE CONTAINER TO THE CARRIER:

(1) THE CONSIGNEE SHALL HAVE NO FURTHER RESPONSIBILITY FOR THE CONTAINER; AND

(2) THE CARRIER SHALL BE RESPONSIBLE TO THE OWNER FOR THE FULL VALUE OF THE CONTAINER UNTIL IT HAS BEEN RETURNED TO THE POINT AT WHICH IT WAS RECEIVED FROM THE OWNER.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is new language derived without substantive change from the second sentence of former Art. 27, §§ 170, as it related to returned containers, and 171, as it related to the time limit for returning a container.

Defined terms: "Carrier" § 1-301

"Consignee" § 1-301

1-304. PENALTY FOR VIOLATION OF CONSIGNEE'S DUTIES.

(A) CIVIL PENALTY.

A CONSIGNEE WHO FAILS TO COMPLY WITH § 1-302(A) OR § 1-303(A) OF THIS SUBTITLE SHALL PAY TO THE OWNER THE FULL MARKET VALUE OF THE CONTAINER WITH AND IN ADDITION TO THE PRICE OF THE FARM PRODUCT IN THE CONTAINER.

(B) PENALTY.

A CONSIGNEE WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF $5 FOR EACH VIOLATION AND COURT COSTS.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is new language derived without substantive change from former Art. 27, §§ 171 and 172, as they related to penalties.

In subsection (b) of this section, the reference to each "violation" is substituted for the former reference to each "and every offense" for consistency with the Criminal Law Article. *See* General Revisor's Note to the Criminal Law Article.

For provisions relating to consignment of goods other than farm products or articles, *see* CL Title 11, Subtitle 8.

Defined term: "Consignee" § 1-301

1-305. SALE OF CONSIGNED GOODS -- FAILURE TO ACCOUNT.

(A) ACCOUNTING REQUIRED.

AFTER A SALE OF A FARM PRODUCT CONSIGNED FOR SALE BY A PERSON IN THIS STATE TO A PERSON ENGAGED IN THE BUSINESS OF SELLING GOODS ON CONSIGNMENT, THE CONSIGNEE SHALL TRANSMIT TO THE CONSIGNOR WITHIN 24 HOURS AFTER THE SALE A FULL ACCOUNT OF THE SALE, INCLUDING:

(1) THE AMOUNT AND PRICE OF THE GOODS SOLD; AND

(2) THE NAME AND ADDRESS OF THE PURCHASER, INCLUDING THE HOUSE OR BUSINESS NUMBER, STREET, AND CITY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF $5 FOR EACH VIOLATION, AND COURT COSTS.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 172, as that section related to accounting for a farm product or article sold on consignment.

In subsection (a) of this section, the reference to an amount and price "of the farm product" is added for clarity.

Also in subsection (a) of this section, the former references to after a sale "shall have been made by him" and a farm product consigned "to him" are deleted as surplusage.

In subsection (b) of this section, the reference to the additional penalty of "court costs" is substituted for the former reference to the additional penalty of "together with the cost of prosecution" for consistency with Title 7 of the Courts Article.

Also in subsection (b) of this section, the reference to "each violation" is substituted for the former reference to "each and every offense" for consistency with the Criminal Law Article.

Defined term: "Person" § 1-101

1-306. APPLICATION OF GENERAL PENALTIES.

THE PENALTIES UNDER TITLE 12 OF THIS ARTICLE DO NOT APPLY TO THIS SUBTITLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is new language added to clarify that the general penalties for a violation of this article do not apply to a violation of this subtitle, which is derived from former Art. 27, §§ 170 through 172.

SUBTITLE 7. ENCLOSED LIVESTOCK.

3-701. OPENING ENCLOSURE OF ANOTHER.

(A) PROHIBITED.

A PERSON MAY NOT WILLFULLY AND MALICIOUSLY OPEN THE GATE OF ANOTHER'S FIELD, PASTURE, OR ENCLOSURE THAT ENCLOSES LIVESTOCK.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 111A.

In subsection (b) of this section, the former reference to imprisonment for "a period of" not more than 1 year is deleted as surplusage.

Also in subsection (b) of this section, the former redundant reference to a violator being subject to "imprisonment and fine" is deleted as surplusage.

Defined terms: "Livestock" § 1-101

"Person" § 1-101

4-123.1. INHUMANE SLAUGHTER OF LIVESTOCK.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "HUMANE METHOD" MEANS:

1. A METHOD BY WHICH LIVESTOCK ARE RENDERED INSENSIBLE TO PAIN, BY A SINGLE BLOW OR GUNSHOT, OR BY AN ELECTRICAL, CHEMICAL, OR OTHER RAPID AND EFFECTIVE MEANS, BEFORE BEING SHACKLED, HOISTED, THROWN, CAST, OR CUT; OR

2. RITUAL SLAUGHTER.

(II) "HUMANE METHOD" DOES NOT INCLUDE THE USE OF A MANUALLY OPERATED HAMMER, SLEDGE, OR POLEAX DURING A SLAUGHTERING OPERATION.

(3) (I) "LIVESTOCK" MEANS CATTLE, CALVES, SHEEP, SWINE, HORSES, MULES, GOATS, OR OTHER ANIMALS THAT MAY BE USED IN THE PREPARATION OF A MEAT PRODUCT.

(II) "LIVESTOCK" DOES NOT INCLUDE POULTRY OR OTHER FOWL.

(4) "PACKER" MEANS A PERSON WHO IS ENGAGED IN THE BUSINESS OF:

(I) SLAUGHTERING; OR

(II) MANUFACTURING OR PREPARING A MEAT OR LIVESTOCK PRODUCT FOR SALE.

(5) "RITUAL SLAUGHTER" MEANS A METHOD OF SLAUGHTER BY WHICH LIVESTOCK SUFFER LOSS OF CONSCIOUSNESS BY ANEMIA OF THE BRAIN CAUSED BY SIMULTANEOUS AND INSTANTANEOUS SEVERANCE OF THE CAROTID ARTERIES WITH A SHARP INSTRUMENT IN ACCORDANCE WITH RITUAL REQUIREMENTS OF A RELIGIOUS FAITH.

(6) "SLAUGHTERER" MEANS A PERSON WHO IS REGULARLY ENGAGED IN THE COMMERCIAL SLAUGHTERING OF LIVESTOCK.

(7) "STOCKYARD" MEANS A FACILITY, CONSISTING OF PENS, OTHER ENCLOSURES, AND APPURTENANCES, OPERATED FOR COMPENSATION OR PROFIT AS A PUBLIC MARKET TO HANDLE, KEEP, AND HOLD LIVESTOCK FOR SALE OR SHIPMENT.

(B) DECLARATION OF POLICY.

IT IS THE POLICY OF THE STATE TO PREVENT INHUMANE METHODS OF LIVESTOCK SLAUGHTER AT AN OFFICIAL ESTABLISHMENT.

(C) RULES OF CONSTRUCTION.

THIS SECTION MAY NOT BE CONSTRUED TO:

(1) PROHIBIT OR LIMIT THE RELIGIOUS FREEDOM OF A PERSON;

(2) APPLY TO A FARMER WHILE SLAUGHTERING LIVESTOCK OF THE FARMER; OR

(3) APPLY TO RITUAL SLAUGHTER.

(D) PROHIBITED.

A SLAUGHTERER, PACKER, OR STOCKYARD OPERATOR MAY NOT, UNLESS BY A HUMANE METHOD:

(1) SHACKLE, HOIST, OR OTHERWISE BRING LIVESTOCK INTO POSITION FOR SLAUGHTER; OR

(2) BLEED OR SLAUGHTER LIVESTOCK.

(E) INSPECTION.

THE SECRETARY SHALL INSPECT THE HANDLING OF LIVESTOCK IN CONNECTION WITH SLAUGHTERING IN AN OFFICIAL ESTABLISHMENT.

(F) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $100 FOR EACH VIOLATION.

(2) IN ADDITION TO THE PENALTY UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE SECRETARY MAY REFUSE TO PROVIDE OR MAY SUSPEND TEMPORARILY INSPECTION SERVICES FOR AN ESTABLISHMENT THAT VIOLATES THIS SECTION WITH RESPECT TO THE SLAUGHTER OF LIVESTOCK.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, §§ 333B, 333C, 333D, and 333A(a) and (c) through (g), and former AG § 4-123.1.

With respect to former AG § 4-123.1, subsection (a)(2) of this section is revised as a definition for clarity, brevity, and consistency with former Art. 27, § 333A(g). As a result, the reference to the requirement that livestock may only be slaughtered "[a]t an official establishment or custom slaughterhouse ... according to" a humane method is deleted as unnecessary.

In subsection (a)(2) of this section, the reference to "livestock" is substituted for the former references to an "animal" for consistency within this section.

Also in subsection (a)(2) of this section, the reference a "humane method" specifically "not includ[ing] [a method]" is substituted for the former reference to a method "declared to be an inhumane method of slaughter" for consistency.

Also in subsection (a)(2) of this section, the former reference to "either

[method]" is deleted as surplusage.

Also in subsection (a)(2) of this section, the former phrase "within the meaning of this subtitle" is deleted as implicit in subsection (a)(1) of this section.

In subsection (a)(3) of this section, the former references to use of livestock "for" and livestock that "can [be used in]" the preparation of a meat product are deleted as surplusage.

Also in subsection (a)(3) and (4) of this section, the former references to "meat" are deleted as included in the references to a "meat product" and a "meat or livestock product".

In subsection (a)(4) of this section, the reference to a person "who is" engaged in business is added for clarity.

Also in subsection (a)(4) of this section, the former references to sale "either by such person or others" are deleted as surplusage.

In subsection (a)(5) of this section, the former reference to a religious faith "that prescribes a method of slaughter" is deleted as implicit in the reference to the description of the methods "[i]n accordance with the ritual requirements" of a religious faith.

Also in subsection (a)(5) of this section, the former reference to a religious faith that prescribes "handling in connection with slaughtering" is deleted as implicit in the reference to "ritual requirements".

In subsection (a)(7) of this section, the former reference to a "place [or] establishment" is deleted as implicit in the reference to a "facility".

Also in subsection (a)(7) of this section, the former reference to a place "commonly known as a stockyard" is deleted as implicit in the definition of "[s]tockyard".

Also in subsection (a)(7) of this section, the former reference to a facility "conducted" for profit is deleted as implicit in the reference to "operated" for profit.

Also in subsection (a)(7) of this section, the former reference to "for the purpose of sale" is deleted as surplusage.

In subsection (b) of this section, the former reference to a declaration by "[t]he General Assembly" is deleted as implicit in the enactment of the statute and for consistency within this article.

Also in subsection (b) of this section, the former reference to a "custom slaughterhouse" is deleted as implicit in the reference to an "official establishment".

Also in subsection (b) of this section, the former reference to an official establishment "subject to the provisions of this subtitle" is deleted as surplusage.

In subsection (c) of this section, the reference to "limit[ing]" freedom is substituted for the former references to "abridg[ing] or in any way hinder[ing]" freedom for brevity and clarity.

Also in subsection (c) of this section, the reference to a "group" is deleted as implicit in the reference to a "person", in light of Art. 1, § 8, which provides that the singular generally includes the plural.

In subsection (d) of this section, the reference to a "slaughterer, packer, or stockyard operator" is substituted for the former reference to an "official establishment or custom slaughterhouse" for clarity and accuracy.

Also in subsection (d) of this section, the phrase "unless by a humane method" is substituted for the former phrase "except by a humane method" for clarity.

In subsection (e) of this section, the former reference to a "custom slaughterhouse" is deleted as implicit in the reference to an "official establishment".

In subsection (f)(1) of this section, the reference to "each violation" is substituted for the former reference to "each such conviction" for clarity.

Also in subsection (f)(1) of this section, the former reference to the provisions of Art. 27, § 63 - now CR § 10-609 - which authorizes an officer of a humane organization to make an arrest for cruelty to an animal, being incorporated by reference and made applicable to the enforcement and administration of this section is deleted as unnecessary because CR § 10-609 is implicitly applicable to the enforcement of this revised section.

Also in subsection (f)(1) of this section, the former reference to a "firm or corporation" that violates this subtitle is deleted in light of § 1-101(f) of this article, which defines "person" to include a firm or a municipal or private corporation.

Also in subsection (f)(1) of this section, the former reference to "any provision of this subtitle" is deleted as surplusage.

Former Art. 27, § 333A(b), which defined "person", is deleted as unnecessary because the same term is defined in § 1-101 of this article.

Defined terms: "Person" § 1-101

"Poultry" § 1-101

"Secretary" § 1-101

12-101.

Any person who violates any provision of this article is guilty of a misdemeanor. Unless another penalty specifically is provided elsewhere in this article, the person, upon conviction, is subject to a fine not exceeding $500, or imprisonment not exceeding three months, or both, with costs imposed in the discretion of the court.

12-102.

Unless another penalty specifically is provided elsewhere in this article, any person found guilty of a second or subsequent violation of any provision of the same title, is subject to a fine not exceeding $1,000, or imprisonment not exceeding one year, or both, with costs imposed in the discretion of the court. For the purposes of this section, a second or subsequent violation is one which has occurred within two years of any prior violation of this title and which arises out of a separate set of circumstances.

12-103.

In addition to any administrative penalty provided in this article, violation of any rule or regulation adopted by the Secretary pursuant to the provisions of this article is a misdemeanor and is punishable as provided in §§ 12-101 and 12-102.

12-104. EXCEPTION TO TITLE.

THIS TITLE DOES NOT APPLY TO A VIOLATION OF TITLE 1, SUBTITLE 3 OF THIS ARTICLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which clarifies that this title does not apply to enforcement of Title 1, Subtitle 3 of this article. That subtitle, which was added by the same Act that added this section, is derived from former Art. 27, §§ 170 through 172, which were never subject to enforcement under this title. No substantive change is intended.

Article - Business Regulation

Subtitle 10. Prohibited [Act] ACTS.

11-1002. RACING HORSE UNDER FALSE NAME.

(A) PROHIBITED.

A PERSON KNOWINGLY MAY NOT ENTER OR RACE A HORSE IN A RUNNING OR HARNESS RACE UNDER A NAME OR DESIGNATION OTHER THAN THAT REGISTERED WITH THE JOCKEY CLUB OR THE UNITED STATES TROTTING ASSOCIATION.

(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.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 233B.

In subsection (a) of this section, the reference to a "harness" race is substituted for the former reference to a "trotting" race for consistency within this title.

Also in subsection (a) of this section, the reference to a name other than "that" registered is substituted for the former reference to the "name or designation" registered for brevity.

Also in subsection (a) of this section, the former reference to a name or designation "assigned to the horse by" the Jockey Club or the United States Trotting Association is deleted because the Jockey Club registers, but does not name, a horse, and the United States Trotting Association assigns a name to (and then registers) a horse from a list of three names submitted by the owner.

Also in subsection (a) of this section, the former reference to "instigat[ing], engag[ing] in, or in any way further[ing]" a prohibited act under this section is deleted because under Maryland law, there is no distinction between an accessory to a misdemeanor and a principal. *See, e.g., Fabian v. State*, 235 Md. 306, 317 (1963); *see, also*, CP § 4-204.

Defined terms: "Harness racing" § 11-101

"Person" § 1-101

11-1003. FRAUD -- PARI-MUTUEL BETTING TICKETS.

(A) PROHIBITED.

A PERSON MAY NOT KNOWINGLY PRESENT FOR PAYOFF, OR GIVE TO ANOTHER TO PRESENT FOR PAYOFF, A COUNTERFEIT OR ALTERED PARI-MUTUEL BETTING TICKET.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 233C.

