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Foreword

Rising crime rates across the United States in the late 1980s, fueled by the crack cocaine epidemic, heightened public safety concerns, leading to calls for more police, tougher sentencing, and other reforms designed to keep offenders incarcerated. Often overlooked in these efforts are the burdens placed upon the courts and correctional systems. Like other states, Maryland has found that it cannot build prisons and local detention centers quickly enough to keep up with the numbers of offenders sentenced to incarceration.

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

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

This is the ninth of nine volumes of the 1998 Legislative Handbook Series prepared prior to the start of the General Assembly term by the Department of Legislative Services. The material for this volume was assembled and prepared by Susan W. Caccamise, Lauren C. Casey, Guy Cherry, and Jeremy M. McCoy, under the general direction of Lori Caldwell-Valentine. Additional review was provided by Donald J. Hogan, Jr. and Michael I. Volk. Administrative assistance was provided by Sharon Beatty and Elaine Oaks.

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

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

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Chapter 1. Introduction

Handbook Overview

In General

The goals of this handbook are twofold. First and foremost, it is intended to provide policymakers with an overview of the criminal justice process in Maryland from the perspective of an offender. The topics of discussion include the charging process, pretrial disposition, contact with the courts, sentencing, and punishment under some form of supervision or incarceration. Recent developments pertaining to the death penalty are also included. Although the primary focus is on the adult offender, because of the significant public attention given to juvenile crime, a chapter on juvenile justice is also included.

Second, the handbook presents the trends and statistics which, specific to each component of the system, affect the process and outcomes of criminal justice in this State.

Items Not Included

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

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

Organization

The handbook has been divided into 16 chapters which are categorized under three major sections - crimes, the judicial process, and punishment and incarceration. A summary of each chapter is provided below.

- Chapter 1. This chapter provides an overview of the handbook and a brief overview of source law in the areas of constitutional law, criminal law, juvenile law, criminal procedure, motor vehicle law, and other public safety issues.
- Chapter 2. This chapter begins with a discussion of the problem of crime and substance abuse, one of the predominant underlying factors associated with criminal activity. Trends and reports on criminal activity, based on data collected by the Maryland State Police and compiled in the *Uniform Crime Report*, are presented for the most serious offenses (Part I offenses) reported to the State Police. The chapter also discusses adult and juvenile arrest trends. The chapter concludes with information on automated technologies, such as the Maryland Automated Fingerprint Identification System and the Central Image Repository System, which assist law enforcement agencies in the apprehension and identification of offenders.
- Chapter 3. This chapter discusses the procedures and criminal penalties for motor vehicle offences, such as convictions, fines, and incarceration, and the administrative component, which consists of the assessment of points and revocation or suspension of driving privileges. There is also a discussion on drunk and drugged driving and its impact on highway fatalities. Finally, the chapter discusses sanction and treatment programs such as the Drinking Driver Monitor Program for persons convicted of driving while under the influence of alcohol or drugs, or driving while intoxicated.

Chapter 4. The criminal justice process begins when a person commits a crime that is observed by or reported to the police or other law enforcement officers. This is followed by either a warrantless arrest or by the issuance of a charging document. This chapter will discuss these processes.

- Chapter 5. This chapter discusses procedures that occur after charges are filed and the offender is arrested. A court commissioner sets a court date and determines, based on the crime and the offender's prior criminal record, whether the offender can safely be released on personal recognizance, bail, or pretrial release supervision which may include home detention, electronic monitoring and drug testing/monitoring programs as a condition of release. This chapter further discusses circumstances under which an offender would be denied pretrial release and confined in a local detention center until trial.
- Chapter 6. This chapter discusses the jurisdiction and recent caseload trends of the two trial courts in the State - the circuit courts and the District Court. Both courts have original exclusive jurisdiction over specific cases. The courts also have concurrent jurisdiction for certain felonies and misdemeanors in which the maximum penalty is three years or more in prison or a fine of \$2,500 or more. The circuit courts oversee the operation of the juvenile justice system in most jurisdictions in the State.
- Chapter 7. An offender's first contact with the criminal justice system may be with the juvenile justice system. A separate program for juveniles was created and designed to protect public safety while restoring order to the lives of young offenders without the determination of guilt or imposition of fixed sentences. The flow of the system is illustrated, from intake to final disposition. The specific procedures involved with juvenile court and classification, statistical information, and information on youth services programs are included in this chapter.
- Chapter 8. According to Maryland law and tradition, a defendant with a mental disorder or mental retardation may not be prosecuted or punished. There are circumstances under which these illnesses are considered in a criminal proceeding. The first is whether a defendant is mentally able to participate in a trial. The second is whether the defendant had the necessary mental capacity at the time of the crime. The processes by which the courts determine whether a defendant is competent to stand trial or is not criminally responsible for the crime are outlined in this chapter.
- Chapter 9. The chapter discusses trends in criminal sentencing with an emphasis on sentencing restrictions in Maryland law as well as on sentencing guidelines, which are designed to promote consistent and equitable sentencing. The General Assembly established the Maryland Commission on Criminal Sentencing Policy to evaluate the State's sentencing and correctional laws and policies. The goals of the commission are discussed in this chapter. The chapter also discusses the role of probation, which allows the court to impose conditions on an offender in addition to the sanctions provided in the law that the offender violated. Probation may either be given before judgment (commonly known as a "PBJ") or after judgment.
- Chapter 10. Discussion focuses on the alternatives available to convicts seeking review of a sentence imposed by a trial court and the length of the sentence. The options may include review at the trial court level, appeal to a circuit court (if the trial was in the District Court), review by the Court of Special Appeals, the Court of Appeals, or the federal courts. The procedures for review and appeal are outlined, as well as a discussion of the Uniform Post Conviction Procedure Act.
- Chapter 11. The provisions of Maryland law stipulate a number of rights and services for victims of crime and their representatives. The protections, available services, guidelines for participation throughout the adjudication process, and the right of victims to be informed of all aspects of processing the offender are defined.
- Chapter 12. Local detention centers house offenders awaiting trial and convicted offenders whose sentences may be 18 months or less. The detention center populations and the costs of housing the offenders are discussed in this chapter, as well as the local capital and operating programs.
- Chapter 13. The State prison system and the services the facilities provide are described. After reception, inmates are classified and sent to an institution having an appropriate level of security. Statistical trends and characteristics of the population are analyzed. The use of alternatives to incarceration and intermediate sanctions

are also examined. The capital projects to build new prisons, services such as inmate grievance procedures, and the use by the Department of Public Safety and Correctional Services of a Repeat Incarceration Supervision Cycle to follow-up on offenders in an effort to reduce recidivism are also presented.

- Chapter 14. The Patuxent Institution was originally established to rehabilitate habitual offenders known as "defective delinquents." These individuals were involuntarily committed to the institution for an indeterminate sentence. Today, the Patuxent Institution is a maximum security correctional treatment facility within the Department of Public Safety and Correctional Services. Its mission has changed from treatment and rehabilitation of higher risk offenders to remediation of youthful offenders. This chapter examines the evaluation and treatment programs of the only correctional institution which has its own conditional release and supervision authority.
- Chapter 15. This chapter examines the three ways an inmate may be released from imprisonment before the completion of the term of confinement: parole, mandatory release, and pardon.
- Chapter 16. The final chapter concludes with a brief commentary about changes in criminal justice policy.
- Glossary. A glossary of many of the legal and technical terms is provided to enhance the reader's understanding of the criminal justice process.

Overview of the Law

Sources of law pertaining to Maryland's criminal justice process are generally constitutionally and statutorily based. However, other sources include court rules (Maryland Rules), the common law, and court decisions.

Constitutional Law

The Constitution of the United States, the Maryland Constitution, and the Maryland Declaration of Rights all contain law dealing with the areas discussed in this handbook. Primarily these constitutional provisions regulate matters concerning criminal procedure. Examples include prohibitions on unreasonable searches and seizures, the right to a jury trial, the right to remain silent after arrest and at trial, and the right to due process. In matters concerning changes to parole and diminution credits, the constitutional prohibition on ex post facto laws is relevant (see Chapter 15). These constitutional provisions and court cases interpreting them may not be overturned by statute, and may only be altered by constitutional amendment.

In addition to the constitutional rights provided to defendants, Maryland has adopted Article 47 of the Maryland Declaration of Rights which establishes constitutional rights for crime victims. See Chapter 11 of this handbook for a discussion of victims' rights.

Criminal Law and Procedure

Statutory Law

Maryland's statutory criminal law is currently codified in Article 27 of the Annotated Code of Maryland. This volume of the code is currently going through the long-standing nonsubstantive code revision process required by the General Assembly and will eventually be revised into two volumes entitled Criminal Law Article and Criminal Procedure Article. Provisions dealing with criminal procedure are found in both Article 27 and the Courts and Judicial Proceedings Article. Another nonsubstantively revised article, the Correctional Services Article (prepared for introduction in the 1999 session) will contain the law dealing with incarceration and punishment. Completing the nonsubstantive revision of the laws relating to the criminal justice process will be the Public Safety Article, scheduled for introduction at a future session after the General Assembly has acted on the Criminal Law Article and the Criminal Procedure Article. When all of these revised articles are enacted, all of the existing provisions of Article 27 of the code will have been repealed or transferred to other parts of the code.

Common Law

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

Unlike most states, Maryland still retains many common law crimes. Murder, for instance, is a common law crime. Article 27, however, Maryland divides murder into first and second degree murder for punishment purposes. Manslaughter is a common law crime that has a statutory maximum penalty of ten years provided in Article 27. For common law crimes that do not have a statutory penalty, the maximum penalty that may be imposed is life imprisonment, with the limitation that the actual penalty may not violate the constitutional prohibition on cruel and unusual punishment.

Also, inchoate crimes (incomplete crimes) are generally common law crimes. For example, a person who attempts but fails to burn down a building is guilty of the crime of attempted arson. Article 27 prohibits arson, not attempted arson, but the common law prohibits the attempt as well. The maximum penalty for these inchoate crimes is the same as the maximum penalty for the completed crime. Other examples of these inchoate common law crimes include conspiracies (two or more persons planning to commit a crime) and solicitations (one person requesting another to commit a crime).

Felonies and Misdemeanors

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

The following are the practical differences between a felony and a misdemeanor. First, unless a statute specifically provides otherwise, all felonies are tried in the trial courts of general jurisdiction (i.e., the circuit courts) where a defendant has a right to a jury trial. Felonies cannot be tried in the District Court, which is a court of limited jurisdiction. A misdemeanor may be tried before a judge in the District Court. However, if the maximum length of imprisonment is three years or more, or the maximum fine is \$2,500 or more, with the exception of misdemeanor drug possession cases, a misdemeanor may also be tried in the circuit court (where a defendant would have the right to a jury trial). Further, a misdemeanor that has a maximum term of imprisonment of more than 90 days generally permits a defendant to pray a jury trial, thereby removing the case from the District Court to a circuit court for a jury trial. See Chapter 6 for a full discussion on jury trial prayers.

Second, for a felony there is no statute of limitations. A person may be charged at any time with a felony, regardless of when the offense occurred. Unless a statute provides otherwise, a misdemeanor must be charged within one year after the offense was committed. By statute, a prosecution for a misdemeanor that provides that a violator is subject to imprisonment in the penitentiary (a "penitentiary misdemeanor") may be instituted at any time.

In addition, a conviction for a felony also subjects a person to other legal disabilities. A first time felon may not vote in an election until the full time of the sentence has been served, and a second or subsequent felon loses permanently the right to vote. Convicted felons may also be disqualified from obtaining certain State-issued licenses.

Motor Vehicle Offenses

Most motor vehicle offenses are found in the Transportation Article of the Annotated Code. These offenses, which include drunk and drugged driving offenses, are all misdemeanors which subject an individual to criminal penalties (fines and in some cases imprisonment) and administrative penalties (possible license sanctions). Drunk and drugged driving offenses that result in death or life threatening injuries are found in Article 27 and are felonies. For a full

discussion of these issues, see Chapter 3 of this handbook.

Juvenile Law

The prohibitions of the criminal law apply to all persons, regardless of age. The penalties and procedures, however, do not apply to juveniles (individuals under the age of 18 years) unless they are subject to the jurisdiction of the adult court. Provisions of law dealing with juveniles are found in the Courts and Judicial Proceedings Article. For a full discussion of juvenile law, see Chapter 7 of this handbook.

Chapter 2. Crime Rates and Arrest Trends

The Problem

The underlying causes of crime in our society are complex. Although crime rates nationally have begun to flatten out or actually decline in recent years, it is difficult for policymakers to identify precisely why. A number of theories about crime rates have been proposed by experts in various fields suggesting that they are the result of a lack of economic opportunities, education, and job training. Demographics also influence crime rates, especially the number of persons in their teens and twenties who are most likely to commit crimes. Other theories include peer pressure, the breakdown of the family, suburban migration, urban poverty and decay, increased gang activity, and substance abuse.

Although anecdotal evidence exists to support many of these claims, the current data indicates that substance abuse constituted one of the major contributing factors behind criminal activity, spawning crime that is both directly and indirectly influenced by the abuse of legal and illegal substances. Examples of directly influenced crime include possession or sale of controlled dangerous substances and driving while intoxicated. Many other offenses, such as murder, robbery, or motor vehicle theft, may be committed either to support addictions or while under the influence of drugs and alcohol. The available data suggest that recent overall crime rate reductions have mirrored declines in drug use.

Since 1994 some new initiatives by the Maryland State Police and local police agencies have been given some credit for the declines in crime rates in the State. The federal Violent Crime Control and Law Enforcement Act of 1994 provided major new crime fighting monies for State and local governments. With the addition of an increase in State funds (generally provided through the Governor's Office of Crime Control and Prevention and the Cabinet Council on Criminal and Juvenile Justice), Maryland's new initiatives in the area of crime control and prevention have included increased community policing, identification of high-risk offenders, targeting high crime areas (via the "HotSpots" program), and computerization of police reporting methodologies. Fresh efforts have also been aimed at reducing violence against women, increasing seizures of illegal guns, and improving the use and availability of DNA testing. As of June 1998, the federal COPS Program had funded an additional 119 police officers in Maryland. From fiscal 1997 to 1998, total funding (including general, special, and federal funds) for the Office of Crime Control and Prevention has increased by 108.2 percent to \$29.2 million.

Drug use is common among those who are arrested throughout the United States. The National Institute of Justice surveys drug use among offenders arrested in cities across the country. In 1992 the institute's first annual Arrestee Drug Abuse Monitoring report was issued which represented data collection from 24 cities participating in a survey of drug use among arrestees. Although Baltimore City was not a survey participant, the institute's overall findings from 1992 are consistent with analyses of 1990 through 1996 data showing that crack/cocaine use is experiencing pronounced declines in many cities, especially in the Northeast and West Coast. These declines have also been most dramatic among younger arrestees (ages 15 through 20), which suggest lower cocaine initiation rates.

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

Crime Rates

In 1975 Maryland instituted a program to require all local law enforcement agencies to submit standardized crime reports based on the federal reporting system to ensure consistency. Data for the reports is gathered from each agency's record of complaints, investigations, and arrests. The Maryland State Police compile the information by calendar year which is published as the *Uniform Crime Report*. The methodology for these reports follows guidelines and definitions of crimes as provided by the FBI and its national *Uniform Crime Report*.

It should also be noted that the names and definitions of crimes are those used by the FBI and the national *Uniform Crime Report*. Although all these acts are crimes in Maryland, Maryland law may use different terms. For instance, forcible rape in the *Uniform Crime Report* would be either first or second degree rape or first or second degree sexual offense under Maryland law.

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

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

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

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

It is important to understand the difference between offenses committed and persons arrested. Crimes relate to events, and arrests relate to persons. Unlike traffic violations where there is usually one event, one violation, and one offender, a single criminal act can involve several crimes, offenders, and victims. For example, one offender could be responsible for committing a traffic violation, robbery, and murder. In this instance, one arrest is linked to three crimes. Relating specific crimes to a criminal or offense to evaluate characteristics of those arrested is generally beyond the scope of the *Uniform Crime Report*.