In subsection (a) of this section, the reference to a "betting" ticket is added for clarity and consistency within this title.

Defined terms: "Pari-mutuel betting" § 11-101

"Person" § 1-101

SUBTITLE 2. ORGANIZATIONAL INSIGNIA.

19-201. "ORGANIZATION" DEFINED.

IN THIS SUBTITLE, "ORGANIZATION" MEANS AN INCORPORATED OR UNINCORPORATED SOCIETY, ASSOCIATION, ORGANIZATION, LODGE, ORDER, FRATERNAL SOCIETY, BENEFICIAL ASSOCIATION, FRATERNAL AND BENEFICIAL SOCIETY OR ASSOCIATION, HISTORICAL, MILITARY, OR VETERANS' ORGANIZATION, LABOR UNION, FOUNDATION, FEDERATION, DEGREE, BRANCH, SUBORDINATE LODGE, OR AUXILIARY.

REVISOR'S NOTE: Chapter ____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is new language added to avoid repetition of the phrase "incorporated or unincorporated society, association, organization, lodge, order, fraternal society, beneficial association, fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, degree, branch, subordinate lodge, or auxiliary".

19-202. REGISTRATION OF NAME OR INSIGNIA.

(A) IN GENERAL.

(1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN ORGANIZATION MAY REGISTER WITH THE SECRETARY OF STATE A FACSIMILE, DUPLICATE, OR DESCRIPTION OF ITS NAME OR INSIGNIA, INCLUDING A BADGE, MOTTO, BUTTON, DECORATION, CHARM, EMBLEM, OR ROSETTE IF THE PRINCIPLES AND ACTIVITIES OF THE ORGANIZATION ARE NOT REPUGNANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES OR THIS STATE.

(2) AN ORGANIZATION THAT REGISTERS A NAME OR INSIGNIA UNDER THIS SUBSECTION MAY CHANGE OR CANCEL THE REGISTRATION BY REREGISTRATION.

(B) EXCEPTIONS.

THE SECRETARY OF STATE MAY NOT REGISTER A NAME OR INSIGNIA OF AN ORGANIZATION IF THE NAME OR INSIGNIA IS SIMILAR TO, IMITATES, OR SO NEARLY RESEMBLES ANOTHER NAME OR INSIGNIA REGISTERED UNDER THIS SECTION AS TO BE LIKELY TO DECEIVE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, §§ 184 and 187.

In subsection (a)(1) of this section, the reference to registration "xcept as provided in subsection (b) of this section" is added for clarity and consistency.

Also in subsection (a)(1) of this section, the reference to registering "with" the Secretary of State is substituted for the former reference to registering "in the office of" the Secretary of State for brevity and consistency within the Business Regulation Article.

In subsection (a)(2) of this section, the reference to authorizing a person to "change or cancel the registration by reregistration" is substituted for the former reference to authorizing an organization to "by reregistration alter or cancel the same" for clarity and consistency.

In subsection (b) of this section, the reference to "a name or insignia" closely resembling another registered name or insignia is added for clarity.

Also in subsection (b) of this section, the reference to the "Secretary of State" is added to clarify who registers a name or insignia.

Also in subsection (b) of this section, the reference to a name or insignia "of" an organization is substituted for the former reference to an organization "having" a name or insignia for clarity.

Also in subsection (b) of this section, the former reference to permitting the "alteration" of a registration is deleted as implicit in the reference to "register[ing]".

Also in subsection (b) of this section, the former reference to other insignia "whatsoever" is deleted as surplusage.

Also in subsection (b) of this section, the former reference to a name or insignia "already" registered is deleted as unnecessary.

Defined term: "Organization" § 19-201

19-203. APPLICATION FOR REGISTRATION.

THE CHIEF EXECUTIVE OFFICER OF THE ORGANIZATION SHALL APPLY FOR REGISTRATION UNDER THIS SUBTITLE ON THE FORM THAT THE SECRETARY OF STATE PROVIDES.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 185, as it related to application for registration.

The reference to application for registration "under this subtitle" is added for clarity.

The reference to application by the chief "executive" officer is added for clarity and consistency within the Code. *See, e.g.*, §§ 9-231 and 14-419 of the Insurance Article.

The reference to "a form" that the Secretary of State provides is substituted for the former archaic reference to "blanks" for clarity and consistency.

The former reference to application by the chief executive officer "or officers" is deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

The former reference to an application for "alteration, or cancellation" is deleted as implicit in the reference to an application for "registration".

Defined term: "Organization" § 19-201

19-204. FEES.

(A) IN GENERAL.

ANY FEES THAT THE SECRETARY OF STATE ESTABLISHES FOR REGISTRATION, ALTERATION, CANCELLATION, RESEARCH, AND THE ISSUANCE OF CERTIFICATES UNDER THIS SUBTITLE SHALL BE AS PROVIDED BY LAW FOR SIMILAR SERVICES.

(B) DISBURSEMENT.

THE SECRETARY OF STATE SHALL PAY FEES COLLECTED UNDER THIS SUBTITLE, LESS ADMINISTRATIVE COSTS, INTO THE GENERAL FUND OF THE STATE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 190.

In subsection (a) of this section, the reference to "research" is substituted for the former reference to "searches made by him" for clarity and brevity.

In subsection (b) of this section, the reference to remittance "less administrative costs" is substituted for the former reference to remittance "after deducting the cost of administering this law" for brevity and consistency within this article.

Also in subsection (b) of this section, the reference to remittance into the "general fund of the State" is substituted for the former reference to remittance into the "State Treasury" for consistency within the Code.

19-205. SCOPE OF REGISTRATION.

A REGISTRATION UNDER THIS SUBTITLE IS FOR THE USE, THE BENEFIT, AND ON BEHALF, OF THE ORGANIZATION, OR A SUBSIDIARY OR MEMBER IN THE STATE OF THE ORGANIZATION.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 185, as it related to the scope of registration.

The reference to registration "under this subtitle" is added for clarity.

The reference to registration on behalf of "a subsidiary" is substituted for the former reference to registration on behalf of "auxiliaries" for clarity.

The reference to registration on behalf of "a member" of an organization is substituted for the former reference to registration on behalf of "the individual members" of an organization in light of Art. 1, § 8, which provides that the singular generally includes the plural.

The reference to members "in" the State is substituted for the former reference to members "throughout" the State for clarity and brevity.

The former reference to registration on behalf of "those ... to become members" is deleted as implicit in the reference to registration on behalf of a "member".

Defined term: "Organization" § 19-201

19-206. RECORD OF REGISTRATION.

(A) IN GENERAL.

(1) THE SECRETARY OF STATE SHALL KEEP A PROPERLY INDEXED RECORD OF REGISTRATIONS GRANTED UNDER THIS SUBTITLE.

(2) THE RECORD SHALL SHOW ANY ALTERED OR CANCELED REGISTRATION.

(B) CERTIFICATE.

THE SECRETARY OF STATE SHALL ISSUE A CERTIFICATE OF REGISTRATION TO EACH PERSON GRANTED A REGISTRATION UNDER THIS SUBTITLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, §§ 186 and 188.

In subsection (a)(1) of this section, the reference to registration "granted" is substituted for the former reference to registration "provided for" for consistency within this subtitle.

Also in subsection (a)(1) of this section, the reference to registration "under" this subtitle is substituted for the former reference to registration "by" this subtitle for consistency within this subtitle.

In subsection (b) of this section, the reference to a registration granted "under this subtitle" is substituted for the former reference to a registration granted "as aforesaid" for clarity and consistency within this subtitle.

Also in subsection (b) of this section, the reference to a "person" is substituted for the former reference to "petitioners" for clarity.

Also in subsection (b) of this section, the reference to a certificate "of registration" is substituted for the former archaic reference to a certificate "setting forth the fact at such registration" for clarity and brevity.

Defined terms: "Organization" § 19-201

"Person" § 1-101

19-207. PROHIBITED ACTS; PENALTIES.

(A) IMPERSONATING MEMBER OF FRATERNAL ORGANIZATION.

A PERSON MAY NOT FALSELY IMPERSONATE AN OFFICER OR MEMBER OF A MILITARY OR PATRIOTIC ORGANIZATION, GRAND OR SUBORDINATE LODGE, OR FRATERNAL OR SORORAL SOCIETY THAT IS CHARTERED OR HAS GRAND OR SUBORDINATE LODGES IN THE STATE.

(B) UNAUTHORIZED USE OF INSIGNIA OF FRATERNAL OR PATRIOTIC ORGANIZATION.

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT WEAR, OR USE TO OBTAIN AID, ASSISTANCE, OR PERSONAL OR SOCIAL RECOGNITION FROM A PERSON IN THE STATE, THE INSIGNIA OF A MILITARY OR PATRIOTIC ORGANIZATION, OR A LODGE OR FRATERNAL SOCIETY THAT IS CHARTERED OR HAS GRAND OR SUBORDINATE LODGES IN THE STATE, UNLESS THE PERSON IS ENTITLED TO USE OR WEAR THE INSIGNIA UNDER THE CONSTITUTION, BYLAWS, OR RULES OF THE ORGANIZATION, LODGE, OR SOCIETY.

(2) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO PROHIBIT A PERSON FROM WEARING AN INSIGNIA OF A LODGE OR SOCIETY IF THE PERSON IS A PARENT, SIBLING, CHILD, OR SPOUSE OF A MEMBER OF THE LODGE OR SOCIETY WHO IS ENTITLED TO WEAR THE INSIGNIA UNDER THIS SUBSECTION.

(3) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $200.

(C) UNAUTHORIZED USE OF INSIGNIA OF VETERANS' ORGANIZATIONS.

(1) A PERSON MAY NOT WEAR WILLFULLY, OR USE TO OBTAIN AID OR ASSISTANCE IN THE STATE, THE INSIGNIA OF THE AMERICAN LEGION, THE VETERANS OF FOREIGN WARS OF THE UNITED STATES, OR THE DISABLED AMERICAN VETERANS, UNLESS THE PERSON IS ENTITLED TO USE OR WEAR THE INSIGNIA UNDER THE CONSTITUTION, BYLAWS, OR RULES OF THE ORGANIZATION.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) A FINE NOT EXCEEDING $25; OR

(II) IF PAYMENT OF THE FINE IS DEFAULTED, IMPRISONMENT NOT EXCEEDING 30 DAYS.

(D) UNAUTHORIZED USE OF REGISTERED INSIGNIA.

(1) A PERSON MAY NOT WILLFULLY WEAR, EXHIBIT, DISPLAY, PRINT, OR USE THE INSIGNIA THAT IS REGISTERED UNDER THIS SUBTITLE, UNLESS THE PERSON IS ENTITLED TO USE OR WEAR THE INSIGNIA UNDER THE CONSTITUTION, BYLAWS, OR RULES OF THE ORGANIZATION.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) A FINE NOT EXCEEDING $100; OR

(II) IF PAYMENT OF THE FINE IS DEFAULTED, IMPRISONMENT NOT EXCEEDING 60 DAYS.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, §§ 181, 182, 183, and 189.

In subsection (a) of this section, the reference to "impersonate" a person is substituted for the former archaic reference to "personate" a person for clarity.

As to the deletion of the references to a "badge[, distinctive ribbons, or membership rosette or button]", in subsection (b) of this section, *see* General Revisor's Note to subtitle.

In subsection (b) of this section and throughout this section, the references to using and wearing an "insignia" are substituted for the former references to using and wearing "the same" for clarity.

In subsections (b)(1), (c)(1), and (d)(1) of this section, the former references to "regulations" of a society, etc., are deleted as implicit in the references to the "rules" of a society, etc.

In subsection (b) of this section, the introductory phrase "[s]ubject to paragraph (2) of this subsection" is added for clarity.

Also in subsection (b) of this section, the former references to "lodges" and "societies" are deleted in light of Art. 1, § 8, which provides that the singular generally includes the plural.

Also in subsection (b) of this section, the former reference to a person

entitled to wear a symbolic representation "[under subsection (a) of] this section" is deleted because subsection (a) of this section is a prohibition, not an authorizing or entitling statute.

In subsections (c)(2) and (d)(2) of this section, the references to imprisonment "if payment of the fine is defaulted" are substituted for the former references to imprisonment if "in default of payment" for clarity.

Also in subsections (c)(2) and (d)(2) of this section, the references to "[a] person who violates this subsection" are added for clarity and consistency.

As to the deletion of the reference in subsection (c) of this section to a "uniform or button ... or the official decorations" of an organization, *see* General Revisor's Note to subtitle.

In subsection (c) of this section, the former reference to the Disabled American Veterans "of the World War" is deleted to reflect the current name of that organization.

Also in subsection (c) of this section, the former reference to the "United Spanish War Veterans" is deleted because the organization no longer exists.

As to the deletion of the reference to a registered "badge, motto, button, decoration, charm, emblem, rosette" in subsection (d) of this section, *see* General Revisor's Note to subtitle.

In subsection (d) of this section, the reference to authorization under the bylaws of an "organization" is added for consistency with § 19-201 of this subtitle, which authorizes an organization to register a name or insignia.

Also in subsection (d) of this section, the reference to a symbolic representation "that is registered under this subtitle" is substituted for the former archaic reference to a symbolic representation "duly registered hereunder" for clarity.

Also in subsection (d) of this section, the former reference to a violation "for any purpose" is deleted as implicit in the reference to the violation.

Also in subsection (d) of this section, the former reference to a symbolic representation "of any such association or organization, herein mentioned" is deleted as unnecessary in light of the reference to a "registered" symbolic representation.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the provisions of subsections (c)(2)(ii) and (d)(2)(ii) of this section, authorizing imprisonment in default of paying a fine, may infringe the Fourteenth Amendment to the U.S. Constitution by imposing a greater punishment on those unable to pay the fine than on those who are able to pay. *See Tate v. Short*, 401 U.S. 395 (1971); *cf.*

Bearden v. Georgia, 461 U.S. 660 (1983).

Defined term: "Person" § 1-101

GENERAL REVISOR'S NOTE TO SUBTITLE

Throughout this subtitle, the references to a "[name or] insignia" are substituted for variations of the former lengthy, obsolete, and redundant references to a "name, badge, [motto,] button, decoration, charm, emblem, rosette, [distinctive ribbons, uniform, official decorations] or other insignia" for clarity, brevity, and consistency within this subtitle.

Former Art. 27, § 184 authorized an association to register a symbolic representation, including a motto, with the Secretary of State. Former Art. 27, § 187 provided that the Secretary of State may not register a symbolic representation, including a motto, that imitates, etc. another registered symbolic representation, *not including* a motto. This revision authorizes the registration of the same list of symbolic representations. This revision also provides that the Secretary of State may not register a symbolic representation, including a motto, that imitates, etc. another registered symbolic representation, *including* a motto. The Criminal Law Article Review Committee calls this addition to the attention of the General Assembly.

SUBTITLE 3. RETURNABLE CONTAINERS AND RETURNABLE TEXTILES.

19-301. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also enacted this subsection, which is new language added as the standard introductory language to a definition section.

(B) RETURNABLE CONTAINER.

(1) "RETURNABLE CONTAINER" MEANS A DEVICE MADE OF ANY MATERIAL:

(I) THAT IS USED TO HOLD, CONTAIN, OR CONVERT GOODS INTO A PACKAGE, EITHER BY NECESSITY OR FOR CONVENIENCE OF DELIVERY OR SALE;

(II) THAT IS SUITABLE FOR REPEATED USE; AND

(III) THE TITLE TO WHICH THE SELLER DOES NOT INTEND TO PASS WITH THE SALE OF THE GOODS OR THE TRANSPORT OR RETURN OF THE GOODS, AS PROVIDED IN ITEM (2)(II) OF THIS SECTION.

(2) "RETURNABLE CONTAINER" INCLUDES:

(I) A BASKET, TRAY, MILK CRATE, OR ANY TYPE OF CONTAINER THAT IS USED BY A BAKERY, DAIRY, DISTRIBUTOR, RETAILER, FOOD SERVICE ESTABLISHMENT, OR ITS AGENT, TO TRANSPORT, STORE, OR CARRY GOODS INCLUDING BAKERY OR DAIRY PRODUCTS; AND

(II) A BAG, BOX, BASKET, OR ANY OTHER DEVICE:

1. THAT IS INTENDED FOR REPEATED USE;

2. THAT IS USED TO HOLD OR CONTAIN GOODS THAT ARE BEING:

A. TRANSPORTED TO A LAUNDRY, DRY CLEANING, OR DYEING ESTABLISHMENT TO BE WASHED, LAUNDERED, DRY CLEANED, OR DYED; OR

B. RETURNED TO THE PERSON ENTITLED TO THE RETURN; AND

3. THE TITLE TO WHICH THE SELLER DOES NOT INTEND TO PASS BY THE TRANSPORT OR RETURN OF THE GOODS.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this subsection, which is new language derived without substantive change from the first clause of former Art. 27, § 478, which defined "returnable container".

Throughout this subsection, the references to "goods that are" transported or returned are substituted for the former references to an "article, material or thing" being transported or returned for brevity and consistency within this subsection.

Also throughout this subsection, the former reference to a device that is used "for the purpose of" listed functions is deleted as surplusage.

Also throughout this subsection, the former references to "wares, or merchandise", "contents", and "packages" are deleted as implicit in the references to "goods".

In paragraph (1) of this subsection, the former reference to any material "whatsoever" is deleted as surplusage.

In paragraph (1)(ii) of this subsection, the reference to a device that is "suitable for repeated use" is substituted for the former reference to a device that is "susceptible of repeated use for such purpose" for brevity and grammatical accuracy.

Also in paragraph (1)(ii) of this subsection, the former reference to a container that "by its very nature" has certain characteristics is deleted as surplusage.

In paragraph (1)(iii) of this subsection, the reference to a "seller" is substituted for the former reference to a "vendor" for clarity and consistency.

In paragraph (2)(i) of this subsection, the former reference to goods being "sent, [or] conveyed" is deleted as implicit in the reference to goods being "transported".

In paragraph (2)(ii)2B of this subsection, the former reference to a "partnership or body corporate" is deleted in light of the reference to a "person". *See* § 1-101 of this article.

Defined term: "Person" § 1-101

(C) RETURNABLE TEXTILE.

"RETURNABLE TEXTILE" MEANS A GARMENT, TOWEL, TABLE LINEN, OR BED LINEN WITH AN IDENTIFYING NAME, MARK, OR DEVICE WOVEN, IMPRESSED, OR PRODUCED ON IT, THAT IS REGULARLY SUPPLIED CLEAN, AND PERIODICALLY EXCHANGED FOR A SIMILAR SOILED TEXTILE.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also enacted this subsection, which is new language derived without substantive change from the first sentence of former Art. 27, § 471, as it related to returnable textiles that may be registered.

19-302. RULES OF CONSTRUCTION.

(A) DEPOSIT.

IN THIS SUBTITLE, REQUIRING OR ACCEPTING A DEPOSIT ON A REGISTERED RETURNABLE CONTAINER, WHETHER OPTIONAL, CONDITIONAL, OR OTHERWISE, DOES NOT CONSTITUTE A SALE OF THE CONTAINER.

(B) CIVIL AND CRIMINAL ACTIONS.

THIS SUBTITLE DOES NOT PROHIBIT:

(1) THE OWNER OF A RETURNABLE CONTAINER OR RETURNABLE TEXTILE FROM BRINGING A CIVIL ACTION, INCLUDING AN ACTION FOR INJUNCTIVE RELIEF, TO PRESERVE THE RIGHTS OF THE OWNER, TO RECOVER DAMAGES, OR TO RECOVER THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE, FROM A PERSON WHO UNLAWFULLY POSSESSES THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE OF THE OWNER; OR

(2) A PROSECUTION FOR THEFT UNDER § 7-104 OF THE CRIMINAL LAW ARTICLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived

without substantive change from former Art. 27, § 480A and the second clause of § 478.

In subsection (a) of this section, the former reference to "taking" a deposit is deleted as implicit in the reference to "accepting" a deposit.

Also in subsection (a) of this section, the former reference to requiring or accepting a deposit "for any purpose" is deleted as implicit in requiring or accepting a deposit.

In subsection (b)(1) of this section, the defined term "returnable textile" is substituted for the former references to "article[s]" for consistency within this subtitle.

Also in subsection (b)(1) of this section, the reference to an action against a person who possesses a "returnable container or returnable textile" is substituted for the former reference to an action against a person who possesses "property" for clarity and consistency.

Also in subsection (b)(1) of this section, the former reference to a "type of" returnable container is deleted as surplusage.

Also in subsection (b)(1) of this section, the former reference to an article "described in this subtitle" is deleted as implicit in the reference to a "returnable textile".

Also in subsection (b)(1) of this section, the former reference to an action to "take" a certain item is deleted as implicit in the reference to an action to "recover" a certain item.

Defined terms: "Person" § 1-101

"Returnable container" § 19-301

"Returnable textile" § 19-301

19-303. REGISTRATION.

(A) IN GENERAL.

(1) A PERSON MAY REGISTER:

(I) A CLASS OF RETURNABLE CONTAINERS IF:

1. THE PERSON OWNS OR DEALS IN GOODS HANDLED OR DELIVERED IN A RETURNABLE CONTAINER; AND

2. THE RETURNABLE CONTAINER HAS AN IDENTIFYING NAME, MARK, OR DEVICE SECURELY ATTACHED, IMPRESSED, OR IMPRINTED; OR

(II) A CLASS OF RETURNABLE TEXTILES, IF THE PERSON:

1. IS IN THE BUSINESS OF REGULARLY SUPPLYING CLEAN LAUNDERED RETURNABLE TEXTILES; AND

2. PERIODICALLY EXCHANGES THE CLEAN RETURNABLE TEXTILES FOR SOILED RETURNABLE TEXTILES.

(2) A PERSON WHO HAS REGISTERED A RETURNABLE CONTAINER OR RETURNABLE TEXTILE UNDER STATE LAW IS NOT REQUIRED TO REREGISTER THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE.

(B) PROCEDURE.

TO REGISTER A RETURNABLE CONTAINER OR RETURNABLE TEXTILE A PERSON SHALL:

(1) (I) PREPARE A CLEAR STATEMENT OF THE CHARACTER OF THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE; AND

(II) PREPARE A COMPREHENSIVE DESCRIPTION OF THE IDENTIFYING NAME, MARK, OR DEVICE ATTACHED, IMPRESSED, IMPRINTED, WOVEN, OR PRODUCED;

(2) SIGN AND ACKNOWLEDGE THE COMPREHENSIVE DESCRIPTION BEFORE AN OFFICER QUALIFIED TO TAKE AN ACKNOWLEDGMENT TO DEEDS IN THE STATE;

(3) PUBLISH THE SIGNED AND ACKNOWLEDGED COMPREHENSIVE DESCRIPTION:

(I) IN TWO SUCCESSIVE ISSUES, IN DIFFERENT WEEKS, OF A NEWSPAPER PUBLISHED IN THE COUNTY IN WHICH THE PRINCIPAL OFFICE, PLACE OF BUSINESS, OR AGENCY OF THE PERSON IS LOCATED; OR

(II) TWICE A WEEK FOR 2 SUCCESSIVE WEEKS IN A DAILY NEWSPAPER PUBLISHED IN BALTIMORE CITY IF THE PRINCIPAL OFFICE, PLACE OF BUSINESS, OR AGENCY OF THE PERSON IS LOCATED IN BALTIMORE CITY; AND

(4) FILE WITH THE SECRETARY OF STATE THE COMPREHENSIVE DESCRIPTION AND A CERTIFICATE OF PUBLICATION, CERTIFIED BY THE OWNER OR MANAGER OF THE NEWSPAPER IN WHICH THE COMPREHENSIVE DESCRIPTION WAS PUBLISHED.

(C) TRANSFER.

A PERSON MAY TRANSFER A REGISTRATION BY FILING A COPY OF THE ASSIGNMENT OR TRANSFER WITH THE SECRETARY OF STATE.

(D) RECORDING.

(1) THE SECRETARY OF STATE SHALL RECORD EACH:

(I) COMPREHENSIVE DESCRIPTION FILED UNDER SUBSECTION (B) OF THIS SECTION;

(II) CERTIFICATE OF PUBLICATION FILED UNDER SUBSECTION (B) OF THIS SECTION; AND

(III) TRANSFER FILED UNDER SUBSECTION (C) OF THIS SECTION.

(2) ON APPLICATION, THE SECRETARY OF STATE SHALL PROVIDE TO THE APPLICANT A CERTIFIED COPY OF A RECORDED FILING.

(3) THE SECRETARY OF STATE SHALL ESTABLISH REASONABLE FEES:

(I) FOR RECORDING UNDER THIS SECTION; AND

(II) FOR PROVIDING COPIES OF RECORDS FILED UNDER THIS SECTION.

(E) EVIDENCE.

A CERTIFIED COPY OF A COMPREHENSIVE DESCRIPTION AND A CERTIFICATE OF PUBLICATION OR OF A TRANSFER WITH THE SEAL OF THE SECRETARY OF STATE ATTACHED IS:

(1) EVIDENCE THAT THE PERSON COMPLIED WITH THIS SUBTITLE; AND

(2) PRIMA FACIE EVIDENCE OF:

(I) TITLE TO OR RIGHT TO USE, COLLECT, OR DELIVER THE CORRESPONDING RETURNABLE CONTAINERS; AND

(II) TITLE TO THE CORRESPONDING RETURNABLE TEXTILES.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, §§ 471, 472, 473, and, as it related to reregistering returnable containers, 479.

In subsection (a)(1) of this section and throughout this subtitle, the defined term "returnable textile" is substituted for the former references to "[clean laundered or soiled] articles" for clarity and brevity.

Also in subsection (a)(1) of this section and throughout this subtitle, the former references to "partnership[s] or bod[ies] corporate" are deleted in light of the definition of "person". *See* § 1-101 of this article.

In the introductory language of subsection (a) of this section, the former reference to a person being "entitled to all the benefits of this subtitle as if the same had been registered hereunder" is deleted as implicit in the benefits of "register[ing]" a returnable container or returnable textiles.

In subsection (a)(1) of this section, the reference to authorizing the registration of a "class of" returnable containers or returnable textiles is substituted for the former reference to authorizing the registration of a returnable container "thereby procur[ing] all of the benefits of such registration ... as to all like containers" for brevity and clarity.

Also in subsection (a)(1) of this section, the reference to "goods" handled or delivered is substituted for the former reference to "commodities" handled or delivered for consistency within this subtitle.

Also in subsection (a)(1) of this section, the reference to a container that "has" a mark is substituted for the former reference to a container that "bear[s]" a mark for clarity.

Also in subsection (a)(1) of this section, the reference to an "identifying" mark is substituted for the former reference to a mark "whereby such container can be readily identified" for clarity and brevity.

Also in subsection (a)(1) of this section, the former reference to a mark attached "in any manner whatsoever" is deleted as surplusage.

Also in subsection (a)(1) of this section, the former reference to a person "engaged" in the cleaning business is deleted as surplusage.

Also in subsection (a)(1) of this section, the former reference to the benefits of registration "guaranteed under the provisions of this subtitle" is deleted as surplusage.

Also in subsection (a)(1) of this section, the former reference to a registration applying "whether such containers or such articles were actually in existence or not at the time of registration" is deleted as implicit in the reference to registration applying to a "class of returnable containers ... or ... returnable textiles".

In subsection (a)(1)(ii)1 of this section, the former reference to a textile "with his or its name or other marks or devices woven, impressed or produced thereon" is deleted as included in the definition of "returnable textile". *See* § 19-301 of this subtitle.

In subsection (a)(2) of this section, the reference to returnable containers or returnable textiles registered "under State law" is substituted for the former reference to containers or goods registered "under the provisions of the law, as the same stood at the time of such registration" for clarity and brevity.

In subsection (b) of this section and throughout this subtitle, the references to a "person" are substituted for the former references to an "owner or dealer" because any person may register a returnable container or returnable textiles.

In subsections (b)(4) and (c) of this section, the references to requiring a person "fil[ing]" a comprehensive description and a certificate of publication or a copy of a transfer with the Secretary of State are substituted for the former references requiring the documents to "be recorded" by a person for consistency with subsection (d) of this section, which requires the Secretary of State to record these documents "filed" by a person.

In the introductory language of subsection (b) of this section, the former reference to a person "desiring" registration is deleted as implicit in the reference to "register[ing]".

In subsection (b)(1)(ii) of this section, the reference to a name, mark, or device "woven, or produced" is added for consistency within this section, in that the requirement for a comprehensive description also applies to the registration of returnable textiles.

Also in subsection (b)(1)(ii) of this section, the requirement to "prepare" a statement is substituted for the former reference to a person "caus[ing] to be prepared" a statement for clarity and brevity.

Also in subsection (b)(1)(ii) of this section, the reference to an "identifying" name is substituted for the former reference to a "distinguishing" name for consistency within this section.

In subsection (b)(2) of this section, the references to a person "sign[ing]" a comprehensive description are substituted for the former archaic references to a comprehensive description being "subscribed" by a person for clarity and consistency.

Also in subsection (b)(2) of this section, the former reference to an officer "thereof, should such owner or dealer be a body corporate" is deleted as included in the reference to an "officer".

Also in subsection (b)(2) of this section, the former redundant reference to the requirement for a "subscription and acknowledgment to be made" before certain persons is deleted as surplusage.

In subsection (b)(3) of this section, the reference to the requirement that a person publish a "signed and acknowledged" comprehensive description is substituted for the former language requiring publication "[a]fter such description shall have been so made, subscribed and acknowledged" for clarity, brevity, and consistency.

Also in subsection (b)(3) of this section, the reference to the requirement that a person "publish the ... comprehensive description" is substituted for the former reference to a person "causing such description to be printed" for clarity, brevity, and consistency.

In subsections (c), (d)(1)(iii), and (e) of this section, the former references to

"assign[ments]" are deleted as implicit in the references to "transfer[s]".

In subsection (c) of this section, the former requirement that "[a]fter such container, or such clean laundered article, shall have been registered with the Secretary of State" before the registration may be transferred is deleted as implicit in the reference to transferring an existing registration.

Also in subsection (c) of this section, the former phrase "when so made and recorded such transfer or assignment shall secure to the assignee or transferee all the benefits of this subtitle" is deleted as implicit in a transfer.

In subsections (d)(1) and (e) of this section, the references to "certificate of publication" are substituted for the former references to "[said advertisements and] certificates of the [said] publishers of said newspapers [in which the same have been published]" for clarity, brevity, and consistency within this section.

In subsection (d)(1) of this section, the former reference to recording "in some book of record" is deleted as implicit in the reference to "record[ing]".