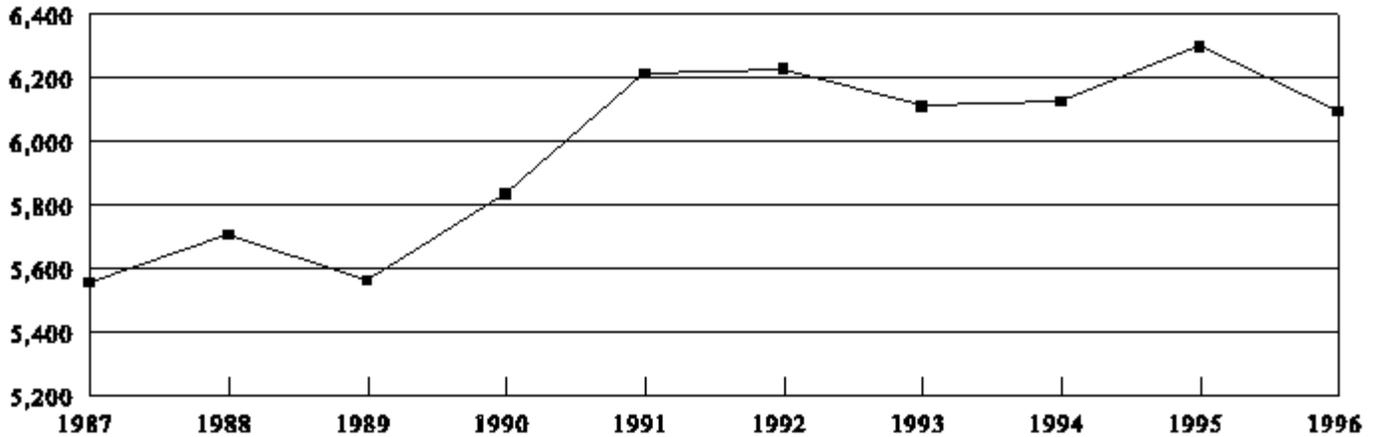
Finally, juvenile crime and arrest statistics, because of their nature, can cause some misunderstanding. Many juvenile offenders are handled informally. As a consequence, inaccurate or incomplete recording of the event or action may result. Procedures for handling juveniles vary between departments more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

Based upon reported offenses, a crime rate is calculated for the number of offenses per 100,000 inhabitants. In 1996 Maryland's crime rate was 6,090 victims for every 100,000 population, a 3 percent decrease from the 1995 rate of 6,294. The 1996 violent crime rate was 931 victims per 100,000 population, a 6 percent decrease from the 1995 rate of 987. Property crime had a rate of 5,159 victims, a 3 percent decrease from 1995 (5,307). As seen in Exhibit 2.1, the statewide crime rate for Part I offenses remained relatively stable in the late 1980s. Significant growth occurred from calendar 1989 to 1991, when the rate increased from 5,500 offenses to 6,200 offenses. In calendar 1992 the rate stabilized again, with noticeable drops in 1993 and 1996 surrounding a slight rise in 1995.

Exhibit 2.1
Maryland Crime Rate Trends

Offenses per 100,000 of Population

CY 1987 - 1996



Source: 1996 *Uniform Crime Report*, Maryland State Police

Drug Arrests

Although the *Uniform Crime Report* does not provide information concerning drug offenses, it does provide information concerning arrests. Arrests for the sale and manufacture of drugs have decreased slightly from almost 12,700 in 1992 to less than 12,300 in 1996. However, arrests for possession have fluctuated, and there may actually be an upward trend since possession arrests have risen from 19,100 in 1992 to 24,300 in 1996. These numbers are reflective of continuing efforts to curtail the sale and distribution of controlled dangerous substances.

Offense Trends

Calendar year trends in each of the eight reported Part I offense areas are discussed in further detail. Offense trends over the most recent four-year period for which there is complete data (1993 through 1996) are compared with similar occurrences from 1989 through 1992. Increases in the number of offenses over the four years from 1993 through 1996 compared to 1989 through 1992 were experienced in only the categories of larceny-theft and motor vehicle theft. Interestingly, the number of offenses for all Part I offenses grew by nearly 2 percent, while the rate per 100,000 of population for all such offenses has actually decreased by less than 1 percent.

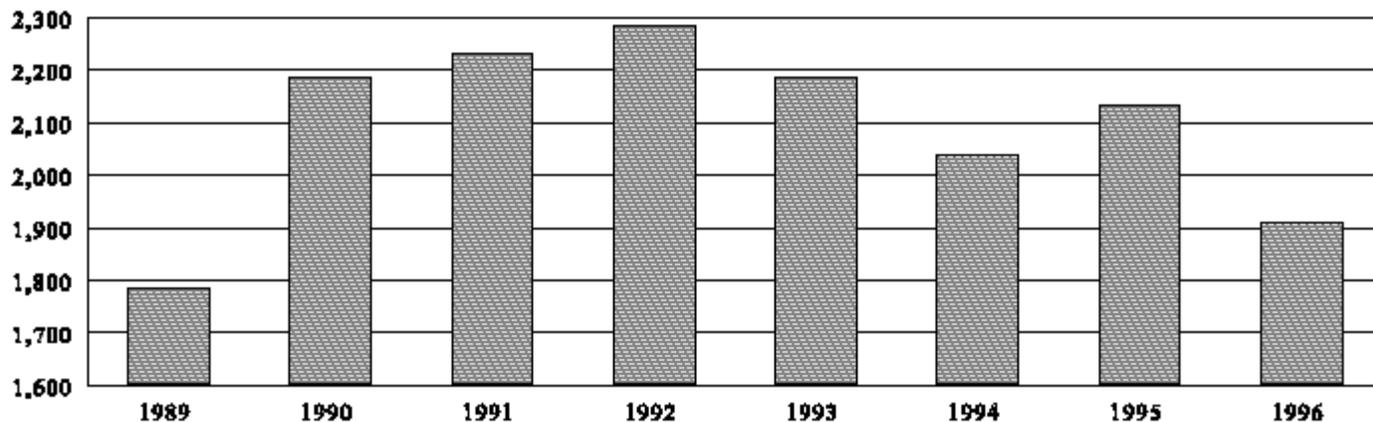
At the time this document was prepared, complete *Uniform Crime Report* data for calendar 1997 was not available. Arrest totals for calendar 1996 are included in the text in order to provide an indication of the magnitude of arrests relative to the number of offenses within each category.

Rape

From 1989 through 1992 the number of reported rape offenses rose an average of 3.2 percent annually, from 1,783 to 2,280 reported cases (see Exhibit 2.2). From 1993 through 1996 there has been an average annual decline of 3.6 percent to 1,907 offenses. In 1996, 687 persons were arrested for rape.

Offense Trends

Rape



Source: 1996 Uniform Crime Report, Maryland State Police

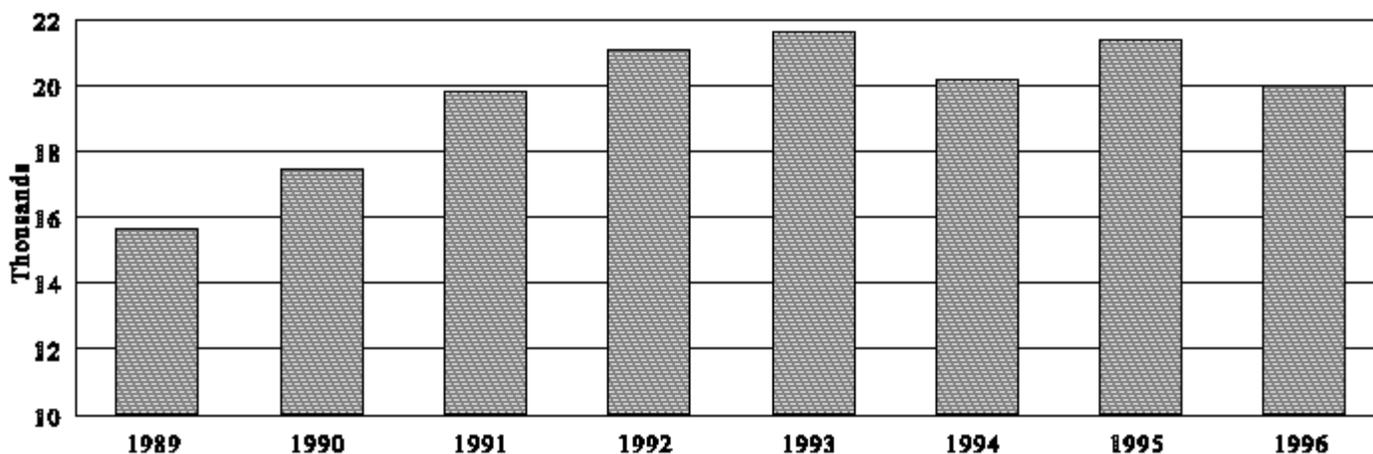
Robbery

Robbery is defined as the taking, or attempting to take, anything of value by force. The number of robberies rose from 15,584 in 1989 to 21,054 in 1992; an average annual increase of 3.4 percent (see Exhibit 2.3). This category declined by 2.1 percent annually over the last four years, from 21,580 to 19,935 offenses. In 1996, 4,686 persons were arrested for robbery.

Exhibit 2.3

Offense Trends

Robbery



Source: 1996 Uniform Crime Report, Maryland State Police

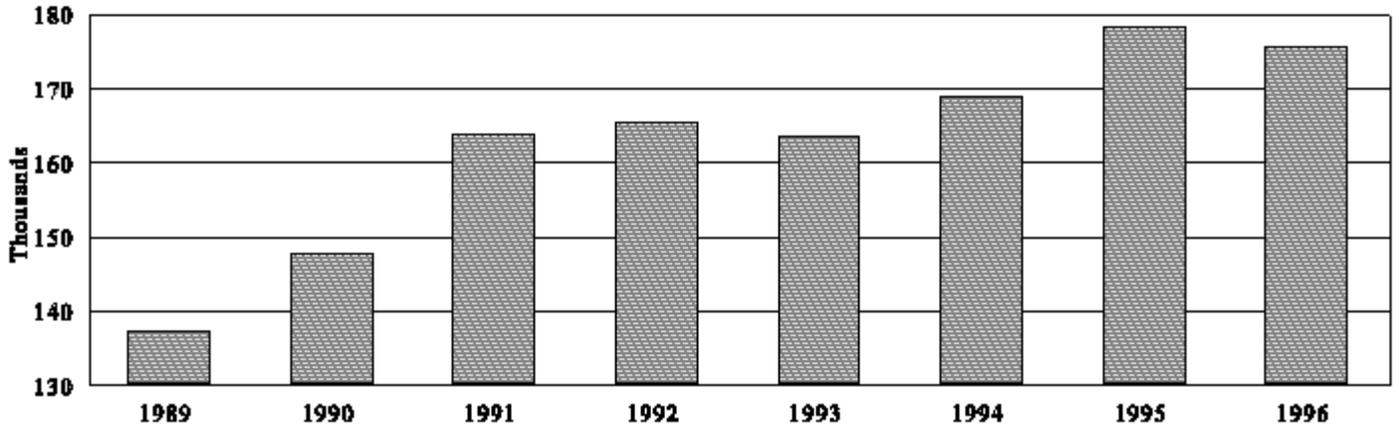
Larceny-Theft

Larceny-theft is the unlawful taking of property from the possession of another person. The number of offenses of larceny-theft reported has increased annually by an average of 3.0 percent for the 1989 through 1992 period. From 1993 through 1996 the average annual increase was 0.3 percent (see Exhibit 2.4). There were 175,283 reported offenses for larceny in 1996, and 30,448 arrests.

Exhibit 2.4

Offense Trends

Larceny-Theft



Source: 1996 Uniform Crime Report, Maryland State Police

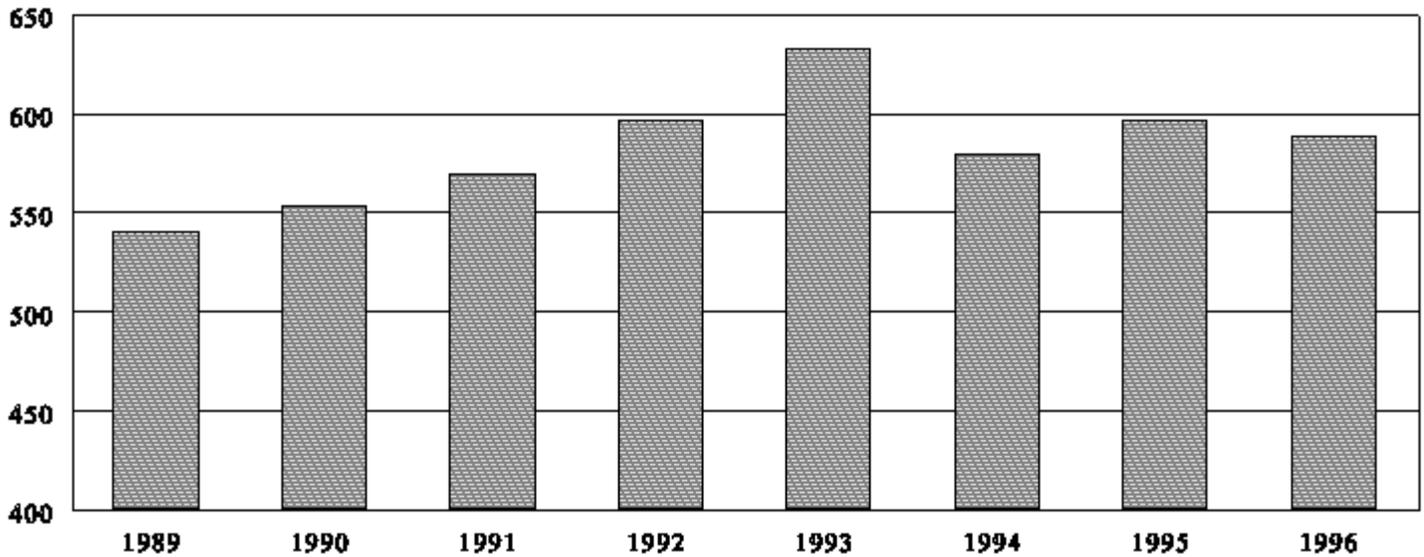
Murder

In 1996, 588 murders were reported to law enforcement agencies in Maryland. This is a decline of 44 murders from the all time high of 632 reported in 1993, an average annual decrease of 1.9 percent (see Exhibit 2.5). However, even though this is notably different than the 2.6 percent annual increase in murders reported for the period 1989 through 1992, the number of murders annually has hovered statistically near 600 since 1990.

In 1996 a majority of the victims (479 or 81 percent) were African-American. Drug related murders declined from 11 percent in 1995 to 8 percent in 1996. Family related murders increased by 68 percent (over 1995). Handguns were used in 69 percent of the reported murders in 1996, which is a 3 percent increase over 1995. Most murders occurred in either Baltimore City (333 or 57 percent) or Prince George's County (142 or 24 percent).

Exhibit 2.5
Offense Trends

Murder



Source: 1996 Uniform Crime Report, Maryland State Police

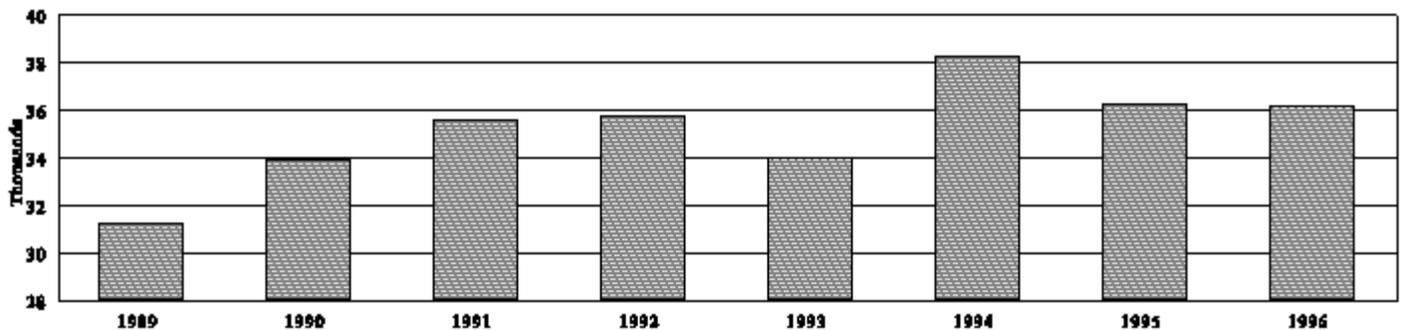
Motor Vehicle Theft

In 1996, 36,076 motor vehicle thefts were reported. This represents a 1.6 percent rate of annual growth since 1993. However, this number also represents a 0.3 percent decrease from 1995. From 1989 through 1992, motor vehicle theft offenses rose 0.3 percent annually (see Exhibit 2.6). There were 6,162 persons arrested in Maryland for motor vehicle theft during 1996. Of the vehicles reported stolen in 1996, a total of 26,270 (73 percent) were recovered.