Also in subsection (d)(1) of this section, the former reference to the recordation requirements for comprehensive descriptions "authorized to be" filed is deleted because the Secretary of State may record only a comprehensive description that is filed.

In subsection (d)(2) of this section, the reference to providing "certified copy of a recorded filing" is substituted for the former archaic reference to "such records duly certified" for clarity.

Also in subsection (d)(2) of this section, the former reference to furnishing a copy "in the usual manner" is deleted as surplusage.

In subsection (d)(3) of this section, the former requirement that the Secretary of State "shall receive" fees is deleted as implicit in the reference to the Secretary of State "establish[ing]" fees.

In subsection (e)(2)(i) of this section, the reference to "corresponding" returnable containers or returnable textiles is added for clarity.

Defined terms: "County" § 1-101

"Person" § 1-101

"Returnable container" § 19-301

"Returnable textile" § 19-301

19-304. PROHIBITED ACTS; PENALTIES.

(A) IMPROPER USE OF REGISTERED CONTAINER.

(1) AFTER THE RECORDATION, A PERSON MAY NOT:

(I) USE A REGISTERED RETURNABLE CONTAINER OF ANOTHER WITH CONTENTS OF A NATURE DIFFERENT FROM THAT DELIVERED; OR

(II) SELL, BUY, RENT, OR OTHERWISE TRAFFIC IN A REGISTERED RETURNABLE TEXTILE OF ANOTHER.

(2) A PERSON WHO VIOLATES THIS SUBSECTION:

(I) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

1. FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $50; AND

2. FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $250 OR BOTH; AND

(II) SHALL FORFEIT TO THE RIGHTFUL OWNER POSSESSION OF THE PROPERTY INVOLVED IN THE VIOLATION.

(B) DEFACING IDENTIFICATION.

(1) AFTER THE RECORDATION, A PERSON MAY NOT WILLFULLY DEFACE, REMOVE, CONCEAL, OR DESTROY AN IDENTIFYING NAME, MARK, OR DEVICE ATTACHED, IMPRESSED, OR IMPRINTED ON A RETURNABLE CONTAINER OR RETURNABLE TEXTILE OF ANOTHER.

(2) A PERSON WHO VIOLATES THIS SUBSECTION:

(I) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

1. FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $50; AND

2. FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $250 OR BOTH; AND

(II) SHALL FORFEIT TO THE RIGHTFUL OWNER POSSESSION OF THE PROPERTY INVOLVED IN THE VIOLATION.

(C) DAMAGING REGISTERED ITEMS.

(1) AFTER THE RECORDATION, A PERSON MAY NOT WILLFULLY BREAK, DESTROY, OR OTHERWISE INJURE A RETURNABLE CONTAINER OR RETURNABLE TEXTILE OF ANOTHER.

(2) A PERSON WHO VIOLATES THIS SUBSECTION:

(I) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

1. FOR A FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $50; AND

2. FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $250 OR BOTH; AND

(II) SHALL FORFEIT TO THE RIGHTFUL OWNER POSSESSION OF THE PROPERTY INVOLVED IN THE VIOLATION.

(D) IMPROPER TRANSFER.

(1) AFTER THE RECORDATION, A PERSON MAY NOT BUY, OFFER FOR SALE, SELL, USE, GIVE, RECEIVE, HIRE, RENT, LEND, TRANSPORT, COLLECT FROM ASH OR GARBAGE RECEPTACLES, DUMPS, OR PREMISES, KEEP IN STOCK OR STORE, OR DISPOSE OF A RETURNABLE CONTAINER OR RETURNABLE TEXTILE OF ANOTHER WITHOUT AN ASSIGNMENT FROM OR THE WRITTEN CONSENT OF THE REGISTERED OWNER.

(2) A PERSON WHO VIOLATES THIS SUBSECTION:

(I) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

1. FOR EACH FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $50; AND

2. FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $250 OR BOTH; AND

(II) SHALL FORFEIT TO THE RIGHTFUL OWNER POSSESSION OF THE PROPERTY INVOLVED IN THE VIOLATION.

(E) IMPROPER REGISTRATION.

A PERSON MAY NOT ADOPT AND REGISTER UNDER THIS SUBTITLE A RETURNABLE CONTAINER OR RETURNABLE TEXTILES, OR A DESCRIPTION, NAME, MARK OR DEVICE, THAT:

(1) HAS BEEN PREVIOUSLY REGISTERED BY ANOTHER; OR

(2) IS IN USE BY ANOTHER IN GOOD FAITH.

(F) FAILURE TO SURRENDER TO PROPER CUSTODIAN.

(1) A PERSON WHO RECEIVES A REGISTERED RETURNABLE CONTAINER OR REGISTERED RETURNABLE TEXTILE MAY NOT FAIL ON DEMAND TO SURRENDER PROMPTLY THE CONTAINER OR TEXTILE TO THE PERSON FROM WHOM THE CONTAINER OR TEXTILE WAS RECEIVED.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF $1.

(G) FAILURE TO CLEAN AFTER CONTACT WITH A DAIRY PRODUCT.

(1) A PERSON WHO RECEIVES A REGISTERED RETURNABLE CONTAINER THAT HAS COME INTO IMMEDIATE CONTACT WITH A DAIRY PRODUCT SHALL THOROUGHLY CLEAN THE INSIDE OF THE CONTAINER IMMEDIATELY AFTER EMPTYING THE CONTENTS.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF $1.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, §§ 477, 474 as it related to prohibitions concerning returnable containers and textiles, and, as it related to prohibited acts under this subtitle, 479.

Throughout this section, the reference to the penalty that a person "shall forfeit" certain property is substituted for the former references to a "court imposing the punishment therein prescribed" by awarding possession of certain property for brevity and clarity.

Also throughout this section, the former references to the requirement that the Secretary of State record "a description of such returnable containers or such clean articles" as a precondition to the prohibition against using a returnable container are deleted as implicit in the reference to the prohibition against using a "registered" returnable container.

Also throughout this section, the references to a "violation" are substituted for the former references to an "offense" for consistency with the Criminal Law Article. *See* General Revisor's Note to the Criminal Law Article.

Also throughout this section, the former references to "a second or subsequent" offense are deleted as implicit in the references to "each subsequent violation".

Also throughout this section, the former references to "the discretion of the court" are deleted as implicit in the establishment of maximum penalties.

Also throughout this section, the former references to a "rightful ... dealer" are deleted as implicit in the references to a "rightful owner".

In subsection (a)(1) of this section, the reference to a "registered" returnable textile is substituted for the former reference to returnable textiles "mentioned in this subtitle so marked or designated as provided herein" for brevity, clarity, and consistency within this subtitle.

Also in subsection (a)(1) of this section, the former reference to "fill[ing]" a returnable container is deleted as implicit in the reference to "us[ing]" a returnable container.

Also in subsection (a)(1) of this section, the former reference to using a registered returnable container "whether actually in existence at the time of such registration or not" is deleted as implicit in the reference to "use a registered returnable container".

In subsection (b)(1) of this section, the reference to an identifying mark "on a returnable container or returnable textile" is added for clarity.

Also in subsection (b)(1) of this section, the former reference to the prohibition that a person may not "erase, obliterate, cover up, or otherwise" remove an identifying mark is deleted as implicit in the prohibition that a person may not "deface, remove, conceal, or destroy" an identifying mark.

In subsection (d)(1) of this section, the reference to a "registered owner" is substituted for the former reference to the "one causing the same to be registered" for brevity.

Also in subsection (d)(1) of this section, the former prohibition that a person may not "have on sale, ... take, ... handle in the course of business, ... convey in any vehicle of any kind or character, ... deal in, or traffic in ..." a returnable container or returnable textiles is deleted as implicit in the prohibition that a person may not "buy, offer for sale, sell, use, give, receive, hire, rent, lend, transport, collect from ash or garbage receptacles or dumps, keep in stock or store, or dispose of" a returnable container or returnable textile.

Also in subsection (d)(1) of this section, the former reference to "parts or pieces" of a returnable container is deleted as implicit in the reference to a returnable container.

In the introductory language of subsection (e) of this section, the former reference to applying the prohibition to a "corporation" is deleted in light of the defined term "person". *See* § 1-101 of this article.

In subsection (e)(2) of this section, the former reference to a returnable container or returnable textiles that are "used" is deleted as implicit in the reference to a returnable container or returnable textile that is "in use".

Also in subsection (e)(2) of this section, the former reference to use by a person in good faith "whether under the provisions of this article or otherwise" is deleted as implicit in the reference to a returnable container or returnable textile that is "in use".

In subsections (f)(1) and (g)(1) of this section, the statements that a "person ... may not fail" to surrender or clean a certain container or textile are substituted for the former statements that it is the "duty" of a person to surrender or clean certain containers or textiles, for clarity and consistency.

In subsection (g)(1) of this section, the former reference to "milk or cream" is deleted as included in the reference to a "dairy product".

Defined terms: "Person" § 1-101

"Returnable container" § 19-301

"Returnable textile" § 19-301

19-305. WARRANTS.

(A) SEARCH WARRANT.

A DISTRICT COURT JUDGE SHALL ISSUE A SEARCH WARRANT, AUTHORIZING A SEARCH OF THE PREMISES SPECIFIED IN THE WARRANT, TO A SHERIFF, DEPUTY SHERIFF, OR OTHER LAW ENFORCEMENT OFFICER TO WHOM A WARRANT MAY BE DIRECTED, IF A PERSON WHO HAS REGISTERED A RETURNABLE CONTAINER OR RETURNABLE TEXTILE, OR THE PERSON'S AGENT, MAKES AN AFFIDAVIT BEFORE THE JUDGE, STATING THAT:

(1) THE AFFIANT REASONABLY BELIEVES THAT A VIOLATION OF § 19-304(A), (B), (C), OR (D) OF THIS SUBTITLE HAS OCCURRED; AND

(2) EVIDENCE OF THE VIOLATION MAY BE OBTAINED BY A SEARCH OF PREMISES SPECIFIED BY THE AFFIANT.

(B) ARREST WARRANT.

IF ALL OR PART OF A REGISTERED RETURNABLE CONTAINER, OR RETURNABLE TEXTILE IS FOUND ON OR ABOUT THE PREMISES SPECIFIED IN THE WARRANT:

(1) THE LAW ENFORCEMENT OFFICER EXECUTING THE SEARCH WARRANT SHALL REPORT THE FINDINGS UNDER OATH TO THE JUDGE; AND

(2) AFTER RECEIVING THE REPORT AND CHARGING A VIOLATION OF § 19-304(A), (B), (C), OR (D) OF THIS SUBTITLE, THE JUDGE SHALL ISSUE AN ARREST WARRANT FOR THE PERSON AGAINST WHOM THE CHARGE IS MADE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 476.

In the introductory language of subsection (a) of this section, the reference to a search warrant "authorizing a search of the premises specified in the warrant" is substituted for the former reference to a search warrant "thereby caus[ing] the premises so to be designated in the warrant to be searched" for clarity and consistency with CP § 1-203.

Also in the introductory language of subsection (a) of this section, the reference to a "person's agent" is substituted for the former reference to "his or its officer, agent or employee, or the assignee of any such or his, or its officer, agent or employee" for clarity and brevity and because an

assignee possesses all of the rights of an assignor. *See, e.g., duPont de-Bie v. Vredenburgh*, 490 F.2d 1057 (4th Cir. 1974).

Also in the introductory language of subsection (a) of this section, the former reference to a search warrant "properly" directed is deleted as surplusage.

In subsection (a)(1) of this section, the former reference that a person "has reason to believe" that a violation has occurred is deleted as implicit in the reference that an affiant "believes" that a violation has occurred.

In subsection (b)(1) of this section, the reference to a "law enforcement" officer is added for consistency.

In subsection (b)(2) of this section, the former reference to a judge "caus[ing] him to be brought before him for trial" is deleted as implicit in the reference to an "arrest".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the requirements for issuing a warrant under this section appear not to comport with the minimum standards for issuance of a warrant under the Fourth Amendment to the U.S. Constitution, in that there is no requirement to show probable cause for the issuance. *See, e.g., Illinois v. Gates*, 462 U.S. 263 (1983); *U.S. v. Leon*, 468 U.S. 897 (1984).

Defined terms: "Person" § 1-101

"Returnable container" § 19-301

"Returnable textile" § 19-301

19-306. CHARGING DOCUMENT.

(A) IN GENERAL.

IN A PROSECUTION UNDER THIS SUBTITLE, A CHARGING DOCUMENT IS SUFFICIENT IF IT:

(1) DESCRIBES THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE IN A WAY THAT ALLOWS ITS IDENTIFICATION;

(2) AFFIRMS THAT THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE IS DISTINCTLY MARKED AND REGISTERED UNDER THIS SUBTITLE; AND

(3) GIVES THE NAME OF THE OWNER OF THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE, THE PERSON USING THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE THROUGH REGISTRATION, OR, IF APPLICABLE, THE TRANSFEREE.

(B) PARTICULARS NOT REQUIRED.

IN A PROSECUTION UNDER THIS SUBTITLE, A CHARGING DOCUMENT NEED NOT:

(1) STATE OR DESCRIBE THE NAME, MARK, OR DEVICE ATTACHED, IMPRESSED, OR IMPRINTED ON A RETURNABLE CONTAINER OR RETURNABLE TEXTILE; OR

(2) STATE THE PARTICULARS OF THE REGISTRATION OF THE RETURNABLE CONTAINER OR RETURNABLE TEXTILE OR OF THE ASSIGNMENT OR TRANSFER OF THE REGISTRATION.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 480.

Throughout this section, the references to a "returnable" container are added for clarity and consistency.

In subsection (a)(2) of this section, the reference to "affirm[ing]" a marking is substituted for the former archaic reference to "averring" a marking for clarity.

In subsection (a)(3) of this section, the reference to a person using a container or textile "through" registration is substituted for the former reference to a person using a container or textile "by virtue of such" registration for clarity and brevity.

In this section, the reference to a transferee "if applicable" is substituted for the former reference to a transferee "as the case may be" for clarity and brevity.

Defined terms: "Person" § 1-101

"Returnable container" § 19-301

"Returnable textile" § 19-301

19-307. POSSESSION -- EVIDENCE OF VIOLATION.

(A) IN GENERAL.

IN A PROSECUTION UNDER § 19-304(A), (B), (C), OR (D) OF THIS SUBTITLE, POSSESSION BY A PERSON CHARGED OF ALL OR PART OF THE REGISTERED RETURNABLE CONTAINER OR RETURNABLE TEXTILE IS PRIMA FACIE EVIDENCE THAT THE PERSON IS GUILTY OF THE CHARGE.

(B) EXCEPTIONS.

SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO:

(1) A GARBAGE COLLECTOR WHO COLLECTS A REGISTERED RETURNABLE CONTAINER OR RETURNABLE TEXTILE IN THE REGULAR COURSE OF BUSINESS;

(2) THE POSSESSION OF A REGISTERED RETURNABLE CONTAINER BY A PERSON WHO RECEIVED THE CONTAINER WITH ITS CONTENTS; OR

(3) THE POSSESSION OF A REGISTERED RETURNABLE TEXTILE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 474, as it related to the evidentiary value of the possession of a registered returnable container or returnable textile.

In subsection (a) of this section, the reference to a "person charged" is substituted for the former reference to "one so accused" for clarity and consistency within this subtitle.

Also in subsection (a) of this section, the reference to "all or part" of a registered returnable container is substituted for the former reference to "any part or parts thereof" for clarity and brevity.

Also in subsection (a) of this section, the reference to a person being guilty of a "charge" is substituted for the former reference to a person being guilty of "offenses so charged" for clarity, brevity, and consistency within this subtitle.

In the introductory language of subsection (b) of this section, the statement that "[s]ubsection (a) of this section does not apply to" certain persons is substituted for the former statement that the violations apply to persons "other than" certain persons for clarity and consistency within the Code.

Defined terms: "Person" § 1-101

"Returnable container" § 19-301

"Returnable textile" § 19-301

GENERAL REVISOR'S NOTE TO SUBTITLE:

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that the Secretary of State has never received a request to register a returnable container. The General Assembly may wish to consider whether to repeal this subtitle as obsolete.

Article - Commercial Law

11-810. SALE OF CONSIGNED GOODS -- FAILURE TO ACCOUNT.

(A) ACCOUNTING REQUIRED.

AFTER A SALE OF GOODS CONSIGNED FOR SALE BY A PERSON IN THIS STATE TO A PERSON ENGAGED IN THE BUSINESS OF SELLING GOODS ON CONSIGNMENT, THE CONSIGNEE SHALL TRANSMIT TO THE CONSIGNOR WITHIN 24 HOURS AFTER THE SALE A FULL ACCOUNT OF THE SALE, INCLUDING:

(1) THE AMOUNT AND PRICE OF THE GOODS SOLD; AND

(2) THE NAME AND ADDRESS OF THE PURCHASER, INCLUDING THE HOUSE OR BUSINESS NUMBER, STREET, AND CITY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF $5 FOR EACH VIOLATION, AND COURT COSTS.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 172, as that section related to accounting for goods sold on consignment.

In subsection (a) of this section, the reference to an amount and price "of the goods sold" is added for clarity.

Also in subsection (a) of this section, the former references to after a sale "shall have been made by him" and goods consigned "to him" are deleted as surplusage.

In subsection (b) of this section, the reference to the additional penalty of "court costs" is substituted for the former reference to the additional penalty of "together with the cost of prosecution" for consistency with Title 7 of the Courts and Judicial Proceedings Article.

Also in subsection (b) of this section, the reference to each "violation" is substituted for the former reference to each "and every offense" for consistency with the Criminal Law Article. *See* General Revisor's Note to the Criminal Law Article.

For provisions relating to consignment of farm products and articles, *see* AG Title 1, Subtitle 3.

Defined terms: "Consignee" § 11-801

"Goods" § 11-801

"Person" § 11-801

14-1316. DEBT ADJUSTING.

(A) "DEBT ADJUSTING" DEFINED.

IN THIS SECTION, "DEBT ADJUSTING" MEANS THE MAKING OF A CONTRACT, EXPRESSED OR IMPLIED, WITH A DEBTOR AND ANOTHER PERSON ENGAGED IN THE DEBT ADJUSTING BUSINESS BY WHICH THE DEBTOR AGREES TO PAY A CERTAIN AMOUNT OF MONEY PERIODICALLY TO THE OTHER, WHO FOR CONSIDERATION DISTRIBUTES THE MONEY AMONG SPECIFIED CREDITORS IN ACCORDANCE WITH AN AGREED PLAN.

(B) PROHIBITED.

A PERSON MAY NOT ENGAGE IN THE BUSINESS OF DEBT ADJUSTING.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $500 OR BOTH.

(D) EXCEPTIONS.

THIS SECTION DOES NOT APPLY TO THE FOLLOWING WHEN ENGAGED IN THE REGULAR COURSE OF THEIR RESPECTIVE BUSINESSES AND PROFESSIONS:

(1) A LAWYER;

(2) A BANK OR FIDUCIARY, AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND PERFORM CREDIT AND FINANCIAL ADJUSTING SERVICE IN THE REGULAR COURSE OF ITS PRINCIPAL BUSINESS;

(3) A TITLE INSURER OR ABSTRACT COMPANY, WHILE DOING AN ESCROW BUSINESS;

(4) A JUDICIAL OFFICER OR A PERSON ACTING UNDER A COURT ORDER;

(5) A NONPROFIT, RELIGIOUS, FRATERNAL, OR COOPERATIVE ORGANIZATION THAT OFFERS DEBT MANAGEMENT SERVICE EXCLUSIVELY FOR MEMBERS, IF A CHARGE IS NOT MADE AND A FEE IS NOT IMPOSED;

(6) A CERTIFIED PUBLIC ACCOUNTANT; AND

(7) A TRADE OR MERCANTILE ASSOCIATION IN THE COURSE OF ARRANGING THE ADJUSTMENT OF DEBTS WITH A BUSINESS ESTABLISHMENT.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 79A.

In subsection (d)(1) of this section, the reference to a "lawyer" is substituted for the former reference to "attorneys at law" for consistency with the Business Occupations and Professions Article.

In subsection (d)(2) of this section, the former reference to a bank or

fiduciary "admitted" to transact business is deleted as included in the reference to a bank or fiduciary "authorized" to transact business.

In subsection (d)(7) of this section, the former reference to a "[b]ona fide" trade or mercantile association is deleted as surplusage.

14-1317. RECEIVING CONSIGNED GOODS FROM TRANSPORTER.

(A) PROHIBITED.

A PERSON MAY NOT PURCHASE OR FRAUDULENTLY RECEIVE FROM ANY PERSON ENGAGED IN TRANSPORTING COAL, IRON, LUMBER, MERCHANDISE, OR PROPERTY CONSIGNED TO ANOTHER:

(1) WITHOUT THE CONSENT OF THE OWNER OF THE PROPERTY; AND

(2) WITH KNOWLEDGE THAT THE PROPERTY IS CONSIGNED.

(B) LIABILITY.

(1) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS LIABLE TO THE OWNER OF THE PROPERTY IN A CIVIL ACTION FOR DAMAGES EQUAL TO DOUBLE THE VALUE OF THE PROPERTY.

(2) AN ACTION BROUGHT UNDER THIS SECTION MAY BE BROUGHT IN THE NAME OF EITHER THE CONSIGNOR OR CONSIGNEE OF THE PROPERTY.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 134.

In subsection (a) of this section, the former reference to "this State, or any other state, or the District of Columbia" is deleted as unnecessary.

Also in subsection (a) of this section, the former reference to any "captain of a canal boat" is deleted as included in the reference to any "person".

In subsection (a)(1) of this section, the former reference to "owners" is deleted as included in the term "owner" because Art. 1, § 8 provides that the singular generally includes the plural.

In subsection (b) of this section, the former reference to "any court having jurisdiction thereof" is deleted as unnecessary.

Defined term: "Person" § 14-1301

SUBTITLE 29. FALSE ADVERTISING AND RELATED CRIMES.

14-2901. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also enacted this subsection, which is new language substituted for the former phrases "when used in this section" in former Art. 27, § 195(a)(1) and (3), and as the standard introductory language to a definition section.

The reference to this "subtitle" is substituted for the former references to this "section", although this subtitle is derived, in part, from material outside former Art. 27, § 195. "[A]dvertise" and "person", which are the two terms defined in this section that are used in § 14-2903 of this subtitle, derived from former Art. 27, § 198, are used in a manner consistent with former §§ 195 and 198. No substantive change is intended.

(B) ADVERTISE.

"ADVERTISE" MEANS:

(1) TO PUBLISH, CIRCULATE, DISSEMINATE, OR PLACE BEFORE THE PUBLIC IN ANY WAY OR THROUGH ANY MEDIUM FOR THE PURPOSE OF SELLING MERCHANDISE; AND

(2) ADVERTISING BY:

(I) EXTERIOR OR INTERIOR SIGNS, INCLUDING NEON OR OTHER ELECTRICAL SIGNS;

(II) RADIO, TELEPHONE, OR TELEVISION; AND

(III) NEWSPAPER, MAGAZINE, BOOK, NOTICE, OR ANY OTHER METHOD OR MATERIAL.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also enacted this subsection, which is new language derived without substantive change from former Art. 27, § 195(a)(3), as it defined "advertise".

In subitem (2)(iii) of this subsection, the reference to "any other method or material" is substituted for the former reference to "circular, pamphlet, letter, handbill, poster, placard, card, [and] label" for clarity and brevity.

(C) PERSON.

"PERSON" INCLUDES AN ASSOCIATION, FIRM, PARTNERSHIP, CORPORATION, OR AN AGENT OR EMPLOYEE OF ANY OF THESE ENTITIES.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also enacted this subsection, which is new language derived without substantive change from former Art. 27, § 195(a)(1), as it defined

"person".

(D) PROPERTY.

"PROPERTY", AS USED IN § 14-2802(A) THROUGH (C) OF THIS SUBTITLE, INCLUDES:

(1) MERCHANDISE;

(2) REAL ESTATE;

(3) SECURITIES;

(4) EMPLOYMENT;

(5) A LOAN MADE AT INTEREST;

(6) ANY CONTRACT RELATING TO REAL ESTATE, SECURITIES, SERVICE, EMPLOYMENT, OR THE MAKING OF LOANS AT INTEREST; OR

(7) ANYTHING ELSE OF VALUE.

14-2902. FALSE AND FRAUDULENT ADVERTISING.

(A) PROHIBITED -- FALSE STATEMENT.

FOR THE PURPOSE OF PURCHASING, SELLING, OR DISPOSING OF PROPERTY OR A SERVICE, A PERSON MAY NOT ADVERTISE A STATEMENT CONTAINING A REPRESENTATION OF FACT THAT THE PERSON KNOWS, OR BY THE EXERCISE OF REASONABLE CARE SHOULD KNOW, TO BE UNTRUE, DECEPTIVE, OR MISLEADING.

(B) SAME -- UNIDENTIFIED REPOSSESSED PROPERTY.

A PERSON MAY NOT OFFER FOR SALE REPOSSESSED, RECONDITIONED, REBUILT, OR SECONDHAND PROPERTY, KNOWING THE PROPERTY TO BE REPOSSESSED, RECONDITIONED, REBUILT, OR SECONDHAND, UNLESS:

(1) THE PROPERTY IS IDENTIFIED CLEARLY AS REPOSSESSED, RECONDITIONED, REBUILT, OR SECONDHAND; OR

(2) THE CIRCUMSTANCES OF THE SALE MAKE IT CLEAR TO A REASONABLE PURCHASER THAT THE PROPERTY IS REPOSSESSED, RECONDITIONED, REBUILT, OR SECONDHAND.

(C) SAME -- SALE OF PROPERTY NOT POSSESSED.

A PERSON MAY NOT KNOWINGLY ADVERTISE FOR SALE PROPERTY OR A SERVICE THAT THE PERSON DOES NOT POSSESS OR CONTROL FOR THE PURPOSE OF INDUCING OR INCREASING THE SALE OF OTHER PROPERTY OR SERVICE THAT THE PERSON POSSESSES OR CONTROLS.

(D) SAME -- VESSEL REGISTRY OMITTED IN ADVERTISING.

(1) A PERSON WHO ISSUES, SELLS, OR OFFERS TO SELL A PASSENGER TICKET TO BOARD A VESSEL MAY NOT OMIT REFERENCE TO THE COUNTRY OF REGISTRY OF THE VESSEL IN ANY ADVERTISEMENT OR ANY OTHER SIMILAR PRINTED PAPER OR NOTICE, WRITTEN OR ORAL, REGARDING:

(I) THE VOYAGE OR THE TICKET THAT ENTITLES OR PURPORTS TO ENTITLE ITS OWNER, PURCHASER, OR HOLDER TO THE VOYAGE;

(II) THE VESSEL FOR WHICH THE VOYAGE IS SOLD OR OFFERED;

(III) THE LINE THAT THE VESSEL IS PART OF; OR

(IV) IF APPLICABLE, THAT THE PERSON IS AN AGENT FOR THE LINE OR VESSEL.

(2) REFERENCE IN A PRINTED ADVERTISEMENT TO THE COUNTRY OF REGISTRY OF THE VESSEL SHALL BE NO LESS PROMINENTLY DISPLAYED THAN THE BALANCE OF THE MATERIAL APPEARING IN THE ADVERTISEMENT.

(E) SAME -- UNDISCLOSED GROUND RENT.

A PERSON MAY NOT ADVERTISE FOR SALE PROPERTY SUBJECT TO A GROUND RENT AT A STATED PRICE OR ON TERMS STATING THE AMOUNT OF ANY INSTALLMENT PAYMENTS WITHOUT ALSO STATING THE AMOUNT OF THE ANNUAL GROUND RENT FOR THE PROPERTY.

(F) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1,000 OR BOTH.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 195(b) through (e).

In subsections (a), (b), and (c) of this section, the defined term "property" is substituted for the former references to "merchandise" for accuracy and consistency with subsection (a) of this section.

In subsection (d) of this section, the former reference to the "owner or consignee of such vessel, his agents, servants or employees" is deleted as included in the defined term "person".

Also in subsection (d) of this section, the former reference to a "circular, circular letter, pamphlet, card, [or] handbill" is deleted as unnecessary in light of the defined term "advertise".

Also in subsection (d) of this section, the former reference to an

"instrument" is deleted in light of the reference to a "ticket" for clarity and brevity.

Also in subsection (d) of this section, the references to a "voyage" are substituted for the former references to a "passage" and a "passage or voyage" for clarity and brevity.

Defined terms: "Advertise" § 14-2901

"Person" § 14-2901

"Property" § 14-2901

14-2903. BAIT AND SWITCH.

(A) PROHIBITED.

A PERSON MAY NOT ADVERTISE FOR SALE MERCHANDISE, COMMODITIES, OR SERVICE THROUGH AN ADVERTISEMENT DESCRIBING THE MERCHANDISE, COMMODITIES, OR SERVICE:

(1) AS PART OF A PLAN OR SCHEME WITH THE INTENT NOT TO SELL THE MERCHANDISE, COMMODITY, OR SERVICE AT THE ADVERTISED PRICE; OR

(2) WITH THE INTENT NOT TO SELL THE MERCHANDISE, COMMODITY, OR SERVICE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 198.

In subsection (a) of this section, the former reference to a "firm or corporation" is deleted as unnecessary in light of the defined term "person". Similarly, in subsection (b) of this section, the former reference to a "firm or corporation and the several members, officers, directors, agents and employees thereof" is deleted as unnecessary in light of the defined term "person".

In subsection (a) of this section, the former reference to "making, publishing, disseminating, circulating or placing before the general public within this State, in a newspaper or other publication, in a public notice or announcement broadcast on radio or television, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way" is deleted as unnecessary in light of the defined term "advertise".

Defined terms: "Advertise" § 14-2901

"Person" § 14-2901

Article - Environment

SUBTITLE 10A. JUNKYARDS AND RELATED FACILITIES.

5-10A-01. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this subsection, which is standard language used to introduce a definition section.

(B) AUTOMOBILE GRAVEYARD.

"AUTOMOBILE GRAVEYARD" HAS THE MEANING STATED IN § 8-801 OF THE TRANSPORTATION ARTICLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this subsection, which is new language derived without substantive change from former Art. 27, § 469(a), as it referred to automobile graveyards. The term is revised as a definition for clarity.

(C) AUTOMOTIVE DISMANTLER AND RECYCLER FACILITY.

"AUTOMOTIVE DISMANTLER AND RECYCLER FACILITY" HAS THE MEANING STATED IN § 8-801 OF THE TRANSPORTATION ARTICLE.

REVISOR'S NOTE: Chapter_____, Acts of 2002, which enacted the Criminal Law Article, also added this subsection, which is new language derived without substantive change from former Art. 27, § 469(a), as it referred to automotive dismantler and recycler facility. The term is revised as a definition for clarity.