Exhibit 2.6

Offense Trends

Motor Vehicle Theft



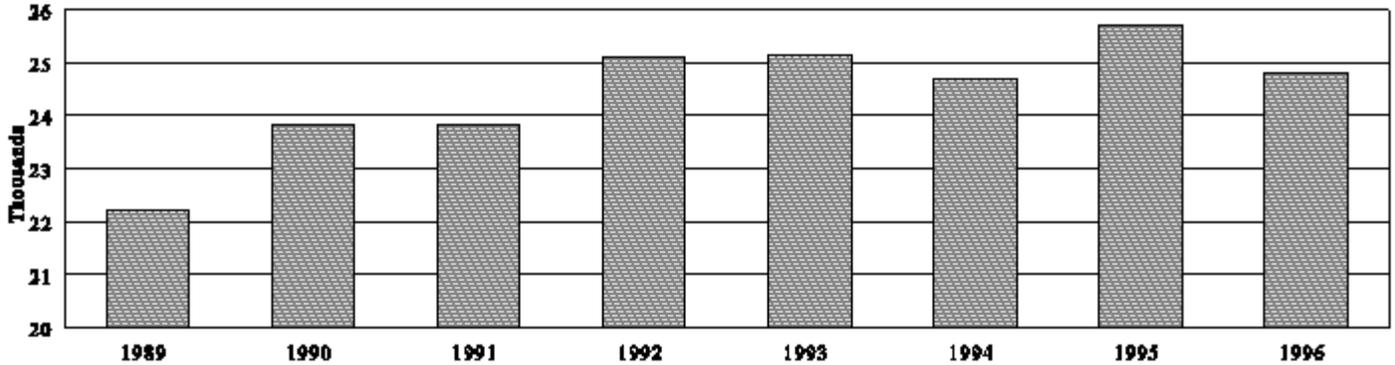
Source: 1996 Uniform Crime Report, Maryland State Police

Aggravated Assault

Aggravated assault is the unlawful attack by one person upon another for the purpose of inflicting severe bodily injury. During 1996 there were 24,798 aggravated assaults reported, a .37 percent average annual decline since 1993 (see Exhibit 2.7). Between 1989 and 1992, there was an annual growth rate of 0.3 percent. In 1996, 5,041 (20 percent) of the aggravated assaults were committed with the use of a firearm, down from a high in 1993 of 6,211. Arrests for aggravated assault totaled 8,058 in 1996.

Exhibit 2.7

Offense Trends Aggravated Assault



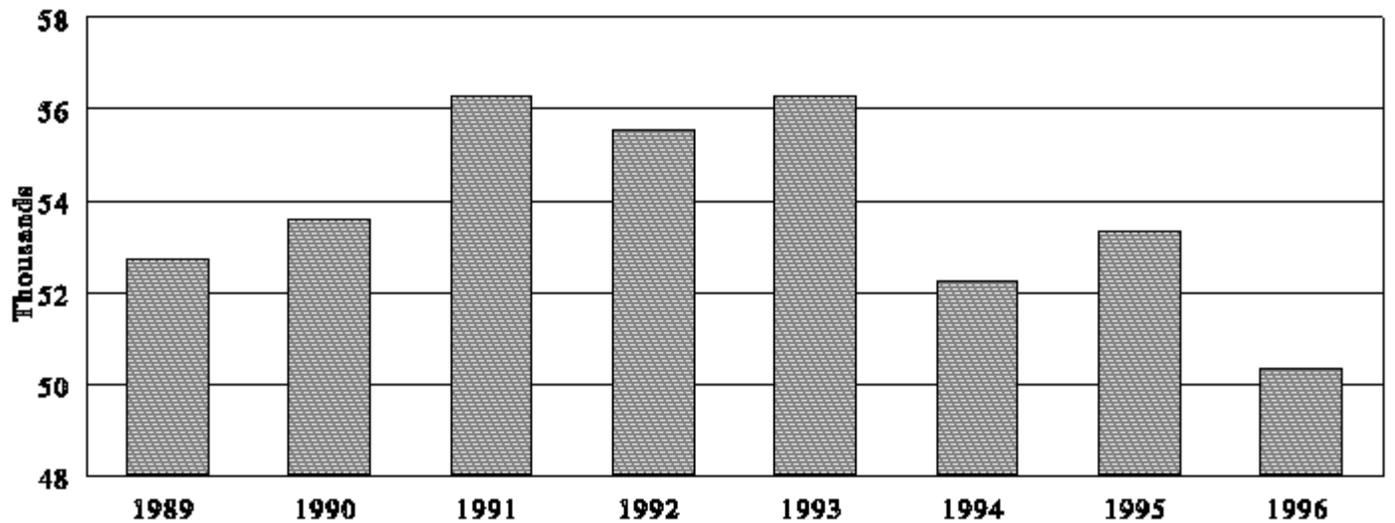
Source: 1996 Uniform Crime Report, Maryland State Police

Burglary

Burglary, defined as the unlawful entry of a property to commit a felony or theft, has remained relatively stable over the last ten years. However, from 1993 through 1996 reported offenses decreased from 56,237 to 50,316 cases (see Exhibit 2.8). Approximately 70 percent of burglaries involved forcible entry, and 65 percent of the offenses were committed in a residence. The average dollar value loss during 1996 was \$1,148. In 1996, 8,758 individuals were arrested for burglary.

Exhibit 2.8

Offense Trends Burglary

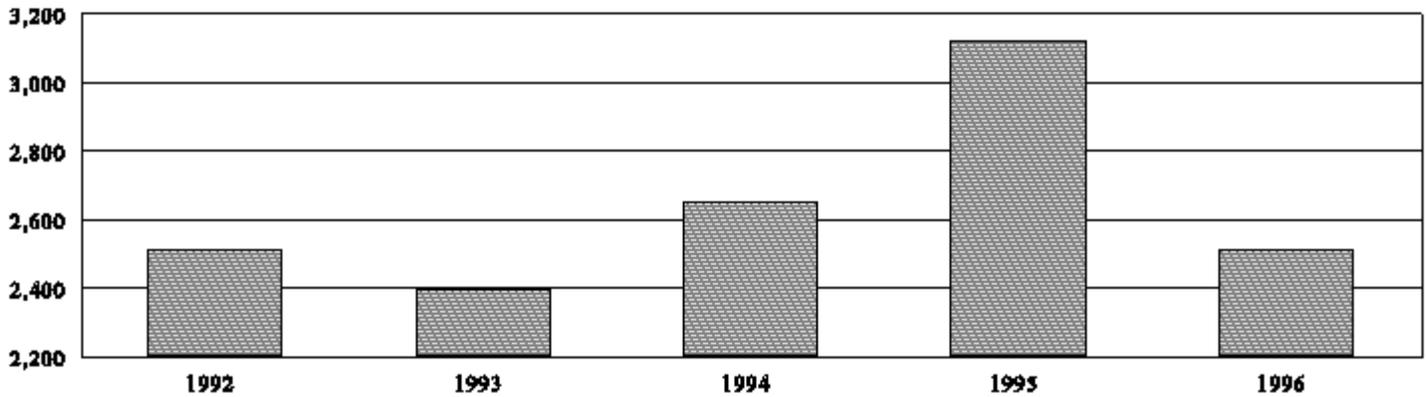


Source: 1996 Uniform Crime Report, Maryland State Police

Arson

In 1996 there were 2,509 incidents of arson reported, down 20 percent from a five-year high in 1995 (3,119) (see Exhibit 2.9). The five-year average (1992 through 1996) was 2,637. In 1996, 43 percent of all incidents of arson targeted structures, and of these structures, 56 percent were residences. Reflecting the difficulty of identifying the perpetrators, there were 548 persons arrested for arson in 1996.

Exhibit 2.9
Offense Trends
Arson



Source: 1996 Uniform Crime Report, Maryland State Police

Arrests

Each State, county, and municipal law enforcement agency is required to submit monthly reports for the number of persons arrested for crimes that have occurred within its jurisdiction. The arrest report shows the age, sex, and race of those arrested and the disposition of juveniles by the arresting agency. Traffic arrests, except for drunk and drugged driving, are not reported. In 1995 there were 286,831 arrests. A total of 275,473 arrests for Part I and Part II criminal offenses were reported during calendar 1996, representing a 4 percent decrease. The arrest rate per 100,000 population for 1996 was 5,431.3, representing a 5 percent decrease from the 1995 rate of 5,688.8.

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

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

During calendar 1996, 22 percent of all reported arrests were for Part I offenses. The majority of arrests were for larceny which accounted for 51 percent of the total for Part I offenses. Almost one-half of all Part II offenses were comprised of arrests made under the categories of drug abuse, disorderly conduct, drunk and drugged driving, violations of liquor laws, and assaults.

Aggregate Arrest Trends

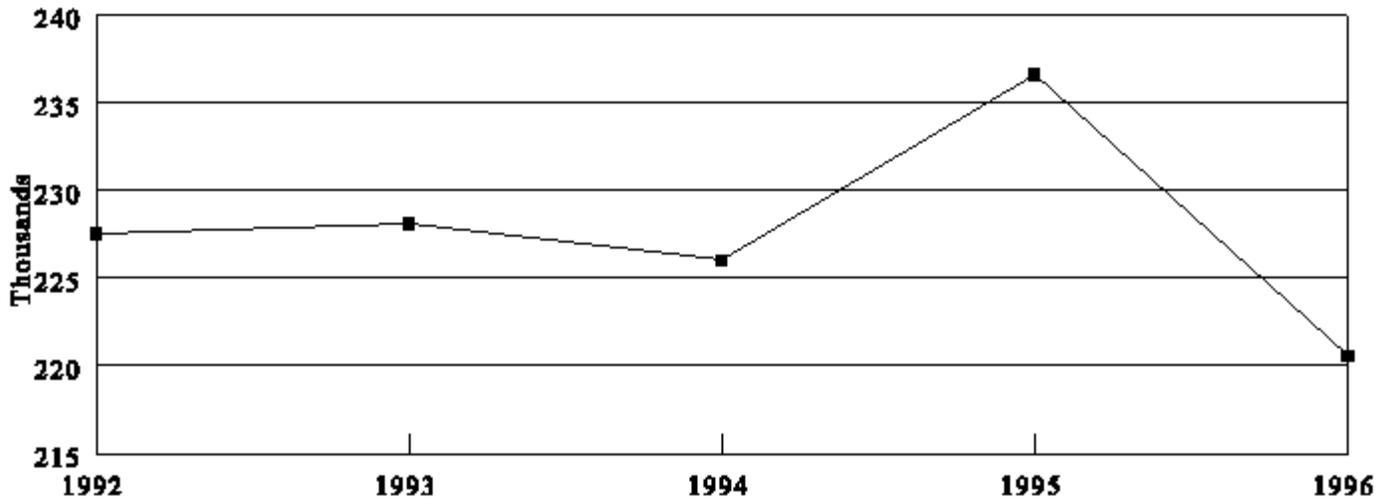
From 1992 through 1994 total adult arrests remained fairly constant, averaging 227,150 arrests. In 1995 this number

rose to over 236,500, but in 1996 dropped sharply to about 220,500 (see Exhibit 2.10).

Exhibit 2.10

Adult Arrest Trends

1992 - 1996



Source: *1996 Uniform Crime Report*, Maryland State Police

There are three reasons that help explain why adult arrest activity has currently stabilized and even declined. First, criminal activity is generally on the decline. Second, the economy has been on an up-turn for several years. Finally, drug use by the adult population has declined and the population of habitual users has aged.

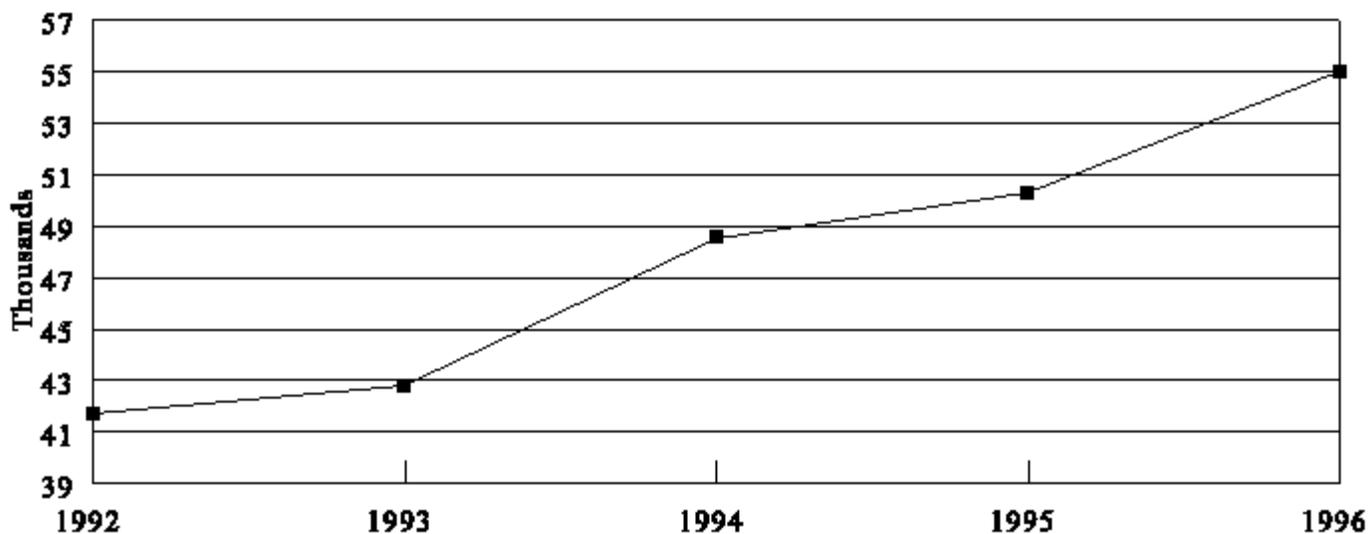
Juvenile arrest trends over the last ten years exhibited a nearly opposite pattern in comparison to adult arrests. From 1984 through 1990 these arrests remained at a level of approximately 38,000. As Exhibit 2.11 shows, however, by 1993 juvenile arrests increased to nearly 43,000. Juvenile arrests have continued to rise (from 41,694 in 1992 to 54,965 in 1996) at an average annual rate over the last five years of almost 8 percent.

This increase is in part due to the Maryland Department of Juvenile Justice having established an automated system for tracking juvenile offenses and arrests in 1991. Whether this trend continues deserves close scrutiny.

Exhibit 2.11

Juvenile Arrest Trends

CY 1992 - 1996



Source: 1996 Uniform Crime Report, Maryland State Police

Management Information Systems

The advent of automated technologies has assisted law enforcement efforts in the apprehension and tracking of offenders as well as the management of supervised and incarcerated caseloads.

The Department of Public Safety and Correctional Services is moving the management of supervised and incarcerated offender caseloads under the umbrella of an integrated Corrections Information System (CIS) using advanced offender identification and tracking technologies implemented by the department's Information Technology and Communications Division.

The Arrest Booking System, the cornerstone of the Corrections Information System, is an enhanced arrest intake process being implemented throughout Maryland. The system is designed to capture significant amounts of offender data in order to electronically populate numerous offender sub-systems. The booking system is currently in use in Baltimore City and Harford and Frederick Counties; expansion is planned at the rate of two counties per year.

The department's Arrest Booking System relies on linkages between four primary automated systems:

- Fingerprint-based identification is provided by the Maryland Automated Fingerprint Identification System (MAFIS), which digitizes fingerprints for electronic storage and identification. The Maryland Automated Fingerprint Identification System is linked to the offender's State Identification (SID) number which will become the offender's universal identification number in Maryland's correctional system.
- Part of the comprehensive electronic data collection which the system initiates at intake is the Central Image Repository System (CIRS). This image system creates a digitized "mug shot" of the offender which is placed in a central electronic repository immediately available to all Arrest Booking System sites for investigative purposes.
- Tied to each offender's identification number is the Arrest/Disposition Report (ADR), which is how Maryland records each offender's Computerized Criminal History (CCH). This, in turn, creates the Maryland "RAP" Sheet (*Report of Arrest and Prosecution*) which presents a cumulative record of an offender's criminal history of "reportable events," such as arrests, convictions, incarcerations, etc., as defined by statute.

- When the Maryland Statewide Warrant System (MSWS) is implemented, the Arrest Booking System will be electronically linked with it. The booking system will positively establish an offender's identification (via Maryland Automated Fingerprint Identification System), pick up any alias names (via Arrest/Disposition Report/Computerized Criminal History), and then perform an automatic search on the statewide warrant system for outstanding warrants for the offender. The agency that placed the warrant will be electronically notified that the wanted offender has been arrested.

The seamless design of the Corrections Information System, as its structure is envisioned, is based on the electronic database initiated by the Arrest Booking System. Thereafter, as the offender moves through the correctional continuum, repetitive data entry will be eliminated and emphasis will be placed on creating a substantive offender database for instant and historical reference. The multiple "intake" processes currently utilized by the various agencies within the department will be reorganized and streamlined into a single admission component. Building incrementally from that point will be the two other complementary departmental and informational components - incarceration and community supervision - each supported by significant management information systems.

Maryland's advances in information technology systems are helping to set standards for the nationwide integration of criminal justice information, as exemplified in the Interstate Identification Index (III), the National Instant Check System (NICS) for firearms purchases, and the National Sexual Offender Registry (NSOR), among others.

Chapter 3. Motor Vehicle Offenses and the Court System

Procedures and penalties for motor vehicle law offenses may consist of criminal offense components such as convictions, fines, and incarceration, as well as administrative components such as assessment of points, revocation or suspension of driving privileges, and civil penalties. Offenses may range from violations of local parking ordinances and minor traffic violations charged by citation to drunk driving and homicide by motor vehicle.