In this subsection and throughout this subtitle, the references to "automotive dismantler *and* recycler facility" are substituted for the former incorrect references to an "automotive dismantler *or* recycler facility" for consistency with § 8-801(c) of the Transportation Article.

(D) JUNKYARD.

"JUNKYARD" HAS THE MEANING STATED IN § 8-801 OF THE TRANSPORTATION ARTICLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this subsection, which is new language derived

without substantive change from former Art. 27, § 469(a), as it related to junkyards. The term is revised as a definition for clarity.

(E) SCRAP METAL PROCESSING FACILITY.

"SCRAP METAL PROCESSING FACILITY" HAS THE MEANING STATED IN § 8-801 OF THE TRANSPORTATION ARTICLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this subsection, which is new language derived without substantive change from former Art. 27, § 469(a), as it related to scrap material processing facilities. The term is revised as a definition for clarity.

5-10A-02. JUNKYARDS AND RELATED FACILITIES -- MAINTENANCE.

(A) REQUIRED.

A PERSON WHO OWNS, MAINTAINS, OR CAUSES TO BE MAINTAINED A JUNKYARD, AUTOMOTIVE DISMANTLER AND RECYCLER FACILITY, SCRAP METAL PROCESSING FACILITY, OR AUTOMOBILE GRAVEYARD THAT LAWFULLY EXISTED ON JANUARY 1, 1972 AND THAT ADJOINS A RIVER, STREAM, OR OTHER BODY OF WATER SHALL:

(1) STORE AND MAINTAIN TRASH, JUNK, AUTOMOBILES, OR AUTOMOBILE PARTS TO PREVENT THE DUMPING, DEPOSITING, OR TRANSPORTING OF THIS MATTER INTO THE WATERS OF THE STATE;

(2) INFORM THE DEPARTMENT AND THE ADMINISTRATION OF PROVISIONS PLANNED OR MADE TO PREVENT THE DUMPING, DEPOSITING, OR TRANSPORTING OF THIS MATTER INTO THE WATERS OF THE STATE; AND

(3) COMPLY WITH THE STANDARDS AND SPECIFICATIONS OF THE ADMINISTRATION RELATING TO:

(I) THE ERECTION OF RETAINING WALLS; OR

(II) THE USE OF DEVICES OR PROCEDURES TO RESTRAIN THE DUMPING, DEPOSITING, OR TRANSPORTING OF THIS MATTER INTO THE WATERS OF THE STATE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 469(a) and (c).

In subsection (a) of this section, the former reference to an "organization" is deleted as included in the defined term "person". *See* § 1-101 of this article and § 5-101 of this title.

In subsection (a)(1) of this section, the former redundant reference to "automobile tires ... and other refuse" is deleted as included in the references to "trash" and "automobile parts".

In subsection (a)(2) of this section, the former reference to waters of the State "as defined in Title 8 of the Natural Resources Article" is deleted as surplusage. The term "waters of the State" defined in § 5-101 of this article, which applies to this subtitle, is derived from the identical term defined in NR § 8-101, and was added to the Environment Article in a reorganization of the units of State government that were responsible for overseeing water quality and management. *See* Ch. 488, Acts of 1995.

In subsection (b) of this section, the former redundant reference to "a court of proper jurisdiction" is deleted as implicit in the reference to a conviction.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a) of this section, the reference to a facility "that lawfully existed on January 1, 1972" does not fit with other provisions regulating solid waste facilities in federal law or in Titles 5 and 9 of this article. This subtitle appears largely to be preempted by the federal Clean Water Act and related pollution control statutes, and superseded by State stormwater control and solid waste statutes. To the extent that it is intended to apply only to older facilities, any pollution control measure in this statute is likewise preempted or superseded by the more stringent requirements of federal and State law.

Defined terms: "Administration" § 5-101

"Automobile graveyard" § 5-10A-01

"Automotive dismantler and recycler facility" § 5-10A-01

"Department" §§ 1-101 and 5-101

"Junkyard" § 5-10A-01

"Person" §§ 1-101 and 5-101

"Scrap metal processing facility" § 5-10A-01

"Waters of the State" § 5-101

5-10A-03. SAME -- EVIDENCE.

IF THE OWNER OR OPERATOR OF A JUNKYARD, AUTOMOTIVE DISMANTLER AND RECYCLER FACILITY, SCRAP METAL PROCESSING FACILITY, OR AUTOMOBILE GRAVEYARD THAT PRODUCES, COLLECTS, RETAINS, DUMPS, OR DEPOSITS TRASH, JUNK, OR OTHER REFUSE HAS NOT ERECTED RETAINING WALLS OR OTHER RESTRAINING DEVICES OR PROCEDURES APPROVED BY THE ADMINISTRATION, THE PRESENCE OF TRASH, JUNK, AUTOMOBILES, OR AUTOMOBILE PARTS IN WATERS OF THE STATE, OR ON EMBANKMENTS OR OTHER SITES WHERE IT MAY READILY FALL

INTO OR BE TRANSPORTED INTO THE WATERS OF THE STATE, IS PRIMA FACIE EVIDENCE OF A VIOLATION OF § 5-10A-02 OF THIS SUBTITLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 469(b).

The former reference to "throw[ing trash]" is deleted as implicit in "dump[ing] or deposit[ing trash]".

The former redundant reference to "automobile tires ... and other refuse" is deleted as included in the reference to "trash" and "automobile parts".

The former phrase "and be subject to the penalties imposed herein" is deleted in light of § 5-10A-02 of this subtitle.

Defined terms: "Administration" § 5-101

"Automobile graveyard" § 5-10A-01

"Automotive dismantler and recycler facility" § 5-10A-01

"Junkyard" § 5-10A-01

"Scrap metal processing facility" § 5-10A-01

"Waters of the State" § 5-101

Article - Family Law

5-503. CORPORATIONS FOR THE CARE AND PROTECTION OF MINOR CHILDREN.

(A) POWERS OF ADMINISTRATION AND DEPARTMENT OF JUVENILE JUSTICE.

THIS SECTION DOES NOT LIMIT THE POWERS OF THE ADMINISTRATION UNDER THIS SUBTITLE OR THE DEPARTMENT OF JUVENILE JUSTICE UNDER ARTICLE 83C OF THE CODE.

(B) AUTHORITY OF AGENTS, OFFICERS, AND REPRESENTATIVES.

AN AGENT, OFFICER, OR REPRESENTATIVE OF A MARYLAND CORPORATION FORMED FOR THE CARE, CUSTODY, OR PROTECTION OF MINOR CHILDREN WHO HAS CARE OR CUSTODY OF A MINOR CHILD HAS THE AUTHORITY AND PRIVILEGES OF A LAW ENFORCEMENT OFFICER FOR ANY PURPOSE RELATED TO THE OBJECTIVES OF THE CORPORATION.

(C) INTERFERING WITH OR OBSTRUCTING AGENTS, OFFICERS, AND REPRESENTATIVES.

(1) A PERSON, INCLUDING A PERSON ACTING UNDER CLAIM OR COLOR OF AUTHORITY OVER A MINOR CHILD AS A PARENT, GUARDIAN, OR OTHERWISE, MAY NOT INTERFERE WITH OR OBSTRUCT AN AGENT, OFFICER, OR REPRESENTATIVE DESCRIBED IN SUBSECTION (B) OF THIS SECTION IN RELATION TO THE CARE, CUSTODY, OR PROTECTION OF THE MINOR CHILD BY THE AGENT, OFFICER, OR REPRESENTATIVE.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is derived without substantive change from former Art. 27, § 399 and FL § 5-503.

In subsections (b) and (c) of this section, the references to "care" of a minor child are substituted for the former references to "personal charge" of a minor child for clarity and consistency within this section. Similarly, in subsection (c) of this section, the former reference to "possession" of a minor child is deleted in light of the reference to "custody" of the minor child.

In subsection (b) of this section, the reference to a Maryland corporation "formed" for the care, custody, or protection of minor children is added for clarity.

Also in subsection (b) of this section, the reference to a "Maryland corporation" is substituted for the former reference to "any institution, society, or body, incorporated under the laws of this State" for clarity and consistency with CA § 1-101, which defines "Maryland corporation" to mean a corporation organized and existing under the laws of the State.

Also in subsection (b) of this section, the references to "minor children" and "minor child", respectively, are substituted for the former references to "children or minors" and "any person under eighteen years of age" in light of Art. 1, § 24 and for consistency within this subtitle.

Also in subsection (b) of this section, the reference to an agent "ha[ving]" the authority of a law enforcement officer is substituted for the former reference to an agent "be[ing] entitled to" the authority of a law enforcement officer for clarity.

Also in subsection (b) of this section, the reference to a "law enforcement officer" is substituted for the former, obsolete reference to a "conservator of the peace" for clarity.

Also in subsection (b) of this section, the former reference to an agent who has "possession" of a minor child is deleted as implicit in the reference to the agent having "custody" of the minor child.

Subsection (c) of this section is revised in standard language used to state a prohibition.

In subsection (c) of this section, the reference to a minor "child" is added for consistency within this section and within this subtitle.

Also in subsection (c) of this section, the former reference to the claim or color of authority over the "person of" a minor child is deleted as

unnecessary.

The requirement of former Art. 27, § 399(b) to "enforce this section in every particular" is deleted as implicit in the general duties of law enforcement officers.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (c) of this section makes a violation of this section a misdemeanor, but without providing any specific penalty, either imprisonment or fine.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that because of the significant changes in the manner of providing care to minors since the former law was first enacted in 1888, it may be appropriate to form a task force to study how this section and similar provisions related to the operation of community-based facilities, halfway houses, and similar operations for the public and private care of minors.

Defined terms: "Administration" § 5-501

"Person" § 1-101

Article - Health - General

SUBTITLE 9. DRUG AND ALCOHOL GRANTS PROGRAM AND FUND.

8-901. DRUG AND ALCOHOL GRANTS PROGRAM.

(A) ESTABLISHED.

THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION MAY ESTABLISH A GRANTS PROGRAM FOR NEIGHBORHOOD CRIME PREVENTION PROGRAMS AND DRUG AND ALCOHOL ABUSE EDUCATION, PREVENTION, TREATMENT, ADJUDICATION, AND LAW ENFORCEMENT PROGRAMS.

(B) REGULATIONS.

THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION SHALL ADOPT REGULATIONS TO CARRY OUT A GRANTS PROGRAM ESTABLISHED UNDER THIS SECTION.

REVISOR'S NOTE: Chapter ____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 297C.

8-902. MARYLAND DRUG AND ALCOHOL GRANTS PROGRAM FUND.

(A) "FUND" DEFINED.

IN THIS SECTION, "FUND" MEANS THE MARYLAND DRUG AND ALCOHOL GRANTS PROGRAM FUND.

(B) ESTABLISHED.

(1) THERE IS A MARYLAND DRUG AND ALCOHOL GRANTS PROGRAM FUND.

(2) THE FUND IS A SPECIAL NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(3) THE FUND CONSISTS OF MONEYS APPROPRIATED IN THE STATE BUDGET TO THE FUND, ALL EARNINGS FROM INVESTMENT OF MONEYS IN THE FUND, AND OTHER MONEYS ACCEPTED FOR THE BENEFIT OF THE FUND FROM A GOVERNMENTAL OR PRIVATE SOURCE.

(4) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY.

(5) THE STATE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(6) THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME MANNER AS OTHER STATE FUNDS.

(7) 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.

(8) THE FUND IS SUBJECT TO AUDIT BY THE OFFICE OF LEGISLATIVE AUDITS UNDER § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

(C) PURPOSE.

THE PURPOSE OF THE FUND IS TO PROVIDE GRANT MONEY FOR NEIGHBORHOOD CRIME PREVENTION PROGRAMS AND DRUG AND ALCOHOL ABUSE EDUCATION, PREVENTION, TREATMENT, AND LAW ENFORCEMENT PROGRAMS UNDER THIS SUBTITLE.

(D) ADMINISTRATION AND DISBURSEMENTS.

(1) ADMINISTRATIVE EXPENDITURES UNDER THIS SECTION MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

(2) THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION SHALL ADMINISTER THE FUND IN ACCORDANCE WITH THIS SECTION AND ALL OTHER APPLICABLE LAW.

(3) DISBURSEMENTS FROM THE FUND SHALL SUPPLEMENT AND MAY NOT SUBSTITUTE FOR MONEY DESIGNATED IN THE STATE BUDGET FOR NEIGHBORHOOD CRIME PREVENTION PROGRAMS AND DRUG AND ALCOHOL ABUSE EDUCATION, PREVENTION, TREATMENT, AND LAW ENFORCEMENT PROGRAMS.

(4) IF THE TERMS OF A GRANT ALLOW, A RECIPIENT MAY EXPEND GRANT MONEY BEYOND THE FISCAL YEAR IN WHICH THE GRANT IS RECEIVED.

(E) MULTICOUNTY ALLOCATION.

(1) THIS SUBSECTION DOES NOT APPLY TO A PROGRAM THAT HAS RECEIVED FUNDS FROM THE HOTSPOT COMMUNITIES INITIATIVE ADMINISTERED BY THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION.

(2) TO THE EXTENT POSSIBLE, THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION SHALL ALLOCATE AT LEAST 10% OF THE GRANTS PROVIDED FROM THE FUND TO PROGRAMS THAT PROVIDE SERVICES IN TWO OR MORE COUNTIES OF THE STATE.

REVISOR'S NOTE: Chapter ____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 297D.

In subsection (c) of this section, the former reference to "§ 297C of this subheading" to reflect the reorganization of material contained in former Art. 27, §§ 297C and 297D in this subtitle.

Defined term: "County" § 1-101

SUBTITLE 7. INJURY REPORTS.

20-701. INJURY REPORTS -- CERTAIN COUNTIES.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES ONLY IN:

(1) ALLEGANY COUNTY;

(2) ANNE ARUNDEL COUNTY;

(3) CHARLES COUNTY;

(4) KENT COUNTY;

(5) MONTGOMERY COUNTY;

(6) PRINCE GEORGE'S COUNTY;

(7) SOMERSET COUNTY;

(8) TALBOT COUNTY; AND

(9) WICOMICO COUNTY.

(B) REQUIRED.

A PHYSICIAN, PHARMACIST, DENTIST, OR NURSE WHO TREATS AN INDIVIDUAL FOR AN INJURY THAT WAS CAUSED OR SHOWS EVIDENCE OF HAVING BEEN CAUSED BY AN AUTOMOBILE ACCIDENT OR A LETHAL WEAPON, OR THE INDIVIDUAL IN CHARGE OF A HOSPITAL THAT TREATS THE INJURED INDIVIDUAL, SHALL NOTIFY THE COUNTY SHERIFF, THE COUNTY POLICE, OR THE DEPARTMENT OF STATE POLICE OF THE INJURY AS SOON AS PRACTICABLE.

(C) CONTENTS.

A REPORT OF INJURY SHALL INCLUDE:

(1) THE INJURED INDIVIDUAL'S NAME AND ADDRESS, IF KNOWN;

(2) A DESCRIPTION OF THE INJURY; AND

(3) ANY OTHER FACTS CONCERNING THE MATTER THAT MIGHT ASSIST IN DETECTING CRIME.

(D) PENALTY.

AN INDIVIDUAL WHO FAILS TO MAKE A REPORT REQUIRED BY THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $25.

REVISOR'S NOTE: Chapter ____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 336(b), (c)(1), and, as it related to the reporting of certain injuries, (a)(1).