Interaction of Judicial Process with Administrative Process

Judicial Process

If an individual violates the Maryland Vehicle Law (as the collection of vehicle related statutes is known), the individual may be subject to arrest or charged by a citation issued by a police officer. A police officer may make a warrantless arrest if a person commits certain serious violations such as hazardous material or vehicle weight offenses committed in the presence of the officer, or if the officer has probable cause to believe that a person has committed certain other serious offenses such as driving while intoxicated or under the influence of drugs or alcohol.

A police officer may also issue a citation charging a person with certain offenses if the officer has probable cause to believe that the person has committed an offense such as a moving violation. A citation may be issued for any State vehicle law offense or any traffic law or ordinance of any local government in the State. A citation must include a notice to appear in court, the name, address, and driver's license number of the alleged violator, the vehicle registration number, and the violation charged.

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

There was a slight increase in the number of motor vehicle cases filed in the District Court between fiscal 1996 and 1997. Of the 962,322 motor vehicle cases processed in fiscal 1997, approximately 301,100 cases were tried, 548,750 tickets were paid, and 112,457 had other dispositions (i.e., *nolle prosequi* dispositions, stet dispositions, or jury trial prayers). Just under two-thirds of all motor vehicle violators pay the traffic tickets rather than appear in court. This figure does not reflect the number of drivers charged because often multiple citations are given in situations.

If a person fails to comply with a notice to appear in a citation, the court may either issue an arrest warrant for the person or notify the Motor Vehicle Administration of the person's noncompliance. A person may comply with a notice to appear by appearance in person for trial, appearance by counsel, payment of a fine (if provided for in the citation), or appearance for a hearing before the court for sentencing and disposition in lieu of trial. If the person fails to pay the fine or post bond for a new trial or hearing date after notification from the administration, the administration may suspend the person's driving privileges. If a person appears in court pursuant to an arrest or citation, the venue will be the District Court in the county in which the offense occurred.

Criminal Penalties

Generally, violations of the provisions of the Maryland Vehicle Law are misdemeanor offenses, unless the offense is specifically classified to be a felony offense or if the offense is punishable only by a civil penalty as required under law. Most violations are punishable only by a fine. Certain offenses are punishable by a fine as well as a potential maximum term of imprisonment.

Administrative Process

As a traffic offense is processed through the judicial system, there is also an administrative process that may be

initiated through the Motor Vehicle Administration that could affect the driving privileges or vehicle of the offender.

The Maryland District Court and the Judicial Information Systems of the Administrative Office of the Courts have developed a computerized technique, known as the Maryland Automated Traffic System (MATS), for processing the thousands of motor vehicle citations issued in Maryland each year. All information concerning the disposition of motor vehicle citations, whether occurring as a result of trial or by the defendant's election to waive trial and pay the preset fine, is forwarded directly from the Judicial Information Systems computer to the computer at the administration. This system facilitates the inclusion of conviction data in driver records.

The administration has the authority to suspend, revoke, or refuse to issue or renew the license of any person under certain circumstances such as for multiple moving violations that indicate an intent to disregard the traffic laws and safety of others; for unfit, unsafe, or habitually reckless or negligent driving; and for several other specific offenses. The General Assembly has established a "point" system to determine suspension or revocation of drivers' licenses for certain offenses. For most minor moving violations, one point is assessed against the driver's license. For more serious offenses, the General Assembly has mandated that a greater number of points be assessed. For example, speeding in excess of the posted speed limit by 10 mph or more is a two point offense, while speeding by 30 mph or more is a five point offense. Driving while under the influence of alcohol is an eight point offense, while driving while intoxicated is a 12 point offense. Points assessed against a person's license remain on the record for two years from the date of the violation.

The accumulation of a certain number of points within a two-year period may have several different effects on the status of a person's license. For example, a warning letter is sent from the administration to each person who accumulates three points within a two-year period, and a conference or training session may be required for a person who accumulates five points. The administration must suspend the license of any person who accumulates eight points and must revoke the license of a person who accumulates 12 points. An individual may request a hearing before the Office of Administrative Hearings concerning a suspension or revocation. If an Administrative Law Judge finds that a suspension or revocation would adversely affect individuals employment, the judge may cancel the suspension or revocation or issue a work-restricted license.

Drunk and Drugged Driving

Current law prohibits a person from driving or attempting to drive any vehicle while intoxicated, driving while "intoxicated per se," or driving under the influence of alcohol, drugs, or controlled dangerous substances. The specific offense and the severity of the sanction are most often determined through blood or breath testing which measures the amount of alcohol in the system at the time of testing.

Under law, an individual is deemed to be "intoxicated per se" if an alcohol test result indicates blood alcohol concentration (BAC) of 0.10 or more as measured by grams of alcohol per 100 milliliter of blood, or grams of alcohol per 210 liters of breath. Since driving with a 0.10 blood alcohol concentration is a per se offense, the focus of a prosecution is limited to whether or not a person had an alcohol concentration of 0.10 at the time of testing. Any other factor or evidence unrelated to whether the individual was the driver and the individual's blood alcohol concentration that might be raised by the defendant are not considered in determining guilt or innocence.

If an alcohol test for an individual indicates a blood alcohol concentration of at least 0.07, but less than 0.10, the test is prima facie evidence that the individual was driving while under the influence of alcohol. If an individual has a blood alcohol concentration above 0.05, but less than 0.07, there is no presumption that the individual is intoxicated or under the influence of alcohol, but the blood alcohol concentration may be considered with other competent evidence in determining if one of the offenses has occurred. Finally, if an individual has a blood alcohol concentration of 0.05 or less, there is a presumption that the individual was neither intoxicated nor under the influence of alcohol.

Even if an alcohol test is not used or is unavailable, a person may be found by a jury to be "intoxicated" or "under the influence of alcohol" based on other sufficient evidence, including the personal observations by a witness or law enforcement officer of the accused's behavior. The evidence may consist of the defendant's erratic driving, odor of alcohol, and poor performance of various road-side tests.

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

In fiscal 1997 there were 33,387 charges for drunk and drugged driving. This is an increase of 12 percent over fiscal 1994 when there were 29,826 charges.

Exhibit 3.1 shows the number of total highway deaths and the number of highway deaths in which alcohol was a contributing factor from calendar 1981 through 1997.

Exhibit 3.1
Highway Fatalities and Alcohol Involvement
CY 1981 - 1997

Year	Total # of Traffic Fatalities	Fatality Rate (Fatalities per 100 Million Vehicle Miles)	% in Which Alcohol a Contributing Factor	Fatalities in Which Alcohol a Contributing Factor
1997	608	1.3	33%	201
1996	608	1.3	36.3%	221
1995	677	1.5	18.5%	125
1994	651	1.5	16.6%	108
1993	672	1.57	39.6%	266
1992	664	1.5	34.5%	229
1991	708	1.7	32.5%	230
1990	727	1.77	44.5%	324
1989	750	1.9	42.3%	317
1988	794	2.1	38%	301
1987	830	2.3	37%	309
1986	790	2.24	46%	361
1985	740	2.19	48%	355
1984	650	2	48.9%	317
1983	663	2.15	53%	351
1982	660	2.2	49.9%	329
1981	793	2.7	63%	500

Source: Maryland State Police; State Highway Administration; Department of Legislative Services

Criminal Penalties

A first offense of driving while intoxicated or intoxicated per se is punishable by up to a \$1,000 fine and imprisonment for up to a year. Subsequent offenses may subject the offender to a fine of up to \$3,000 and imprisonment for up to three years and, if committed within three years of the first offense, subject the offender to a mandatory minimum penalty of 48 hours of imprisonment or 80 hours of community service. Driving under the influence of alcohol, under the influence of drugs, or under the influence of a controlled dangerous substance are punishable by up to a \$500 fine and imprisonment up to two months. A person convicted of a subsequent offense of driving under the influence of

alcohol is subject to imprisonment for up to a year.

Additionally, a conviction of driving while intoxicated or driving while under the influence of alcohol qualifies as a prior offense for the purpose of imposing penalties for the subsequent convictions of either driving while intoxicated or driving while under the influence of alcohol. In addition, there are enhanced penalties for committing these offenses while transporting a minor.

Other criminal sanctions may relate to drunk driving offenses. Manslaughter by motor vehicle is causing the death of another as the result of the driving, operation, or control of a vehicle in a grossly negligent manner. This is a felony punishable by a maximum of ten years in prison and a \$5,000 fine.

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

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

Administrative Per Se Sanctions

Independent from the outcome of a court proceeding, if a licensed driver takes a breath or blood test that indicates an alcohol concentration of 0.10 or more, the Motor Vehicle Administration is required to suspend the person's driver's license for 45 days for a first administrative per se offense and 90 days for a subsequent offense. If a person refuses to take a test, the administration must suspend the driver's license for 120 days for a first administrative per se offense and one year for subsequent offenses. This automatic license suspension provides a disincentive to refuse to take a blood or breath test to determine alcohol levels. These sanctions are usually imposed prior to any trial and even if the defendant is not convicted of the criminal offense.

Post-Conviction Administrative Sanctions

The Motor Vehicle Administration may revoke, suspend, or restrict the license of the offender who is convicted of a drunk or drugged driving offense. The administration may revoke the license of a person convicted of driving while intoxicated or intoxicated per se or while under the influence of a controlled dangerous substance. The administration may suspend for not more than 60 days the license of a person convicted of driving while under the influence of alcohol or drugs. Subsequent offenders are subject to longer terms of suspension and to revocations by the administration.

Sanction and Treatment Programs

Drinking Driver Monitor Program

The Drinking Driver Monitor Program is a specialized program for persons convicted of driving while under the influence of alcohol or drugs or driving while intoxicated. The program emphasizes abstinence from alcohol and other drugs, alcohol education and treatment, and rehabilitation. Offenders may be referred to the program through special conditions established by court ordered probation, including abstinence, or through assignment by the Motor Vehicle Administration as a condition for reinstating a motor vehicle license after it has been suspended or revoked.

Offenders assigned to the program must report within 72 hours of sentencing. At that time, offenders are notified of the conditions of probation and assigned to a weekly reporting location and a probation officer known as a monitor. The

monitors verify lawful conduct of the offender through periodic criminal and motor vehicle record checks and collect fines, costs, and court ordered restitution.

If an offender does not report, violates the conditions of probation, or displays unlawful conduct, the monitor will notify the court or administration within ten days. The monitor will provide testimony and possible recommendations at court hearings on violation of probation charges.

Other Programs

The State, along with many counties, has established other programs that include probation with home detention and electronic monitoring and ignition interlock restrictions for drinking drivers. These programs give judges more sentencing options for repeat or serious offenders.

An ignition interlock system is a device that connects a motor vehicle ignition system to a breath analyzer that measures a driver's blood alcohol level and prevents the ignition from starting if the driver's blood alcohol level exceeds the device's calibrated setting. The law prohibits tampering with or attempting to circumvent the use of an ignition interlock system, for example, by having another person attempt to start the ignition.

Chapter 4. Commencement of the Criminal Justice Process

The criminal justice process begins when a person commits a crime that is observed by or reported to the police or other law enforcement officers. This is followed either by a warrantless arrest or by the issuance of a charging document. This chapter will discuss these processes.

Arrests

An arrest is the detention of a suspected offender for the purposes of potential criminal prosecution. An arrest may be made either after the issuance of an arrest warrant subsequent to a charging document or without a warrant.

Despite the general requirement that a warrant be issued on probable cause by a judge or commissioner in order to make an arrest, the exception to this rule applies to law enforcement officers who may make warrantless arrests when:

- the crime was committed in an officer's presence;
- an officer has probable cause to believe that a felony was committed or attempted even though the crime did not occur in the officer's presence or view; or
- an officer has probable cause to believe that the crime committed is one of a limited number of misdemeanors even though the crime was not committed in the officer's presence.

In addition, although rarely used, an individual has authority under the common law to make a citizen's arrest if the individual witnesses a felony or a misdemeanor giving rise to a breach of the peace.

Charging Documents

Most criminal charges are initiated from a citizen reporting a crime, by the police from direct observation, or from investigation and intelligence work by a law enforcement agency. Regardless of whether an individual is arrested, the issuance of a charging document formally initiates the criminal process. A charging document is a written accusation alleging that the defendant has committed a criminal offense. Charging documents may come in the form of a citation filed by a law enforcement officer, in a statement of charges filed by a law enforcement or judicial officer, on information filed by a State's Attorney, or in an indictment returned by a grand jury. Serious felony offenses that are typically tried in a circuit court are usually charged by information filed by a State's Attorney or result from a grand jury indictment initiated by the State's Attorney, the Attorney General, or the State Prosecutor.

A charging document must contain the name of the accused, a concise and definite statement of the essential facts of the offense charged, and the time and location of the offense. The charging document must also cite the statute or other law violated at the end of each charge or count and must explain the rights of the accused, including the right to counsel.

This section will discuss the four types of charging documents: citations, statements of charges, informations, and indictments.

Citations

A citation is a charging document filed by a law enforcement officer with the District Court. Citations are generally used to charge petty or other relatively minor offenses. Citations may only be used to try offenses in District Court, unless the accused is entitled to and demands a jury trial for the offense in circuit court.

Citations are often issued by law enforcement officers for petty offenses committed in their presence. Usually an individual who is charged by citation is not arrested. Rather, a citation contains a command to the defendant to appear

in court when notified to do so. The defendant is required to sign the citation. The advantage of a citation is that it allows the law enforcement to charge an individual who has committed a minor offense, but does not require the officer and the individual to go through the arrest process when it is likely that the person charged will appear in court.

Most motor vehicle offenses are charged by means of a citation. Citations for minor motor vehicle offenses allow a defendant to pay a fine, which is a guilty plea and disposition, in lieu of appearing in court to contest the charge.

Statements of Charges

A statement of charges is a charging document, other than a citation, that is filed with the District Court by a law enforcement or judicial officer. A statement of charges is prepared by a law enforcement officer following the warrantless arrest of an individual. A law enforcement officer may also apply for the issuance of a statement of charges when the offender is not in custody but the law enforcement officer has probable cause to believe that a crime was committed. An individual who has probable cause to believe that another has committed a crime may also apply for the issuance of a statement of charges. The application is submitted to a judicial officer who decides whether probable cause exists to file a charging document against an individual. The judicial officer may be a judge but is most likely to be a District Court commissioner who is a judicial official available 24 hours a day. As with a citation, a statement of charges may only be used to try offenses in District Court, unless the accused is entitled to and demands a jury trial for the offense in circuit court.

Charging by Information of the State's Attorney

An information is a charging document filed in a court by a State's Attorney. Charging by information is similar to the statement of charges procedure discussed above, except the charges are brought before a circuit court or the District Court by the State's Attorney. Any offense within the jurisdiction of the District Court may be tried on an information in the District Court. A defendant may be tried in a circuit court by information if the offense is: a misdemeanor (provided that the circuit courts have jurisdiction);

a felony that is within the concurrent jurisdiction of the circuit courts and the District Court; or

any other felony or lesser included offense if the defendant consents in writing to be charged by information, the defendant has been charged and a preliminary hearing was held that resulted in a finding of probable cause, or the defendant waived the right to a preliminary hearing.

Indictment by Grand Jury

A State's Attorney may seek to have the accused charged by grand jury indictment, usually in the case of a felony offense that would be tried in circuit court. A defendant who is indicted by a grand jury is not entitled to a preliminary hearing, since the grand jury makes the determination whether there is probable cause that the defendant committed the offense.

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

A grand jury consists of 23 members with an affirmative vote of 12 required to indict. The frequency of meeting and the term length varies by jurisdiction. In Baltimore City, for example, grand juries usually meet five days a week for four months. The pool of jurors is selected at random from the list of registered voters or any alternative system a county may adopt for selection of jurors (e.g., through motor vehicle records of licensed drivers). In this respect, the selection of grand jurors is no different from the selection of petit jurors for a trial jury. Members of the grand jury are interviewed, and the foreman is selected by the circuit court jury commissioner.

Like petit jurors (jurors who serve in jury trials), grand jurors may not be fired by their employers because of missing work time due to service on a grand jury; may not be discriminated against due to race, color, religion, sex, national origin, or economic status; are compensated for service as provided in the State law; and may be excused or

resummoned. Unlike petit jurors whose term is up when the trial they are deciding is over, grand jurors usually serve for a pre-determined amount of time. The time can be extended, however, so that the grand jury may complete any investigation started.

Summons or Arrest Warrant

Except for warrantless arrests for crimes committed in the presence of a law enforcement officer, the charging document does not by itself give the court jurisdiction over a person. After approving the issuance of a charging document, a judge or commissioner must decide whether to issue an arrest warrant or a summons to appear.

A summons that requires an individual to appear for trial at a certain time, rather than a warrant that requires an individual to be taken into custody by a law enforcement officer, may be issued for less serious offenses or under certain circumstances where there is little risk that a defendant will not appear for trial.

A warrant is always served on the defendant by a law enforcement officer, while a summons may be mailed to the defendant rather than served personally. A copy of the charging document always accompanies the warrant or summons.

Chapter 5. Pretrial Procedure

This chapter discusses procedures that occur after charges are filed and before trial.

Police Procedures

After arrest, the police will "book" the defendant. In criminal cases the booking process includes fingerprinting, photographing, and pulling the RAP sheet (Report of Arrests and Prosecutions) on the defendant if he or she has a prior criminal record. The arrest and booking process places the defendant into or updates the Criminal Justice Information System (CJIS) record of the defendant.

Initial Appearance and Bail Review

Following arrest, a defendant is brought to an initial appearance before a judicial officer, usually a District Court commissioner, to notify the defendant of the charges and to determine the defendant's eligibility for pretrial release and any bail or other terms of release. If the defendant is ordered not to be released or is unable to meet the costs of release on bail, the defendant is entitled to a bail review hearing within 24 hours of the initial appearance, at which a judge will review the case to determine whether the terms of release should be altered. If applicable, the judicial officer shall also advise the defendant of the right to a preliminary hearing to determine if probable cause exists to proceed to trial.

Right to Counsel

A law enforcement officer is required to advise a defendant of the right to counsel (i.e., a lawyer) at the time of arrest (one of the so-called *Miranda* warnings). A defendant also will be advised of the right to counsel by the judicial officer at the initial appearance. Notice of this right is included on the charging document. The judicial officer then will inquire if the defendant can afford to hire counsel. If the defendant indicates that he or she cannot afford counsel, the judicial officer will refer the defendant to the clerk of the court for assistance in applying for representation by a public defender.⁽¹⁾ The judicial officer will also inform the defendant that counsel is to be obtained before the court date and that if the defendant appears at trial without counsel, the court may determine that the defendant had adequate time to obtain counsel. The court may then rule that the defendant has waived the right to counsel and will be tried without counsel.

Trial Date

At the initial appearance, a law enforcement officer, but not necessarily the arresting officer, will appear with the defendant before the judicial officer. A court date will be assigned based on the arresting officer's work schedule provided to the judicial officer, or the defendant will be advised that he or she will be notified by mail of the court date.

Pretrial Release/Detention

In General

A defendant will be released by the judicial officer before trial unless the officer determines that such a release will not reasonably ensure the appearance of the defendant as required. Defendants without a prior record or who are charged with a misdemeanor or less serious felony offense are usually not required to post bail but instead are released on their own recognizance. If the defendant is eligible for pretrial release but a judicial officer determines that release on the defendant's own recognizance will not ensure the defendant's appearance, one or more conditions may be imposed on release, including:

- releasing the defendant to the custody of a third party who agrees to assist in ensuring the defendant's future appearance;
- placing the defendant under the supervision of a pretrial services unit, which in some counties may consist of home detention, electronic monitoring, and drug testing/monitoring programs as a condition of release;
- restricting the defendant's travel;
- requiring the defendant to post bail; and
- other reasonably necessary conditions.

A defendant with a prior conviction for a violent crime is ineligible for personal recognizance release. A defendant charged with an offense for which life imprisonment or death is authorized may only be released by a judge and not by a commissioner.

Under current law a District Court commissioner may not authorize pretrial release of a defendant charged with a crime of violence and is on parole, probation, or mandatory supervision for an earlier crime of violence. Under these circumstances there is a rebuttable presumption that the defendant is ineligible for pretrial release. However, a judge may allow release of the defendant on suitable bail and conditions that reasonably assure that the defendant will not flee or pose a danger to others.

Similar restrictions on pretrial release by District Court commissioners extend to a defendant charged as a drug kingpin and an individual charged with escaping a place of confinement in this State.

In several counties a pretrial services unit provides verified factual information to assist the court in setting conditions for release as an alternative to incarceration. The investigation by the pretrial services unit includes a community background check of the defendant, community stability of the defendant, and additional factors concerning the criminal history that are not available to the judicial officer.

A pretrial release plan can be designed by the pretrial services unit so that the defendant can be released under supervision of the unit. The plan provides a viable option for the release of some offenders who are unable to make bail or who ordinarily would be confined until trial. A pretrial services unit may be able to provide close supervision of the defendant pending trial. Supervision may include residential placement, house arrest with or without electronic monitoring, health care treatment for alcohol and drug abuse, and frequent drug and alcohol tests to ensure that the defendant remains drug and alcohol free. These measures, along with frequent announced and unannounced contact with the defendant by the pretrial services unit, reduce the risk to the public of the defendant remaining free before trial. The alternatives offered by the pretrial services unit provide some measure of supervision or restraint pending trial but are less expensive than confinement in the local detention center. When the court rules that the defendant may not be placed in a pretrial release program because there is a high risk of flight or danger to the community, defendants are confined to local detention centers.

For more discussion of alternatives to incarceration, see Chapters 8 and 13.

Basis for Pretrial Release Determinations

The judicial officers have access to the Criminal Justice Information System (CJIS) network and court computer system to review the defendant's prior criminal history and to determine if there are detainers against the defendant. A detainer is a warrant for arrest in a different jurisdiction.

When determining bail, a judicial officer may rely upon information provided in the statement of probable cause or the charging document, the RAP sheet of the defendant, the seriousness of the current offense, and other factors such as the stability of employment, permanent residence, family history, demeanor, financial resources, reputation, and character of the defendant.

Release on Bail

A defendant will be required to post bail if there is a risk that the defendant will fail to appear in court but otherwise does not appear to pose a significant threat to society. Bail is set to ensure the presence of the defendant in court and not as punishment. Once the judicial officer sets bail, the defendant must post bail immediately or be taken to the detention center until someone posts bail. Bail may be satisfied by posting a cash bond or other collateral. A bail bondsman may post bail for the defendant for a fee (usually 10 percent of the bond required). Bail bondsmen may be licensed and regulated in each district of the District Court by bail bond commissioners appointed by the judges of that district. Each of the circuit courts also has authority to regulate bail bondsmen within the jurisdiction and to appoint a bail bond commissioner. Bail bond commissioners maintain a list of licensed bail bondsmen which is distributed to all the District Court commissioners and the clerks of the court within the jurisdiction. The list of bail bondsmen includes information identifying each bail bondsman, the limit on the amount of one bond, and the aggregate limit on all bonds that each bail bondsman is authorized to write. In addition, bail bondsmen who are surety insurers are regulated by the Maryland Insurance Administration. Property bondsmen who write bonds secured by real property owned by the bondsmen are not regulated by the Maryland Insurance Administration.

To release the defendant, the bail bondsman executes an affidavit reciting that the bondsman: is licensed to issue bail bonds if the jurisdiction licenses bail bonds; is an authorized agent of the insurance company insuring the bond and that company is authorized to write bail bonds in Maryland, if applicable; and holds a valid license as an insurance broker or agent from the Insurance Commissioner of Maryland, if applicable. If a defendant fails to appear as required in court, the court is required to order forfeiture of the bond and issue a warrant for the defendant's arrest. The bail bondsman has 90 days in which to produce the defendant or pay the penalty sum of the bond. An extension for up to 180 days may be granted by the court for good cause. Should the defendant be produced subsequent to forfeiture of the bond, the bondsman may apply for a refund of the bond less expenses of the State in apprehending the defendant.

Confinement Awaiting Trial

In Maryland, offenders arrested and booked who are not released on recognizance or bail are held in local detention centers. There is one detention center in each of the State's 23 counties. The counties are responsible for funding and operating the centers, although the State does provide capital and operating assistance. The State assumed operation of the Baltimore City Jail in 1991. Renamed the Baltimore City Detention Center, it was placed within the Division of Pretrial Detention and Services of the Maryland Department of Public Safety and Correctional Services.

Many persons confined to local detention centers are awaiting trial and are not serving sentences (see Exhibit 5.1). In fiscal 1997, of the 11,306 persons confined in local detention centers, 7,160 were awaiting trial or sentencing. This number includes persons who could not make bail, those held without bail, and those found guilty but not yet sentenced.

Exhibit 5.1
Local Detention Centers
Average Daily Population (ADP) and Pretrial Detainees
Averages (12 Months)
FY 1994 - 1997

<u>Jurisdiction</u>	<u>1994</u>		<u>1995</u>		<u>1996</u>		<u>1997</u>	
	<u>ADP</u>	<u>Pretrial</u>	<u>ADP</u>	<u>Pretrial</u>	<u>ADP</u>	<u>Pretrial</u>	<u>ADP</u>	<u>Pretrial</u>
Allegany	101	47	98	40	100	49	93	40
Anne Arundel	568	274	673	308	705	308	736	328
Baltimore City*	3,160	2,590	3,373	2,980	3,841	3,278	3,603	3,260
Baltimore	898	441	967	514	1,062	545	1,091	564
Calvert	120	32	124	30	145	33	148	37

Caroline	42	20	63	35	62	31	71	39
Carroll	109	48	133	49	136	62	142	61
Cecil	168	51	183	52	169	68	180	74
Charles	230	106	283	124	314	127	327	140
Dorchester	119	44	150	59	174	64	176	71
Frederick	308	142	333	167	333	168	376	170
Garrett	40	13	45	16	41	11	46	14
Harford	271	102	321	124	273	106	295	89
Howard	203	117	226	133	250	123	248	110
Kent	50	21	57	18	54	13	52	19
Montgomery	782	284	831	287	827	325	777	309
Prince George's	1,210	829	1,279	877	1,253	983	1,362	990
Queen Anne's	72	19	72	15	84	22	71	18
St. Mary's	140	61	158	65	180	63	154	63
Somerset	83	28	86	30	94	30	87	36
Talbot	81	27	96	33	99	33	91	36
Washington	237	93	291	154	301	161	338	191
Wicomico	389	332	485	325	538	413	627	387
Worcester	209	108	207	108	229	118	217	114
Statewide Total	9,590	5,829	10,532	6,543	11,261	7,134	11,306	7,160

*Note that since the opening of the Central Booking Facility, their detainees committed after the initial bail appearance are included in the ADP for BCDC. An additional 25 to 200 arrestees in process depending on the day of the week are not included.

Source: Department of Public Safety and Correctional Services

Right to Preliminary Hearing

A defendant charged with a felony that is not within the jurisdiction of the District Court will be tried in a circuit court. Except in those cases where there is an indictment (or a *nolle prosequi* or *stet*, which effectively terminate the prosecution), the defendant has a right to a preliminary hearing before a judge of the District Court. If the defendant does not request a hearing at the initial appearance before a judicial officer (a judge or a District Court commissioner) or within ten days after the appearance, the defendant waives the right to the hearing. The primary purpose of the proceeding is to examine the prosecution's case to determine if there is probable cause. A defendant usually requests a preliminary hearing to contest the probable cause finding in the charging document, to get the judge to dismiss the charges, or to reduce the amount of bail. Where a grand jury has returned an indictment, no preliminary hearing is required because the grand jury examines the prosecutor's case to determine probable cause before returning an indictment.

At the hearing held within 30 days of the defendant's request, the State's Attorney presents evidence to the District Court judge. The defendant is entitled to cross-examine the State's witnesses but is not entitled to present evidence. If the judge determines that there is probable cause to believe the defendant committed the offense, the judge will review the conditions of the defendant's release and notify the State's Attorney of the determination. Within 30 days after this notification, the State's Attorney must either file a charging document in the circuit court, amend the charging document or file a new document for charges within the District Court's jurisdiction, or enter a *nolle prosequi* or *stet* to the charges. If the judge determines that there is no probable cause, the judge must dismiss the charges and order the defendant released. Any dismissal is without prejudice, which would allow the State's Attorney to seek an indictment by a grand jury.

Plea Bargaining

In order to speed up the judicial process, the State's Attorney and the defendant can make an agreement called a plea bargain, a procedure by which the defendant agrees to plead guilty in exchange for being charged with a less serious offense or for a recommendation of a sentence less than the maximum allowed by law. For example, a person charged with second degree murder, which carries a maximum sentence of 30 years, may agree to plead guilty to a charge of manslaughter, which carries a maximum sentence of ten years with the recommendation that the sentence be five years. Also a person charged with multiple counts may enter a plea bargain to have some counts dismissed in exchange for a guilty plea on others. A plea bargain may be used to encourage a defendant to testify against a co-defendant or other person in exchange for prosecution for a lesser offense or dropping of some or all charges.

Plea bargaining has raised concerns about defendants not being prosecuted to the fullest extent of the law. However, reasons are given for the necessity of allowing plea bargains. Plea bargains may sometimes be useful if the State's Attorney feels that the State would not be able to obtain a conviction in a trial, but helps ensure that a defendant does not escape punishment altogether. A plea bargain is also used to dispose of less serious cases in order to allow more resources to be dedicated to prosecution of serious offenses. Plea bargains also reduce the amount of time and resource that must be expended by law enforcement agencies, prosecutors, public defenders, the courts, and the correctional system for prosecution, trial, and punishment of offenders.

A plea bargain agreement must be accepted by the court in which the charges were filed. Once accepted by the court, the agreement becomes binding on both parties. If the defendant violates the terms of the plea bargain (for example, refuses to testify as promised), the State's Attorney may reinstate the original charges against the defendant. Conversely, if the defendant does not violate the agreement, the State's Attorney is barred from prosecuting the defendant on the original charges.

1. The Office of Public Defender is the State government entity charged with providing legal representation statewide to indigents primarily in criminal and juvenile delinquency matters. In 1997, 340 attorneys in the Office of Public Defender represented over 161,000 clients.

Chapter 6. The Circuit Courts and the District Court

This chapter will discuss the two trial level courts in the State: the circuit courts and the District Court.⁽¹⁾

Circuit Courts

Jurisdiction

The circuit courts are the highest trial courts, exercising jurisdiction over law and equity matters. There is one circuit court in each county. They have exclusive jurisdiction over most felony cases. Unless a statute specifically grants concurrent jurisdiction in the District Court, felony cases must begin in a circuit court. In addition, the circuit courts have concurrent jurisdiction with the District Court for misdemeanors having a maximum penalty of three years' imprisonment or more or a fine of \$2,500 or more.⁽²⁾ Concurrent jurisdiction allows the State to charge the defendant in either circuit court or District Court at the prosecutor's discretion.

The circuit courts are the only trial courts that provide for trial by jury. The right to trial by jury is guaranteed under the Sixth and Fourteenth Amendments of the United States Constitution for all but petty offenses. The Maryland Declaration of Rights also guarantees the right to a jury trial. Under statutory law a defendant has the right to trial by jury in the first instance in any case with a potential sentence of over 90 days. The District Court is divested of jurisdiction in a misdemeanor or felony case with a maximum sentence of over 90 days if the defendant requests a jury trial.⁽³⁾

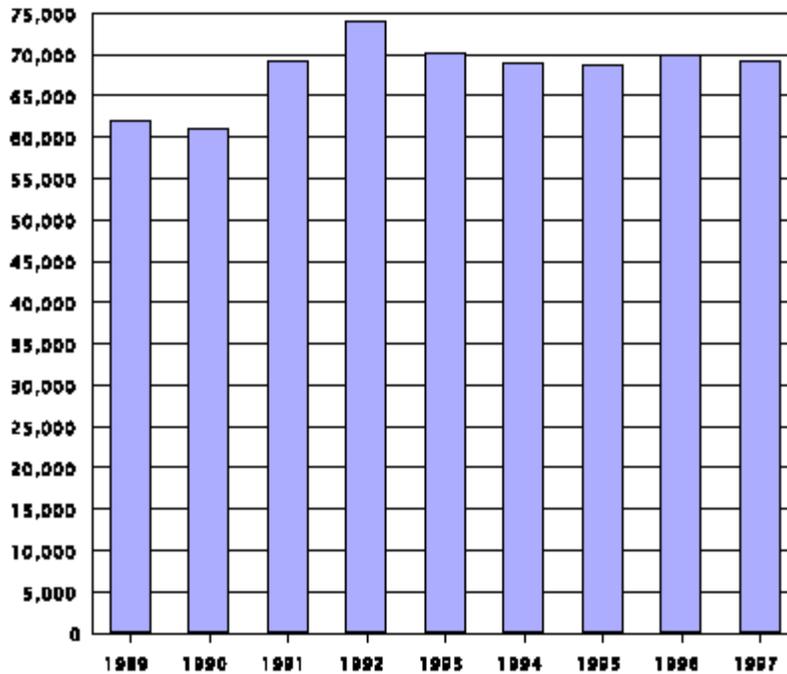
Appellate Jurisdiction

The circuit courts exercise appellate jurisdiction over convictions in the District Court. Under statutory law, a defendant who is not entitled to pray a jury trial in the first instance in the District Court is entitled to a jury trial on appeal to the circuit court if the offense is subject to any period of incarceration. See Chapter 10 on appeals and judicial review.