In subsection (a) of this section, the former phrase "[e]xcept as provided under paragraph (2) of this subsection" is deleted in light of the reorganization of material derived from former Art. 27, § 336 into two sections.

Defined terms: "County" § 1-101

"Person" § 1-101

20-702. SAME -- MOVING VESSEL.

(A) "MOVING VESSEL" DEFINED.

IN THIS SECTION, "MOVING VESSEL" MEANS A VESSEL AS DEFINED IN § 8-701 OF THE NATURAL RESOURCES ARTICLE THAT:

(1) IS IN THE WATER; AND

(2) IS NOT ANCHORED OR TIED TO A FIXED OBJECT.

(B) REQUIRED.

(1) A PHYSICIAN, PHARMACIST, DENTIST, OR NURSE WHO TREATS AN INDIVIDUAL FOR AN INJURY THAT WAS CAUSED OR SHOWS EVIDENCE OF HAVING BEEN CAUSED BY AN ACCIDENT INVOLVING A MOVING VESSEL, OR THE INDIVIDUAL IN CHARGE OF A HOSPITAL THAT TREATS THE INJURED INDIVIDUAL, SHALL NOTIFY THE COUNTY SHERIFF, THE COUNTY POLICE, THE DEPARTMENT OF STATE POLICE, OR THE NATURAL RESOURCES POLICE OF THE INJURY AS SOON AS PRACTICABLE.

(2) A POLICE DEPARTMENT NOTIFIED OF AN ACCIDENT INVOLVING A MOVING VESSEL PROMPTLY SHALL ADVISE THE DEPARTMENT OF NATURAL RESOURCES.

(C) CONTENTS.

A REPORT OF INJURY SHALL INCLUDE:

(1) THE INJURED INDIVIDUAL'S NAME AND ADDRESS, IF KNOWN;

(2) A DESCRIPTION OF THE INJURY; AND

(3) ANY OTHER FACTS CONCERNING THE MATTER THAT MIGHT ASSIST IN DETECTING CRIME.

(D) PENALTY.

AN INDIVIDUAL WHO FAILS TO MAKE A REPORT UNDER SUBSECTION (B)(1) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $25.

REVISOR'S NOTE: Chapter ____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 336(b), (d), and, as it related to the reporting of certain injuries caused by a moving vessel, (a)(1).

Former Art. 27, § 336(c)(2) is deleted as unnecessary in light of the reorganization of material derived from former § 336. Subsection (c)(2) provided that the moving vessel injury reporting requirements applied statewide, unlike the other injury reporting that was required only in certain counties.

Defined terms: "County" § 1-101

"Person" § 1-101

20-703. SAME -- GUNSHOT.

(A) REQUIRED.

A PHYSICIAN, PHARMACIST, DENTIST, OR NURSE WHO TREATS AN INDIVIDUAL FOR AN INJURY THAT WAS CAUSED OR SHOWS EVIDENCE OF HAVING BEEN CAUSED BY A GUNSHOT OF ANY TYPE, OR THE INDIVIDUAL IN CHARGE OF A HOSPITAL THAT

TREATS THE INJURED INDIVIDUAL, SHALL NOTIFY THE COUNTY SHERIFF, THE COUNTY POLICE, OR THE DEPARTMENT OF STATE POLICE OF THE INJURY AS SOON AS PRACTICABLE.

(B) CONTENTS.

A REPORT OF INJURY SHALL INCLUDE:

(1) THE INJURED INDIVIDUAL'S NAME AND ADDRESS, IF KNOWN;

(2) A DESCRIPTION OF THE INJURY; AND

(3) ANY OTHER FACTS CONCERNING THE MATTER THAT MIGHT ASSIST IN DETECTING CRIME.

(C) PENALTY.

A PERSON WHO FAILS TO MAKE A REPORT REQUIRED BY THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $25.

REVISOR'S NOTE: Chapter ____, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 336A.

In subsection (a) of this section, the former phrase "the Baltimore City police" is deleted as Baltimore City is included in the definition of county in HG § 1-101.

Also in subsection (a) of this section, the phrase "of the injury" is substituted for the former phrase "of such fact" for clarity.

In subsection (c) of this section, the phrase "and on conviction is subject to" is substituted for the former phrase "and punishable in a court of competent criminal jurisdiction" for consistency with similar provisions throughout the revised articles of the Code.

Defined terms: "County" § 1-101

"Person" § 1-101

21-259.1. SAME -- OPENING CLOSED FOOD CONTAINER.

(A) PROHIBITED.

A PERSON MAY NOT OPEN A SEALED, CLOSED, OR FASTENED FOOD CONTAINER IN A FOOD STORE OR SUPERMARKET IF OPENING THE PACKAGE OR CONTAINER WILL LEAVE THE ITEM IN AN UNSALABLE CONDITION, UNLESS THE PERSON:

(1) INTENDS TO PURCHASE THE ITEM; OR

(2) HAS RECEIVED FROM THE PROPRIETOR AUTHORITY TO OPEN THE ITEM.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $25.

(C) APPLICATION OF SUBTITLE 12.

THE PENALTY PROVISIONS OF SUBTITLE 12 OF THIS TITLE DO NOT APPLY TO THIS SECTION.

REVISOR'S NOTE: Chapter ____, Acts of 2002, which enacted the Criminal Law Article, also added this section.

Subsections (a) and (b) of this section are new language derived without substantive change from former Art. 27, § 120B.

In subsection (a) of this section, the former reference to a "package" is deleted as included in the reference to a "container".

Subsection (c) of this section is new language added to clarify that Subtitle 12 of this title, which provides penalties for a violation of this title, does not apply to this section, which was formerly codified in Article 27.

Defined term: "Person" § 1-101

Article - Natural Resources

8-713.1. OPERATING VESSEL WITH NUMBER, NAME, OR HOME PORT CONCEALED.

(A) APPLICATION OF SECTION.

THIS SECTION DOES NOT SUPERSEDE § 4-1013(A) AND (B) OF THIS ARTICLE, WHICH PROVIDES FOR THE DISPLAY OF AN OYSTER DREDGE BOAT IDENTIFICATION NUMBER.

(B) PROHIBITED.

A PERSON MAY NOT OPERATE KNOWINGLY A VESSEL ON THE NAVIGABLE WATERS OF THE STATE WHILE THE NUMBER, NAME, OR HOME PORT DESIGNATION OF THE VESSEL, AS ASSIGNED OR DOCUMENTED BY THE UNITED STATES COAST GUARD OR CLEARED BY THE UNITED STATES CUSTOMS SERVICE, IS CONCEALED, COVERED, OR DEFACED.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT LESS THAN 1 MONTH AND NOT

EXCEEDING 6 MONTHS OR A FINE OF NOT LESS THAN $150 AND NOT EXCEEDING $500 OR BOTH.

(D) FORFEITURE.

IN ADDITION TO THE PENALTIES UNDER SUBSECTION (C) OF THIS SECTION, THE COURT MAY ORDER THAT THE VESSEL BE:

(1) FORFEITED TO THE STATE; AND

(2) DELIVERED TO THE DEPARTMENT FOR THE DISPOSITION THAT IS MOST ADVANTAGEOUS TO THE STATE IN THE DISCRETION OF THE DEPARTMENT.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 582.

In subsection (a) of this section, the reference to "an oyster dredge boat identification number" is substituted for the former reference to "canvas dredge boat licenses" for consistency with § 4-1013(b) of this article.

In subsections (b) and (c) of this section, the former references to "aiders, abettors and counsellors" are deleted as implicit in "a person [who violates this section]" in light of the abrogation of the distinction between a principal and an accessory in CP § 4-204. *See* CP § 4-204 and General Revisor's Note to the Criminal Law Article.

In subsection (b) of this section and throughout this section, the former references to a "boat" are deleted as included in the defined term "vessel".

Also in subsection (b) of this section, the former reference to "us[ing]" a vessel is deleted as included in the reference to "operat[ing]" a vessel.

In subsection (c) of this section, the former reference to imprisonment "in the Maryland House of Correction" is deleted for consistency with the Criminal Law Article. Currently, inmates are sentenced to the custody of a unit such as the Division of Correction, and then are placed in a particular facility. *See* CS § 9-103.

Also in subsection (c) of this section, the former reference to "the discretion of the court" is deleted as implicit in setting minimum and maximum penalties.

In subsection (d) of this section, the reference to a court "order[ing]" forfeiture is substituted for the former reference to a court "declar[ing]" forfeiture for accuracy and consistency.

Defined terms: "Department" § 8-101

"Operate" § 8-701

"Person" § 8-101

"Vessel" § 8-701

"Waters of the State" § 8-101

8-724.1. DAMAGING OR INTERFERING WITH USE OF PUBLIC WHARF OR LANDING.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) INTERFERE WITH THE USE OF A PUBLIC LANDING;

(2) DO ANYTHING TO DESTROY THE USEFULNESS OF THE PUBLIC LANDING; OR

(3) DAMAGE A WHARF OR STRUCTURE ERECTED ON THE WHARF BY THE STATE, A COUNTY, OR A PERSON UNDER A WRITTEN AGREEMENT WITH A STATE UNIT OR A COUNTY FOR PUBLIC BENEFIT.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF NOT LESS THAN $25.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 484.

As to the substitution of the reference to a "State unit" for the former reference to "State authority" in subsection (a) of this section, *see* General Revisor's Note to the Criminal Law Article.

In subsection (a) of this section, the former reference to a "partnership or corporation" is deleted as included in the term "person" which as defined in § 8-101(d) of this title includes a "partnership ... [or] public or private corporation".

In subsection (a)(3) of this section, the former reference to "destroy[ing] ... any wharf or other structure" is deleted as implicit in the reference to "damag[ing] a wharf or structure".

Also in subsection (a)(3) of this section, the reference to a "county" is substituted for the former obsolete reference to the "county commissioners" in light of Md. Constitution, Art. XI-A, § 3, which states that "all references ... in the ... laws of this State to the Mayor of Baltimore and City Council of the City of Baltimore or to the County Commissioners of the Counties, shall be construed to refer to the Mayor of Baltimore and City Council of the City of Baltimore and to the President or Chairman and County Council herein provided for whenever such construction would be reasonable". In 1945, when former § 484 was enacted, only Baltimore City operated under a charter; the counties were governed by Boards of County

Commissioners. Thus, this reference was to all counties, and was not meant to be limited to the current non-charter counties that are not governed by county councils and some form of a county executive.

Also in subsection (a)(3) of this section, the former reference to a county "in which said public landing is located" is deleted as surplusage.

Also in subsection (a)(3) of this section, the former reference to a person "who erects such wharf or structures" is deleted as surplusage.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (b) of this section sets a minimum fine of $25, rather than a maximum fine, for each violation of this section.

Defined term: "Person" § 8-101

8-725.5. SPEED LIMIT ON SENECA CREEK.

(A) PROHIBITED SPEED.

A PERSON MAY NOT OPERATE A VESSEL ON SENECA CREEK IN MONTGOMERY COUNTY AT A SPEED IN EXCESS OF 6 KNOTS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE OF NOT LESS THAN $25 AND NOT EXCEEDING $200 OR BOTH.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 21(c) and, as it related to the vessel speed limit on Seneca Creek, (b).

In subsection (a) of this section, the reference to a "vessel" is substituted for the former reference to a "boat" for consistency within this subtitle.

In subsection (b) of this section, the former reference to "the discretion of the court" is deleted as implicit in setting minimum and maximum penalties.

Defined terms: "Operate" § 8-701

"Person" § 8-101

"Vessel" § 8-701

8-725.6. SPEED LIMIT ON CERTAIN AREAS OF MONOCACY RIVER.

(A) PROHIBITED.

A PERSON MAY NOT OPERATE A VESSEL ON THE MONOCACY RIVER BETWEEN STARNER'S DAM AND THE UPSTREAM ISLAND IN CARROLL AND FREDERICK COUNTIES AT A SPEED IN EXCESS OF 6 KNOTS.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE OF NOT LESS THAN $25 AND NOT EXCEEDING $200 OR BOTH.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 21(c) and, as it related to the vessel speed limit on the Monocacy River, (b).

In subsection (a) of this section, the reference to a "vessel" is substituted for the former reference to a "boat" for consistency within this subtitle.

Also in subsection (a) of this section, the former reference to "that part of the Monocacy River" is deleted as surplusage.

Also in subsection (a) of this section, the former reference to "extending" is deleted as surplusage.

In subsection (b) of this section, the former reference to "the discretion of the court" is deleted as implicit in setting minimum and maximum penalties.

Defined terms: "Operate" § 8-701

"Person" § 8-101

"Vessel" § 8-701

8-726.1. THROWING CERTAIN WASTE ON CERTAIN WATERS OF THE STATE.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT:

(1) APPLY TO THE IMPROVEMENT OF HARBORS; OR

(2) AFFECT ANY ACT OF THE GENERAL ASSEMBLY RELATING TO THE CONSTRUCTION OF A WHARF OR TO THE RIGHTS OF A RIPARIAN OWNER.

(B) PROHIBITED.

BALLAST, ASHES, FILTH, EARTH, OYSTERS, OR OYSTER SHELLS MAY NOT BE DEPOSITED FROM A VESSEL TO A SITE:

(1) IN THE CHESAPEAKE BAY ABOVE SANDY POINT;

(2) IN HERRING BAY; OR

(3) BELOW THE HIGH WATER MARK IN A RIVER, CREEK, OR HARBOR IN THE STATE.

(C) PENALTY.

A PERSON IN COMMAND OR HAVING CHARGE OF A VESSEL THAT VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF NOT LESS THAN $20 AND NOT EXCEEDING $150.

(D) ENFORCEMENT.

THE NATURAL RESOURCES POLICE FORCE SHALL ENFORCE THIS SECTION.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, §§ 482 and 483.

In subsection (a) of this section, the former reference to how this section is to "be construed" is deleted as surplusage.

In subsection (a)(2) of this section, the reference to a riparian "owner" is substituted for the former reference to riparian "proprietors" for clarity.

In subsection (b) of this section, the references to "vessel[s]" are substituted for the former references to "ship, steamboat, scow, pungy or other vessel" in light of the definition of "vessel", which includes these conveyances, under § 8-701 of this subtitle.

Also in subsection (b) of this section, the reference to material "deposited" is substituted for the former archaic reference to material "taken, unladen or cast out" for clarity.

Also in subsection (b) of this section, the phrase "under any circumstances" is substituted for the former archaic phrase "on any pretense whatever" for clarity.

Also in subsection (b) of this section, the former reference to "soil" is deleted as included in the reference to "earth".

Also in subsection (b) of this section, the reference to "the waters of" Herring Bay is deleted as surplusage.

In subsection (c) of this section, the reference to being "guilty of a misdemeanor" is added to state expressly what was only 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. 483, 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 (1968).

Also in subsection (c) of this section, the former reference to a "master" is deleted as implicit in the reference to a "person" in command.

Also in subsection (c) of this section, the former word "thereof" is deleted as surplusage.

In subsection (d) of this section, the reference to the "Natural Resources Police Force" is substituted for the former obsolete reference to the "commanding officer of the State fishery force", the predecessor agency.

Defined terms: "Person" § 8-101

"Vessel" § 8-701

8-738.1. OPERATING VESSEL IN RECKLESS OR DANGEROUS MANNER.

(A) PROHIBITED.