Caseloads

Exhibit 6.1 depicts the circuit court criminal caseloads from fiscal 1989 through 1997. The statistics dip slightly in fiscal 1990, reflecting the expedited trials given in circuit courts for jury trial requests filed in the District Court. Caseloads have remained fairly constant since 1993. In fiscal 1992 the caseload peaked as a result of an increase in indictments and jury trial prayers in Baltimore City.

Exhibit 6.1
Circuit Court Criminal Caseload
FY 1989 - 1997



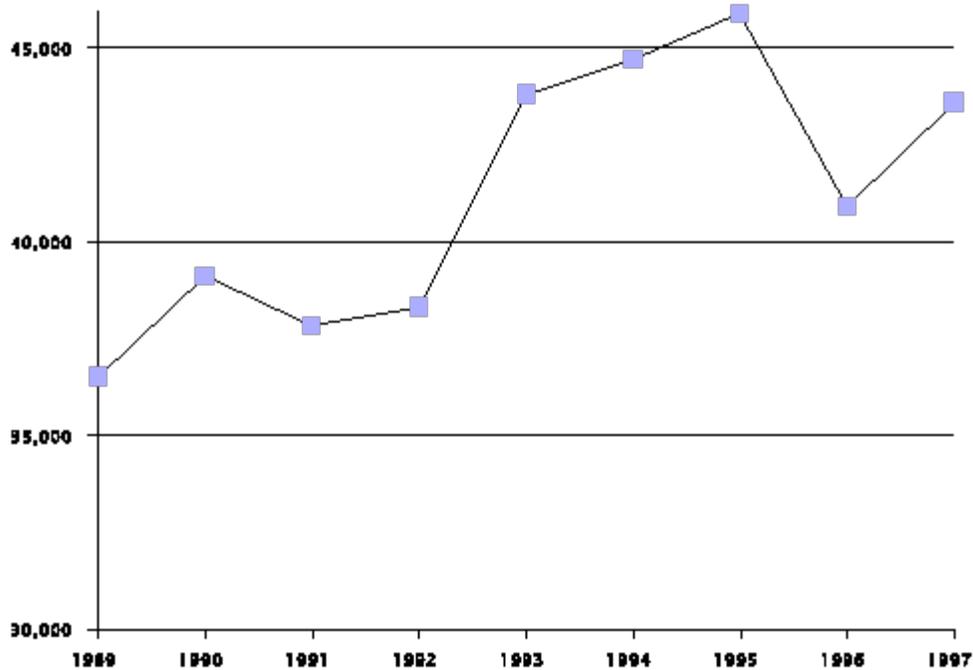
Source: *Annual Reports of the Maryland Judiciary*.

Cases bound over, or forwarded, to the circuit courts have stayed relatively stable. In fiscal 1994 a total of 16,410 cases were bound over to the circuit courts. In fiscal 1997 there were 17,639 cases bound over, a slight increase over the previous four-year period. These are felony cases that were filed with the District Court but are not within the jurisdiction of the District Court. These cases typically involve warrantless arrests for felonies.

Juvenile Disposition

The circuit courts also oversee the operation of the juvenile justice system, except in Montgomery County where this function is handled by the District Court. Exhibit 6.2 shows the number of juvenile cases increased from 1989 through 1997. See Chapter 7 for a full discussion of the juvenile justice system.

Exhibit 6.2
Circuit Court Juvenile Cases
Original and Reopened
FY 1989 - 1997



Note: Includes Montgomery County District Court

Source: *Annual Reports of the Maryland Judiciary*.

The District Court

Overview

The District Court of Maryland was created as a result of the ratification in 1970 of a constitutional amendment consolidating a disparate system of trial magistrates, people's courts, and municipal courts into a fully State-funded court of record possessing statewide jurisdiction. Operation of the District Court began on July 5, 1971. The District Court is divided into 12 geographical districts, each containing one or more counties, with at least one judge and courthouse in each county.

The Governor appoints the District Court judges to terms of ten years each, and they are confirmed by the Senate. The Chief Judge of the District Court is appointed by the Chief Judge of the Court of Appeals. District Court judges are not required to stand for election.

Jurisdiction

The District Court of Maryland is a court of limited jurisdiction. It cannot hear all criminal cases. The District Court has jurisdiction over the following criminal cases:

- violation of the vehicle laws and the State Boat Act unless the violation is a felony or the defendant is under the age of 16;
- all misdemeanor violations, including violations of statutory or common law; a county municipal or other ordinance; or a State, county, or municipal regulation;
- violations within the exclusive original jurisdiction of a juvenile court if the juvenile court waives jurisdiction or the person elects to be tried in the District Court, provided the District Court otherwise would have jurisdiction; and
- felonies involving theft, bad checks, credit card offenses, forgery, fraudulent insurance acts, false worker's compensations claims, manslaughter by motor vehicle or vessel, and homicide by motor vehicle or vessel while

intoxicated.

Although the District Court has jurisdiction over these cases, any case that carries a possible penalty in excess of a 90-day term of imprisonment entitles the defendant to elect a jury trial. Since jury trials are not available in the District Court, these cases would be transferred to a circuit court. The State may not demand a jury trial.

Concurrent Jurisdiction

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

As a practical matter, nearly all serious felonies are tried in circuit courts because either the defendant requests a jury trial, is charged by information filed in a circuit court by the State's Attorney, or is indicted by the grand jury.

Caseload

Exhibit 6.3 shows how the number of criminal cases processed in the District Court have risen in the period from fiscal 1993 through 1997. There were 178,043 criminal case dispositions reported during fiscal 1993 compared to 189,708 dispositions during fiscal 1997, a 6.3 percent increase.

Cases that are not prosecuted, *nolle prosequi* cases, account for approximately 48 percent of the cases terminated in the District Court. Cases that had prosecution suspended, stet cases, made up about 25 percent of the District Court caseload.

Exhibit 6.4 shows the gradual increase in the number of domestic violence cases in the District Court from fiscal 1993 to 1997. The increase in the number of cases can be attributed to the various changes in the law which expanded the eligibility and types of relief available for victims.

Of the 962,322 motor vehicle cases that were processed in fiscal 1997, approximately 301,100 cases were tried, 548,750 tickets were paid, and 112,457 had other dispositions (i.e., *nol prossed*, stet, and jury trial prayers). Just under two-thirds of all motor vehicle violators pay the traffic tickets rather than appear in court. For further information about motor vehicle offenses, see Chapter 3.

Exhibit 6.3
Criminal Cases by the Number of Defendants Charged
Processed in the District Court of Maryland
FY 1993 - 1997

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
DISTRICT 1					
Baltimore City	59,826	62,419	64,537	64,221	70,675
DISTRICT 2					
Dorchester	1,655	1,868	1,673	1,608	1,687
Somerset	1,027	1,003	887	791	761
Wicomico	3,346	3,451	4,252	3,568	3,369
Worcester	3,815	3,286	3,515	3,042	3,936
DISTRICT 3					
Caroline	975	946	1,191	1,172	1,545
Cecil	2,836	2,484	2,576	2,633	2,990
Kent	514	495	545	588	703

Queen Anne's	934	854	1,034	929	1,015
Talbot	1,369	1,276	1,555	1,411	1,615
DISTRICT 4					
Calvert	2,146	2,239	2,144	2,021	2,073
Charles	3,384	3,600	3,765	3,280	3,117
St. Mary's	2,364	2,673	2,334	2,491	2,805
DISTRICT 5					
Prince George's	26,160	22,543	25,351	24,999	23,391
DISTRICT 6					
Montgomery	13,116	13,305	13,030	12,741	12,823
DISTRICT 7					
Anne Arundel	14,134	12,277	11,340	10,322	11,894
DISTRICT 8					
Baltimore	18,865	21,185	19,348	20,157	21,992
DISTRICT 9					
Harford	4,070	3,949	3,870	3,827	4,412
DISTRICT 10					
Carroll	2,429	2,313	2,356	2,567	2,759
DISTRICT 11					
Frederick	3,813	3,565	3,610	3,570	3,487
Washington	3,354	3,067	3,459	3,236	3,815
DISTRICT 12					
Allegany	2,782	2,740	3,310	2,954	3,197
Garrett	902	990	1,028	1,050	1,208
STATE	178,043	176,583	181,530	178,092	189,708

Source: Annual Reports of Maryland Judiciary

Exhibit 6.4
Domestic Violence Cases FY 1993 - 1997

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
DISTRICT 1					
Baltimore City	2,498	3,190	3,393	3,648	3,907
DISTRICT 2					
Dorchester	64	102	106	114	117
Somerset	18	25	33	40	35
Wicomico	185	371	476	536	465
Worcester	42	87	112	123	121
DISTRICT 3					
Caroline	25	58	81	88	59
Cecil	165	233	294	312	243
Kent	17	29	23	23	25
Queen Anne's	46	59	64	69	88
Talbot	44	40	41	33	61
DISTRICT 4					
Calvert					
Charles	92 134	111 207	116 194	133 204	156 240
St. Mary's	135	128	183	190	165
DISTRICT 5					

Prince George's	1,995	2,636	2,882	3,228	3,485
DISTRICT 6					
Montgomery	632	889	897	1,008	1,109
DISTRICT 7					
Anne Arundel	652	1,090	1,159	1,332	1,632
DISTRICT 8					
Baltimore	1,302	1,800	2,170	2,475	2,847
DISTRICT 9					
Harford	145	226	261	373	400
DISTRICT 10					
Carroll					
Howard	79 134	133 214	92 277	152 278	206 332
DISTRICT 11					
Frederick	219	311	364	387	447
Washington	256	304	362	403	504
DISTRICT 12					
Allegany	162	199	240	245	277
STATE	9,114	12,522	13,925	15,492	17,020

Source: *Annual Reports of Maryland Judiciary*

Alternative Courts

In an effort to relieve overcrowded dockets and expedite cases, Baltimore City has established two different courts to handle specific problems: drug courts and a community court. These courts are part of either the District Court or the Circuit Court for Baltimore City but deal only with certain cases.

Drug Court

Baltimore City has drug courts in both the District Court and the circuit court. These courts are used for offenders charged with relatively minor drug crimes who do not have a history of violence. In exchange for a plea of guilty, the offender receives either probation before judgment or probation following judgment. Terms of probation require intensive supervision and drug counseling and treatment.

In the District Court, one judge is assigned full time to the drug court. This judge knows the history of each case and offender, and is knowledgeable about the programs available. If an offender violates probation, which is not unusual for drug offenders, the judge knows what other sanctions are likely to be effective.

Jurisdictions with drug courts have reduced courtroom time for police and allowed prosecutors to focus on more serious crimes. The emphasis on treatment also frees jail space for violent offenders.

Community Court

During the 1998 session the General Assembly endorsed the adoption of a community court to be located in the downtown district of Baltimore City at 33 South Gay Street. Modeled after the Midtown Community Court in New York City, the Baltimore City community court (part of the District Court for Baltimore City) is a public/private cooperative effort that seeks innovative approaches to reducing nuisance crimes like aggressive panhandling, vandalism, and prostitution in the downtown business district. The community court is intended to provide defendants with swift and visible justice (with most cases to be adjudicated on the day of arrest and most sentences involving community service) and to exploit the "moment of crisis" in offenders' lives by channeling them into the social service system where they can receive help for problems such as substance abuse, homelessness, and illness.

The community court is not yet in operation. Due to concerns with whether the promised private funding could be obtained, restrictive budget language in the fiscal 1999 budget withheld all State funds until certain conditions have been met. As of the time of this writing, these conditions have not been met.

Jury Trials

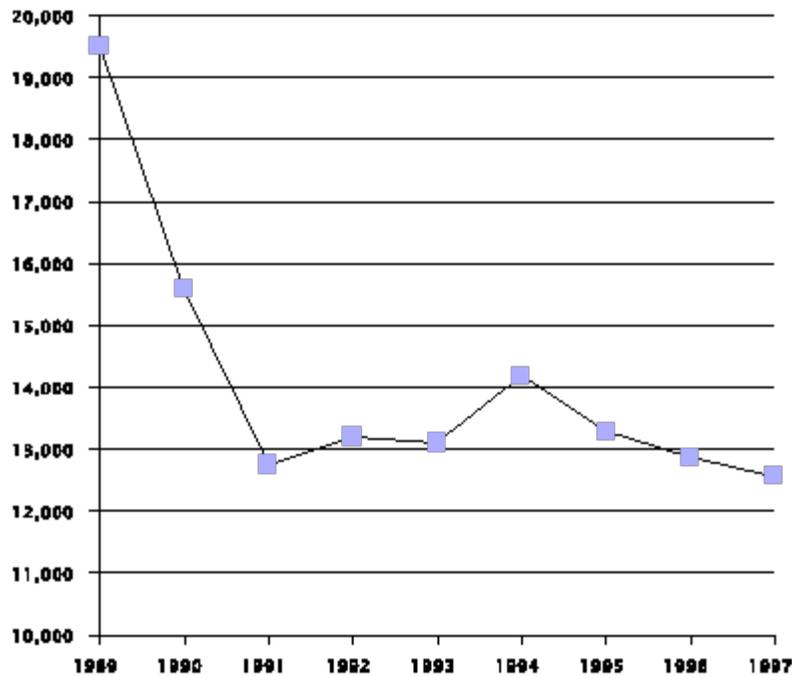
Judge Robert C. Murphy, former Chief Judge of the Court of Appeals, appointed a committee of judges chaired by Judge Joseph A. Ciotola, Chief Administrative Judge of the Baltimore City District Court, to study the problems created when defendants demand jury trials, forcing transfer of cases from the District Court to the circuit courts. The Ciotola report, issued in October 1987, found that jury trials are requested in the District Court for some of the following reasons:

- to obtain a postponement, often so the defendant can obtain counsel or complete payment of counsel fees;
- to remove the case from an individual judge who is unknown to defense counsel or whose sentences are thought to be unduly severe;
- to delay the anticipated incarcerations of defendants released on bail or on their own recognizance;
- in traffic cases, to delay the anticipated loss of driving privileges;
- to obtain a change to the more convenient central location of the circuit court, avoiding travel by defense counsel to the outlying locations of the District Court;
- to obtain a convenient trial date in jurisdictions where criminal cases are not tried in District Court on certain days of the week;
- to take advantage of more lenient sentencing in a circuit court, whether actual or perceived;
- to avoid District Court prosecutors considered inexperienced, unyielding, or inflexible, so defense counsel can negotiate with a more experienced prosecutor who has wider discretion in a circuit court; and
- to litigate the case under the rules of procedure that govern trials in a circuit court.

In an effort to eliminate some of the manipulation of the courts through jury trial requests, a program in four jurisdictions (Anne Arundel, Baltimore, and Montgomery Counties, and Baltimore City) gives a defendant a jury trial in a circuit court on the same day that the jury request is made. This has reduced the number of jury trial requests in these jurisdictions since the program was implemented in 1990.

Statewide, the number of jury trial prayers has remained relatively constant since 1991. Exhibit 6.5 sets forth original criminal jury trial prayers from fiscal 1989 to 1997.

Exhibit 6.5
District Court Jury Requests
FY 1989 - 1997



Source: *Annual Reports of the Maryland Judiciary*.

Commission on the Future of Maryland Courts

The Commission on the Future of Maryland Courts studied a broad range of issues and problems with the State's courts. The commission's report, issued December 15, 1996, recommended, in the criminal law and procedure area, that:

- nonincarcerable motor vehicle offenses be decriminalized and made civil infractions, and handled administratively instead of by the District Court;
- drug courts be established in those counties where the circuit court's criminal docket consists of a significant portion of non-violent drug offenses;
- appeals in criminal cases from the District Court should be decided in a circuit court on the record made in the District Court, and not tried *de novo* (see Chapter 10); and
- to the extent practicable, jury trial prayers in the District Court should be required to be filed prior to the trial date.

With the exception of the drug courts already operational in Baltimore City (see above), none of these recommendations have yet been adopted.

1. In addition to criminal cases, these courts also have jurisdiction over civil cases. A discussion of civil jurisdiction is beyond the scope of this handbook.
2. Misdemeanor possession of drugs is the exception to this rule. Exclusive jurisdiction over this offense, which carries a maximum penalty of a four-year term of imprisonment and a \$25,000 fine, is in the District Court.
3. In addition, the Maryland Declaration of Rights may provide for the right to a jury trial in the first instance even if the maximum term of imprisonment is 90 days or less if there was historically a right to a jury trial for the offense or the offense is a serious one. A full discussion of this issue is beyond the scope of this handbook.

Chapter 7. Juvenile Justice Process

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

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

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

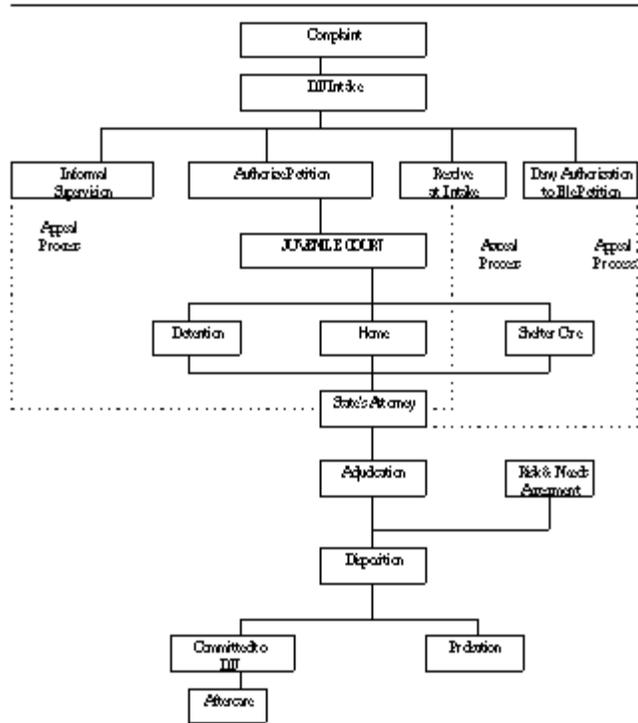
The Department of Juvenile Justice currently administers Maryland's juvenile programs. The department's goal is to assist youths to reach their full potential as valuable and positive members of society through family involvement and constructive programming. Additionally, the department supports community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

Case Flow Through the Juvenile Justice System

Exhibit 7.1 shows the manner in which cases flow through the juvenile justice system.

Exhibit 7.1

Case Flow Through Juvenile Justice System



Source: Department of Juvenile Justice

Intake

The first point of contact that a child has with the State's juvenile justice system is at intake. Intake occurs when a complaint is filed by a police officer or other person or agency having knowledge of facts that may cause a child to be subject to the jurisdiction of the juvenile court. Cases reported by police made up over 93 percent of the total number of intake cases in fiscal 1997.

Within 25 days after the complaint is filed, an intake officer assigned to the court by the Department of Juvenile Justice is required to make an inquiry as to whether the juvenile court has jurisdiction and whether judicial action is in the best interest of the public or the child. In making this determination, the intake officer considers the nature of the alleged offense; the child's home, school, and community environment; and input from the victim and the police. An intake officer may make any of the following four decisions: deny authorization to file a petition, resolve the case at intake, propose informal supervision, or authorize the filing of a petition.

Denial of Authorization to File a Petition

The intake officer may deny authorization to file a petition alleging delinquency in the juvenile court if the matter is not within the jurisdiction of the juvenile court or otherwise lacks legal sufficiency. The victim, the arresting police officer, or the person or agency that filed the complaint may appeal this decision to the State's Attorney. In fiscal 1997 intake officers denied authorization to file a petition in 1,233 cases (2.1 percent of total cases).

Resolution of the Case at Intake

If the intake officer determines that the juvenile court does have jurisdiction over the matter, but that further action by the Department of Juvenile Justice or the court is not necessary to protect the public or to benefit the child, the case may be resolved at intake. The child may receive immediate counseling, a warning, referral to another agency for services, or a combination of these or other short-term interventions. The victim, the arresting police officer, or the

person or agency that filed the complaint may appeal the intake officer's decision to resolve the case to the State's Attorney. In fiscal 1997, 26,027 cases (44.9 percent of total cases) were resolved at intake.

Proposal of Informal Supervision

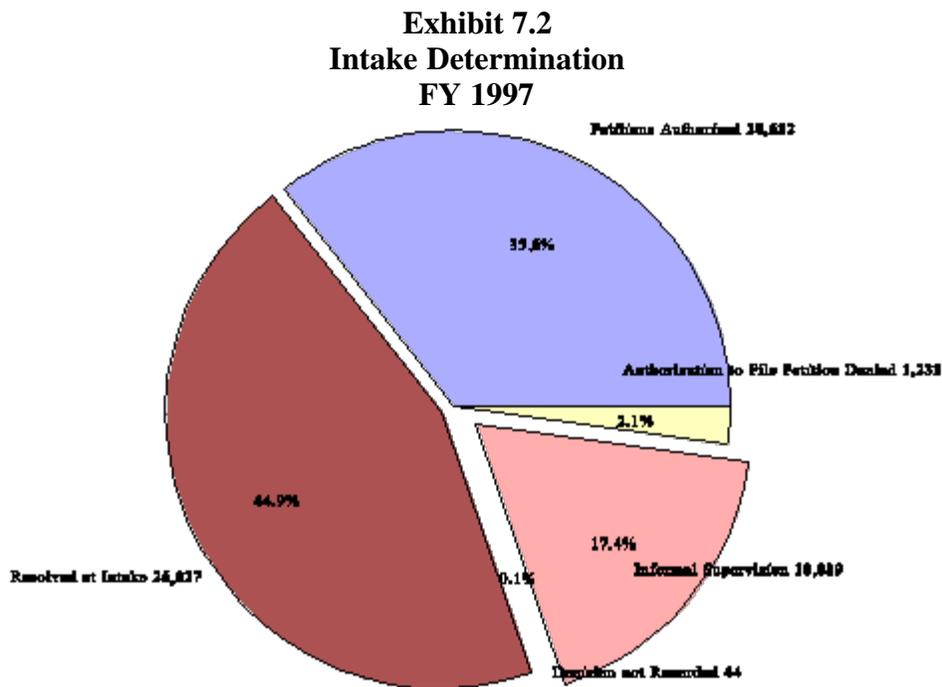
The intake officer may propose informal supervision if the juvenile court has jurisdiction and the child or the child's family needs assistance in preventing further legal violations, but the child does not require, and may not benefit from, judicial intervention or long-term formal supervision. To conduct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

If at any time before the completion of the agreed upon informal supervision the intake officer believes that the informal adjustment cannot be completed successfully, the intake officer may authorize the filing of a petition alleging delinquency in the juvenile court. In fiscal 1997 informal supervision was used in 10,089 cases (17.4 percent of total cases).

Authorization of the Filing of a Petition

If the intake officer determines that the juvenile court has jurisdiction over the matter and that judicial action is in the best interest of the public or the child, the intake officer may authorize the filing of a petition in juvenile court alleging that a child has committed a delinquent act. The recommendation to file a petition is then referred to the State's Attorney for review. In fiscal 1997, 20,632 cases (35.6 percent of total cases) were forwarded to the State's Attorney for formal processing in juvenile court.

Exhibit 7.2 shows the distribution of intake determinations for fiscal 1997.



Source: Department of Juvenile Justice

If the intake officer denies authorization to file a petition or recommends informal supervision, or if the case is

resolved at intake, the child will be sent home in the custody of a parent or guardian.

If the filing of a petition is recommended, the child may be released to the custody of a parent or guardian prior to the hearing. Depending on the severity of the case, the child may be assigned to electronic monitoring or community detention. Electronic monitoring requires the child to wear an electronic device at all times to verify that he or she is at home. Community detention is 24-hour supervision of the child in the community through the use of daily in person and telephone contacts with a Department of Juvenile Justice worker.

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

Juvenile Court

Petition

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

Jurisdiction

Generally, the juvenile court has jurisdiction over any child alleged to be delinquent. However, the juvenile court does not have jurisdiction over: (1) a child at least 14 years old alleged to have committed an act which would be a crime punishable by death or life imprisonment; (2) a child at least 16 years old alleged to have violated certain traffic or boating laws; (3) a child at least 16 years old alleged to have committed certain violent crimes; or (4) a child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult. These cases would be tried in adult criminal court. However, for items (1), (3), and (4) above, the criminal court may transfer the case back to juvenile court if the transfer is believed to be in the best interests of the child or society and certain other conditions are met. This is often referred to colloquially as "reverse waiver".

Waiver

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

Adjudication

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

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

Disposition

Classification Process

Prior to the disposition hearing, each child goes through a classification process administered by the Department of Juvenile Justice to standardize case management and structure the department's recommendations to the juvenile court. The classification process assists in determining the level of risk of harm that a child presents to himself, herself, or the public as well as the risk that the child will escape from placement.⁽¹⁾

Disposition Hearing

After an adjudicatory hearing, unless the petition is dismissed or the hearing is waived in writing by all of the parties, the court is required to hold a separate disposition hearing which may be held on the same day as the adjudicatory hearing. A disposition hearing is a hearing to determine whether a child needs or requires the court's assistance, guidance, treatment, or rehabilitation, and, if so, the nature of the assistance, guidance, treatment, or rehabilitation. The priorities of a judge in making a disposition are the public safety and a program of treatment, training, and rehabilitation best suited to the physical, mental, and moral welfare of the child consistent with the public interest.

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

- place the child on probation or under supervision in the child's own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate;
- commit the child to the custody or under the guardianship of the Department of Juvenile Justice or other agency on terms that the court considers appropriate, including designation of the type of facility where the child is to be accommodated; or
- order the child, parents, guardian, or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family.

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

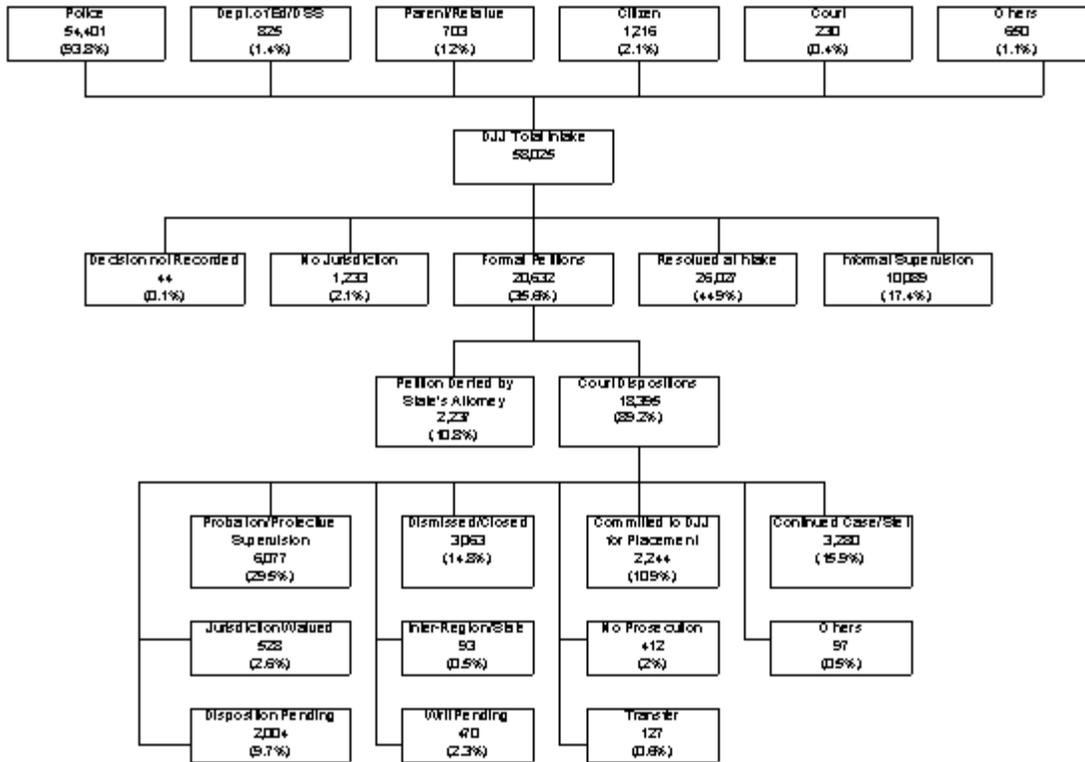
Restitution

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

Exhibit 7.3 shows the distribution of cases in the juvenile system by intake source, intake disposition, and court disposition.

Exhibit 7.3

**Flow Chart of Case Referrals in the Maryland Juvenile Justice System
FY 1997**



Source: Department of Juvenile Justice

Commitment to the Department of Juvenile Justice for Placement

Residential Programs

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

Residential programs administered by the department include family foster care for children whose families cannot appropriately care for them, short-term programs designed to confront a child's behavior and provide consequences for misbehavior, group homes, specialized substance abuse and mental health programs, and secure training school programs. The current length of stay in residential programs varies from approximately 30 days to two or more years. In fiscal 1997 there were 2,763 admissions into residential care.

Residential programs are either State-owned and operated, State-owned and privately operated, or privately owned and operated. Exhibit 7.4 lists all State-owned juvenile facilities.

**Exhibit 7.4
Department of Juvenile Justice
State-Owned Facilities
June 1998**

Facility Name	Location	Type of Facility	Operated by State/ Private	Rated Capacity
Thomas J. S. Waxter	Anne Arundel	Detention	State	76

		Impact	State	20
Alfred D. Noyes	Montgomery	Detention	State	57
J. DeWeese Carter	Kent	Detention	State	27
Cheltenham	Prince George's	Detention	State	169
		Shelter Care	State	12
		Secure Committed	State	28
		CPO Unit	State	30
		Impact	State	30
Charles H. Hickey, Jr.	Baltimore County	Detention	Private	45
		Secure Committed	Private	108
		Impact	Private	96
		Sex Offender	Private	24
		CPO Unit	Private	27
		Intermediate	Private	27
William Donald Schaefer House	Baltimore City	Special Residential	State	19
MD Youth Residence Center	Baltimore City	Shelter Care	State	36
		Residential/ Living Classrooms	State	12
Backbone Mountain	Garrett	Youth Center	State	40
Green Ridge	Allegany	Youth Center	State	45
Maple Run	Allegany	Youth Center	State	45
Meadow Mountain	Garrett	Youth Center	State	40
Savage Mountain	Garrett	Youth Center	State	40
Eastern Shore Structured Shelter	Dorchester	Shelter Care	Private	10
Catonsville Structured Shelter	Baltimore	Shelter Care	Private	10
Western MD Structured Shelter	Allegany	Shelter Care	Private	8
Sykesville Structured Shelter	Carroll	Shelter Care	Private	10
Allegany County Girls Home	Allegany	Group Home	Private	9
Thomas O'Farrell	Carroll	Youth Center	Private	48
Hurlock	Caroline	Group Home	Private	10
Ferndale Respite	Baltimore City	Group Home	Private	6
Victor Cullen	Frederick	Residential	Private	209
Mount Clare House*	Baltimore City	Special Residential	Private	4

* Facility has a total of 12 beds: four used by Department of Juvenile Justice, Department of Human Resources, and Department of Health and Mental Hygiene each.

Source: Department of Juvenile Justice

Aftercare

Aftercare is a term used to describe the array of supervision and ancillary services that a child receives after the

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

1. Based on a study by the National Council on Crime and Delinquency, the department has developed new risk and needs assessment instruments for identifying the level of risk that a delinquent child presents to public safety. The department is currently implementing the new system in many jurisdictions and anticipates statewide implementation during fiscal 1999.

Chapter 8. Incompetency and Not Criminally Responsible Findings

"Early in the common law it was resolved that 'idiots' and 'lunatics' would be spared the ordeal of trial and punishment."⁽¹⁾ Maryland law today follows this tradition. There are two separate circumstances under which a mental disorder or mental retardation⁽²⁾ are considered in criminal proceedings. The first is whether a defendant is incompetent to stand trial. The issue is whether the defendant is mentally able to participate in a trial. The second is whether a defendant is not criminally responsible for the crime. The issue is whether the defendant is culpable for the crime. This chapter will discuss these two issues.⁽³⁾

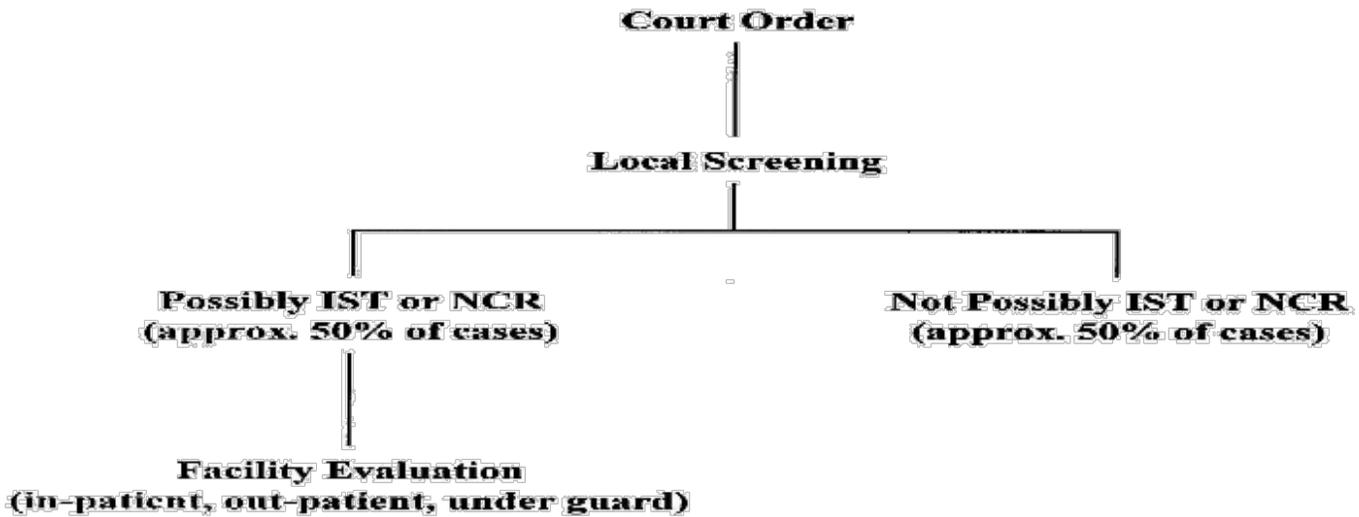
Initial Evaluation of Defendants

The following procedures apply whenever either incompetency to stand trial or criminal responsibility is an issue. The first step in this process is an initial screening by a psychiatrist or psychologist, either in jail or in the community. In fiscal 1998 the courts ordered the Department of Health and Mental Hygiene to evaluate 1,228 defendants for purposes of determining competency to stand trial or criminal responsibility. If there is any question concerning either of the two issues, the defendant is referred to a facility under the department's jurisdiction for post-screening evaluation. In fiscal 1998, 507 defendants were referred for this further evaluation.