A PERSON MAY NOT:

(1) OPERATE A VESSEL RECKLESSLY OR IN A MANNER THAT MAY ENDANGER ANOTHER OR THE PROPERTY OF ANOTHER ON A BAY, CREEK, LAKE, RIVER, OR STREAM IN THE STATE; OR

(2) COME INTO A WHARF OR BATHING SHORE RECKLESSLY OR IN A MANNER THAT MAY ENDANGER A PERSON OR PROPERTY.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE OF NOT LESS THAN $25 AND NOT EXCEEDING $200 OR BOTH.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 21(a) and (c).

In subsection (a) of this section, the reference to a "vessel" is substituted for the former reference to a "boat" for consistency in this subtitle.

Also in subsection (a) of this section, the former reference to "fresh or salt water" is deleted as implicit in the general reference to bodies of water.

In subsection (b) of this section, the former phrase "in the discretion of the court" is deleted as implicit in setting minimum and maximum penalties.

Defined terms: "Operate" § 8-701

"Person" § 8-101

"Vessel" § 8-701

8-740.1. FAILURE TO POSSESS SHIP-TO-SHORE COMMUNICATION DEVICE ON CERTAIN VESSELS.

(A) "SHIP-TO-SHORE COMMUNICATION DEVICE" DEFINED.

IN THIS SECTION, "SHIP-TO-SHORE COMMUNICATION DEVICE" MEANS A:

(1) SHIP-TO-SHORE TELEPHONE; OR

(2) ANOTHER MECHANICAL DEVICE THAT ENABLES THE CREW AND EMPLOYEES ON A VESSEL TO ESTABLISH CONTACT WITH A PERSON ON SHORE AS MAY BE NECESSARY TO SEEK ASSISTANCE UNDER ALL REASONABLE CONDITIONS AND IN AN EMERGENCY.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A VESSEL IN INTERSTATE OR FOREIGN COMMERCE.

(C) PROHIBITED.

A PERSON IN COMMAND OR AN OWNER OF A VESSEL MAY NOT OPERATE THE VESSEL ON THE WATERS OF THE STATE WHILE CARRYING 25 OR MORE PAYING OR GUEST PASSENGERS IN ADDITION TO THE CREW AND EMPLOYEES UNLESS THE VESSEL IS EQUIPPED WITH A SHIP-TO-SHORE COMMUNICATION DEVICE.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $100.

REVISOR'S NOTE: Chapter __, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without substantive change from former Art. 27, § 434.

Subsection (a) of this section is revised as a definition for clarity and brevity.

Also in subsection (a) of this section, the former reference to "devices" is deleted in light of Art. 1, § 8, which states that the singular includes the plural.

Also in subsection (a) of this section, the former reference to contacting "points" is deleted as implicit in the reference to contacting a "person".

In subsection (b) of this section, the phrase "does not apply" is substituted for the former reference to this section being not "construed as extending" for clarity and brevity.

Also in subsection (b) of this section and throughout this section, the former references to "boat" or "boats" are deleted as included in the

definition of "vessel".

In subsection (c) of this section and throughout this section, the reference to "[a] person in command" is substituted for the former reference to "[t]he captain, [or] master" for clarity, brevity, and consistency within this subtitle.

Also in subsection (c) of this section, the former phrase "may so require" is deleted as implicit in the reference to "as needed".

Also in subsection (c) of this section, the former reference to a "vessel ... which begins any such trip on waters of this State" is deleted as implicit in the reference to "operat[ing] ... on the waters of the State".

Defined terms: "Operate" § 8-701

"Person" § 8-101

"Vessel" § 8-701

"Waters of the State" §§ 8-101 and 8-701

Article - Real Property

14-127. REAL ESTATE SETTLEMENTS.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CERTIFICATE OF QUALIFICATION" HAS THE MEANING STATED IN § 10-101 OF THIS ARTICLE.

(3) "CONSIDERATION" INCLUDES:

(I) A FEE;

(II) COMPENSATION;

(III) A GIFT, EXCEPT PROMOTIONAL OR ADVERTISING MATERIALS FOR GENERAL DISTRIBUTION;

(IV) A THING OF VALUE;

(V) A REBATE;

(VI) A LOAN; OR

(VII) AN ADVANCEMENT OF A COMMISSION OR DEPOSIT MONEY.

(B) SCOPE OF SECTION.

THIS SECTION DOES NOT PROHIBIT:

(1) THE PAYMENT OF A COMMISSION TO AN AGENT WHO HAS A CERTIFICATE OF QUALIFICATION; OR

(2) THE REFERRAL OF A REAL ESTATE SETTLEMENT BUSINESS OR A PROFESSIONAL FEE ARRANGEMENT BETWEEN ATTORNEYS, IF THE REFERRAL OR PROFESSIONAL FEE ARRANGEMENT DOES NOT VIOLATE § 17-605 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

(C) PAYMENT OR RECEIPT OF CONSIDERATION PROHIBITED.

A PERSON WHO HAS A CONNECTION WITH THE SETTLEMENT OF REAL ESTATE TRANSACTIONS INVOLVING LAND IN THE STATE MAY NOT PAY TO OR RECEIVE FROM ANOTHER ANY CONSIDERATION TO SOLICIT, OBTAIN, RETAIN, OR ARRANGE REAL ESTATE SETTLEMENT BUSINESS.

(D) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $1,000 OR BOTH.

(E) SEPARATE VIOLATION.

EACH VIOLATION OF THIS SECTION IS A SEPARATE VIOLATION.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted subsections (a)(3) and (b) through (e) of this section, which are new language derived without substantive change from former Art. 27, § 465A.

Subsection (a)(1) and (2) of this section is new language added for consistency within this article. Correspondingly, in subsection (b) of this section, the reference to "an agent who has a certificate of qualification" is substituted for the former reference to "agents who have been duly licensed as such by the State Insurance Department" for consistency with IN Title 10, Subtitle 1.

In subsections (c) and (d) of this section, the former references to a "firm" and "corporation" are deleted in light of the definition of "person" in § 1-101(bb) of this article.

In subsection (c) of this section, the former reference to land "situated and lying" in the State is deleted as included in the comprehensive reference to "land in the State".

In subsection (e) of this section, the reference to a separate "violation" is substituted for the former reference to a separate "offense" for consistency with the Criminal Law Article. *See* General Revisor's Note to the Criminal Law Article.

Also in subsection (e) of this section, the former reference to a separate violation being "punishable as such" is deleted as surplusage.

Defined terms: "Agent" § 1-101

"Person" § 1-101

Article 6 - Caroline County

109. FORTUNE TELLING.

(A) PROHIBITED.

IN CAROLINE COUNTY, A PERSON MAY NOT DEMAND OR ACCEPT PAYMENT OR A GRATUITY TO FORECAST OR FORETELL, OR PRETEND TO FORECAST OR FORETELL, THE FUTURE OF ANOTHER PERSON BY:

(1) READING A CARD;

(2) READING THE PALM OF A HAND; OR

(3) ANY OTHER SCHEME, PRACTICE, OR DEVICE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT IN THE CAROLINE COUNTY DETENTION CENTER NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $100 OR BOTH.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 158A, as it related to fortune telling in Caroline County.

In subsection (a) of this section, the term "payment" is substituted for the former term "remuneration" for consistency with revised sections of the Public General Laws.

In subsection (a)(2) of this section, the modifying phrase "of a hand" is added after the former word "palm" for clarity.

In subsection (b) of this section, the former phrase "the discretion of the court" is deleted as implied by the setting of maximum penalties.

Also in subsection (b) of this section, the reference to the "Caroline County Detention Center" is substituted for the former reference "county jail" for clarity.

Article 7 - Carroll County

4-103. FORTUNE TELLING.

(A) PROHIBITED.

IN CARROLL COUNTY, A PERSON MAY NOT DEMAND OR ACCEPT PAYMENT OR A GRATUITY TO FORECAST OR FORETELL, OR PRETEND TO FORECAST OR FORETELL, THE FUTURE OF ANOTHER PERSON BY:

(1) READING A CARD;

(2) READING THE PALM OF A HAND; OR

(3) ANY OTHER SCHEME, PRACTICE, OR DEVICE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT IN THE CARROLL COUNTY DETENTION CENTER NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $100 OR BOTH.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 158A, as it related to fortune telling in Carroll County.

In subsection (a) of this section, the term "payment" is substituted for the former term "remuneration" for consistency with revised sections of the Public General Laws.

In subsection (a)(2) of this section, the modifying phrase "of a hand" is added after the former word "palm" for clarity.

In subsection (b) of this section, the former phrase "the discretion of the court" is deleted as implied by the setting of maximum penalties.

Also in subsection (b) of this section, the reference to the "Carroll County Detention Center" is substituted for the former reference to the "county jail" for clarity.

Article 11 - Frederick County

1-5-26. DOG PROTECTION REQUIRED.

THE OWNER OR CUSTODIAN OF A DOG THAT IS KEPT OUT-OF-DOORS SHALL ADEQUATELY PROTECT THE DOG FROM THE ELEMENTS.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added this section, which is new language derived without

substantive change from former Art. 27, § 70C.

The former reference to a dog kept "in Frederick County" is deleted in light of the revision of this provision in the Public Local Laws of Frederick County.

Article 21 - Talbot County

8A-1. FORTUNE TELLING.

(A) PROHIBITED.

IN TALBOT COUNTY, A PERSON MAY NOT DEMAND OR ACCEPT PAYMENT OR A GRATUITY TO FORECAST OR FORETELL, OR PRETEND TO FORECAST OR FORETELL, THE FUTURE OF ANOTHER PERSON BY:

(1) READING A CARD;

(2) READING THE PALM OF A HAND; OR

(3) ANY OTHER SCHEME, PRACTICE, OR DEVICE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT IN THE TALBOT COUNTY DETENTION CENTER NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING $100 OR BOTH.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 158A, as it related to fortune telling in Talbot County.

In subsection (a) of this section, the term "payment" is substituted for the former term "remuneration" for consistency with revised sections of the Public General Laws.

In subsection (a)(2) of this section, the modifying phrase "of a hand" is added after the former word "palm" for clarity.

In subsection (b) of this section, the former phrase "the discretion of the court" is deleted as implied by the setting of maximum penalties.

Also in subsection (b) of this section, the reference to the "Talbot County Detention Center" is substituted for the former reference to the "county jail" for clarity.

Article 22 - Washington County

1-108.

(E) FUNDS -- NONPROFIT ORGANIZATIONS.

THE COUNTY COMMISSIONERS MAY NOT REDUCE IN THE COUNTY BUDGET THE TOTAL AMOUNT OF APPROPRIATIONS TO NONPROFIT ORGANIZATIONS BELOW THE TOTAL AMOUNT OF APPROPRIATIONS MADE TO NONPROFIT ORGANIZATIONS IN THE BUDGET FOR FISCAL YEAR 1996.

REVISOR'S NOTE: Chapter ___, Acts of 2002, which enacted the Criminal Law Article, also added subsection (e) of this section, which is new language derived without substantive change from former Art. 27, § 255C(q)(9).

This provision, initially enacted as part of Chapter 663, Acts of 1996, legislation that modified the law governing the regulation of tip jars in Washington County, apparently was intended to ensure that revenues credited to Washington County Gaming Fund were not used to replace other County contributions to nonprofit organizations in the County. Because this provision was not directly related to the regulation of tip jars -- provisions codified in Part III of Title 13, Subtitle 23 of the Criminal Law Article -- Chapter ____, § ___, Acts of 2002, recodified this provision in the Public Local Laws of Washington County as part of the enactment of the Criminal Law Article.

1-704. RECYCLING.

(A) IN GENERAL.

THE COUNTY COMMISSIONERS, BY ORDINANCE, MAY REGULATE RECYCLING IN THE COUNTY.

(B) PENALTIES AUTHORIZED.

THE ORDINANCE AUTHORIZED UNDER SUBSECTION (A) OF THIS SECTION MAY PROVIDE PENALTIES FOR PERSONS WHO PLACE INTO RECYCLING BINS MATERIALS THAT ARE NOT RECYCLABLE.

REVISOR'S NOTE: Chapter _____, Acts of 2002, which enacted the Criminal Law Article, also enacted this section, which is derived without substantive change from former Art. 27, § 468(k) of the Annotated Code of Maryland.

SECTION 5. AND BE IT FURTHER ENACTED, That Section(s) 281(i) of Article 27 - Crimes and Punishments of the Annotated Code of Maryland be repealed and reenacted, with amendments, and transferred to the Session Laws, to read as follows:

1. The Department OF HEALTH AND MENTAL HYGIENE shall initially permit persons to register UNDER TITLE 5, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE IF THE PERSONS [who] own or operate any establishment engaged in the manufacture,

distribution or dispensing of any controlled dangerous substances prior to July 1, 1970, and who are registered or licensed by the State.

REVISOR'S NOTE: This section formerly was Art. 27, § 281(i).

Former § 281(i) is not retained in the Code because it applies, if at all, only to a small class of persons who were engaged in the manufacture, distribution, or dispensing of a controlled dangerous substance before July 1, 1970, and were registered or licensed by the State. It is transferred to the Session Laws to avoid any inadvertent substantive effect that its repeal might have.

SECTION 6. AND BE IT FURTHER ENACTED, That Section(s) 302(a) through (c), inclusive, of Article 27 - Crimes and Punishments of the Annotated Code of Maryland be repealed and reenacted, with amendments, and transferred to the Session Laws, to read as follows:

(a) Prosecutions for any violation of law occurring prior to July 1, 1970, shall not be affected by these repealers or amendments, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to July 1, 1970, shall not be affected by these repealers or amendments, or abated by reason thereof.

(c) All administrative proceedings pending before the Department OF HEALTH AND MENTAL HYGIENE on July 1, 1970, shall be continued and brought to final determination in accord with laws and regulations in effect prior to July 1, 1970. Such drugs placed under control prior to July 1, 1970, which are not listed within Schedules I through V shall automatically be controlled and listed in the appropriate schedule.

REVISOR'S NOTE: This section formerly was Art. 27, § 302(a) through (c).
Former § 302(a) is not retained in the Code because it applies, if at all, only to a small class of persons who were prosecuted before July 1, 1970. It is transferred to the Session Laws to avoid any inadvertent substantive effect that its repeal might have.

Former § 302(b) is not retained in the Code because it applies, if at all, only to a small class of proceedings that were commenced before July 1, 1970. It is transferred to the Session Laws to avoid any inadvertent substantive effect that its repeal might have.

Former § 302(c) is not retained in the Code because it applies, if at all, only to a small class of administrative proceedings that were pending before July 1, 1970, and to drugs that were placed under control before July 1, 1970. It is transferred to the Session Laws to avoid any inadvertent substantive effect that its repeal might have.

SECTION 7. 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 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, 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 11. 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 12. AND BE IT FURTHER ENACTED, That the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross-references and terminology rendered incorrect by this Act or by any other Act of the General Assembly of 2002 that affects provisions enacted by this Act. The publisher shall adequately describe any such correction in an editor's note following the section affected.

SECTION 13. AND BE IT FURTHER ENACTED, That it is the intention of the General Assembly that, except as expressly provided in this Act, this Act shall be construed as a nonsubstantive revision, and may not otherwise be construed to render any substantive change in the criminal law of the State.

SECTION 14. AND BE IT FURTHER ENACTED, That the catchlines, captions, and Revisor's Notes contained in this Act are not law and may not be considered to have been enacted as a part of this Act.

SECTION 15. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect July 1, 2003.

SECTION 16. AND BE IT FURTHER ENACTED, That, except as provided in Section 15 of this Act, this Act shall take effect October 1, 2002.