The further evaluation may take place at one of the seven regional hospitals under the department's jurisdiction, a private medical facility approved by the department, or at Clifton T. Perkins Hospital. Defendants charged with murder, rape, robbery, and other violent crimes are ordinarily evaluated at Clifton T. Perkins Hospital, located in Jessup, Maryland. This hospital is the only maximum security hospital in the State. In addition to evaluations for competency and criminal responsibility, the hospital houses defendants who are found not criminally responsible and other prisoners who become mentally ill and who require involuntary psychiatric hospitalization. A Forensic Review Board makes decisions concerning the treatment of individuals and recommendations concerning readiness for release. Two of the regional facilities, the Crownsville Hospital Center and the Springfield Hospital Center, also have forensic review boards.

Defendants who are admitted for evaluation may be offered treatment. Except under emergency situations, a defendant may not be forced to accept any offered medications. The vast majority accept treatment if it is offered and, as a result, many defendants whose competency to stand trial was questionable on admission are clearly competent to stand trial when the evaluation is completed. See Exhibit 8.1 for a chart on Pretrial Evaluation.

Exhibit 8.1
Pretrial Evaluation
Incompetency to Stand Trial (IST) and Not Criminally Responsible (NCR)



Source: Department of Health and Mental Hygiene.

Incompetency to Stand Trial

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

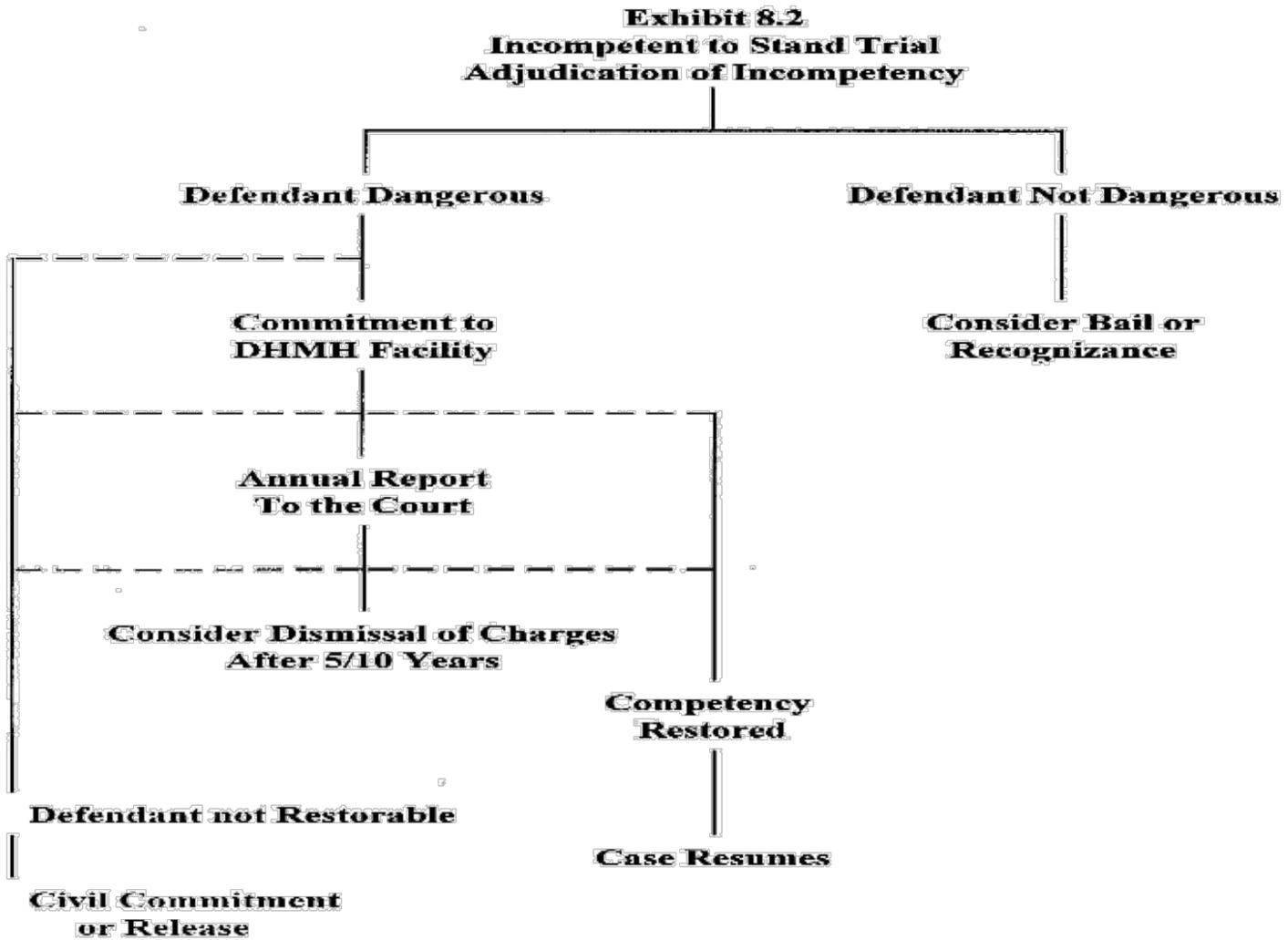
- understand the nature or object of the proceeding; or
- assist in one's defense."

As this definition indicates, incompetency in this context has nothing to do with the actual guilt or innocence of the defendant. Rather, incompetency deals with the current mental ability of the defendant to participate in the trial.

It is up to the trial judge to determine whether a defendant is incompetent to stand trial. If it appears that the defendant may be incompetent to stand trial, the court can decide to hold a competency hearing on its own initiative. Alternatively, a defendant may move to have the court decide the issue of competency. Under either circumstance, the court must hold a hearing and decide whether the defendant is incompetent based on evidence received at the hearing. The court must find beyond a reasonable doubt that the defendant is both able to understand the nature of the proceedings and to assist in the defense. In making this determination, the court may order the Department of Health and Mental Hygiene to examine the defendant.

If the court determines that the defendant is competent to stand trial, the trial must begin as soon as practicable or, if already begun, must continue. If the court determines that the defendant is incompetent to stand trial, the court has three options. First, except in death penalty cases, the court may release the defendant on bail or recognizance if the court finds that the defendant is not dangerous. Secondly, if treatment is warranted, the court may order the defendant to obtain treatment. Unless the defendant is dangerous due to the mental condition, the defendant may only be held under these circumstances if there is a substantial probability that the defendant will attain competency in the foreseeable future. If improvement is unlikely but commitment is deemed desirable, the civil commitment procedures applicable to any individual with a mental condition must be pursued. Lastly, if the court finds that the defendant is dangerous, the court may order the defendant committed to the jurisdiction of the Department of Health and Mental Hygiene for placement in a facility operated by the department. If a defendant is committed, then the defendant may annually apply for release in the same manner as other individuals committed for reasons of mental disorders and mental retardation unrelated to crimes. The defendant may apply for release in a shorter period if there is an affidavit filed with the petition that the person's condition has improved.

After a finding that a defendant is incompetent to stand trial, if the defendant's competency is later restored, the criminal case will resume. A court may dismiss the charges after five years if the court determines that resuming the criminal proceedings would be unjust. In a capital case the court may not dismiss the charges until ten years after the finding of incompetency. If continued commitment of the defendant is warranted due to the defendant's mental condition, civil commitment proceedings must be instituted. See Exhibit 8.2 for a chart outlining procedures for incompetency to stand trial.



Source: Department of Health and Mental Hygiene

If a defendant is committed, the Department of Health and Mental Hygiene is required to report annually to the court on any recommendations that the department has concerning the committed individuals. The department must also provide this report to the State's Attorney's office. Within 30 days after receiving the report, the State's Attorney must send to the court and to defense counsel a recommendation concerning disposition of the charges against each committed individual.

All dispositions and information concerning committed individuals are required to be sent to the Criminal Justice Information System which keeps computerized records of all criminal actions.

In fiscal 1998, of the 248 defendants examined solely for further evaluation as to competency, 175 (70 percent) were evaluated to be incompetent or as competent only due to treatment received during the evaluation. Fifty-seven of these defendants were committed due to incompetency. In fiscal 1998, 259 defendants were referred for further evaluation for both competency and criminal responsibility. Forty-nine (19 percent) of these defendants were determined to be incompetent to stand trial or as competent solely based on treatment received during the evaluation.

Not Criminally Responsible Findings

Overview

Under current law an individual may be found guilty of a crime only if the individual has the necessary mental state at the time of the crime. If an individual suffers a seizure and injures another or commits an act while unconscious (e.g., while sleepwalking or under anesthesia), these individuals are not guilty of what would be crimes under ordinary circumstances. Similarly, an individual who commits a crime may not be found guilty if the individual is not criminally responsible. The plea of not criminally responsible is often referred to as the insanity defense, and these are the circumstances (especially the "temporary insanity" defense) where its use is the most controversial. The concept of not criminally responsible is broader than insanity. It includes mentally retarded individuals, who are unable to appreciate the criminality of their conduct.

Unlike with the incompetency to stand trial issue, the focus of the not criminally responsible concept is on the mental state of the defendant at the time of the crime. The following is the statutory definition of not criminally responsible conduct: "A defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or mental retardation, lacks substantial capacity:

- to appreciate the criminality of that conduct; or
- to conform that conduct to the requirements of law."

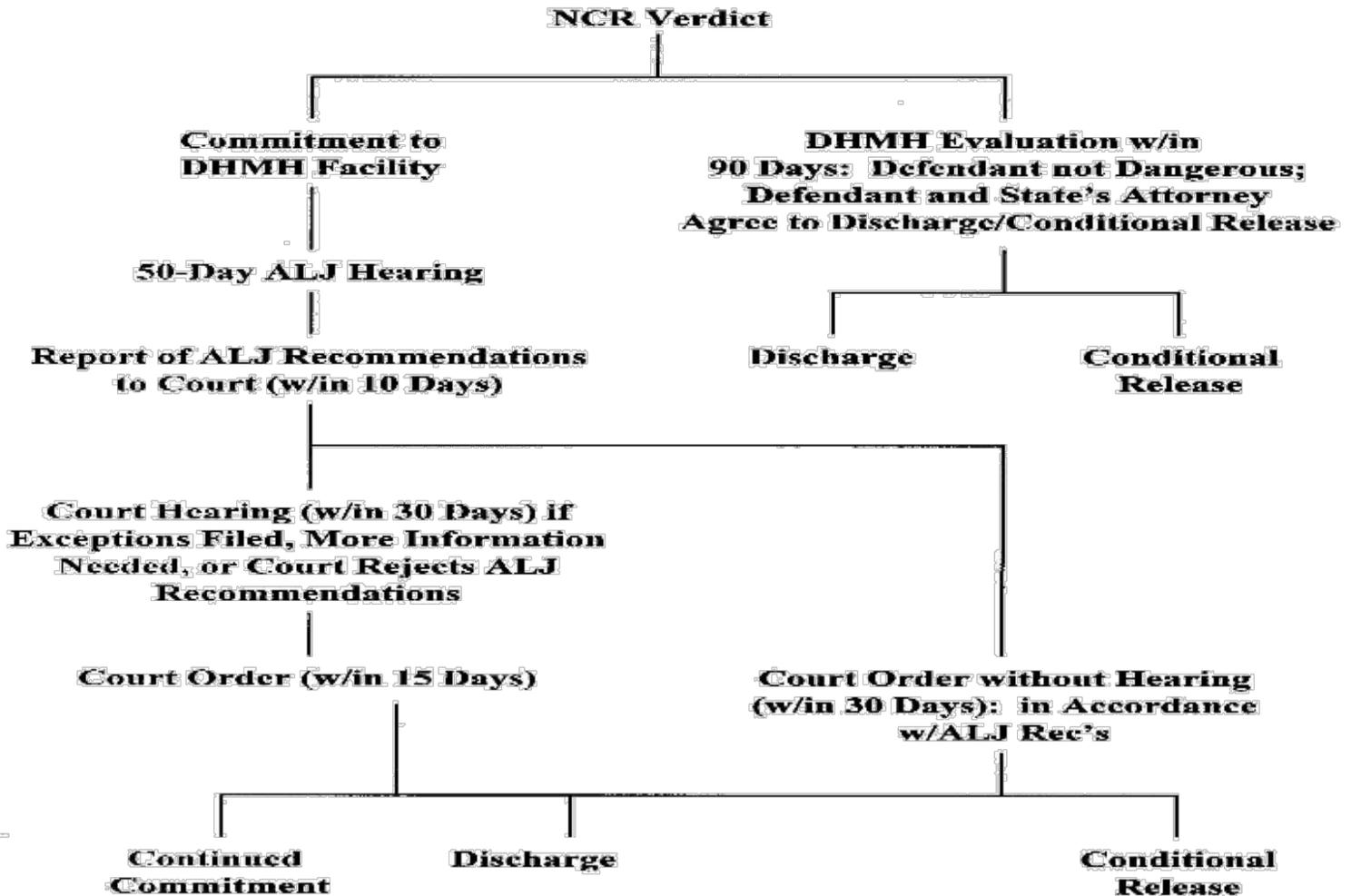
The law further clarifies that a mental disorder does not mean an abnormality manifested only by repeated criminal behavior or other antisocial misconduct.

As stated earlier, in fiscal 1998, after the initial screening, 259 defendants were referred for further evaluation for both competency and criminal responsibility, and 49 (19 percent) of these defendants were determined to be incompetent to stand trial or as competent solely based on treatment received during the evaluation. Seventy-three (28 percent) were determined to be not criminally responsible. Of the 73 defendants determined to be not criminally responsible, 44 were committed to a department facility. The remainder of those found to be not criminally responsible by the department were either not committed despite the finding, withdrew the plea of not criminally responsible, or were not convicted. As of August 1998 about 400 defendants were committed to a department facility for reasons of a not criminally responsible finding, including 75 defendants whose conditional release had either been revoked or who had voluntarily returned from conditional release.

Trial Procedures

If a defendant intends to rely on a defense of not criminally responsible, the defendant must enter a written plea. After the plea is entered, the court may order the Department of Health and Mental Hygiene to examine the defendant and to report back to the court, the State, and the defendant. In a case involving a plea of not criminally responsible, the trier of fact (either a judge or jury) must first find beyond a reasonable doubt that the defendant committed the criminal act. After the trier of fact determines that the defendant committed the act, it must then decide whether the defendant has proven by a preponderance of the evidence⁽⁴⁾ the defense of not criminally responsible. See Exhibit 8.3: Procedure Following Not Criminally Responsible (NCR) Verdict.

**Exhibit 8.3
Procedure Following Not Criminally Responsible (NCR) Verdict**



Source: Department of Health and Mental Hygiene

Commitment

After a finding of not criminally responsible, a court is required to commit a defendant to the custody of the Department of Health and Mental Hygiene for institutional inpatient care or treatment. The court may release a defendant after such a finding only if:

- the Department of Health and Mental Hygiene issues a report within 90 days preceding the verdict that the defendant would not be a danger if released; and
- the State's Attorney and the defendant agree to the release and any conditions the court chooses to impose.

Release

A committed defendant is eligible for release only if the defendant proves by a preponderance of the evidence that the defendant will not be a danger if released. Within 50 days after commitment, unless waived by the defendant, the Department of Health and Mental Hygiene is required to hold a hearing before an Administrative Law Judge to determine whether to recommend to the court to allow the defendant's release. At the hearing, the formal rules of evidence do not apply. The defendant is entitled to legal representation, including representation by the Office of Public Defender if indigent. In addition, the department and the State's Attorney are entitled to participate in the hearing. After the hearing, the Administrative Law Judge is required to submit a report of written findings to the court and to all parties.

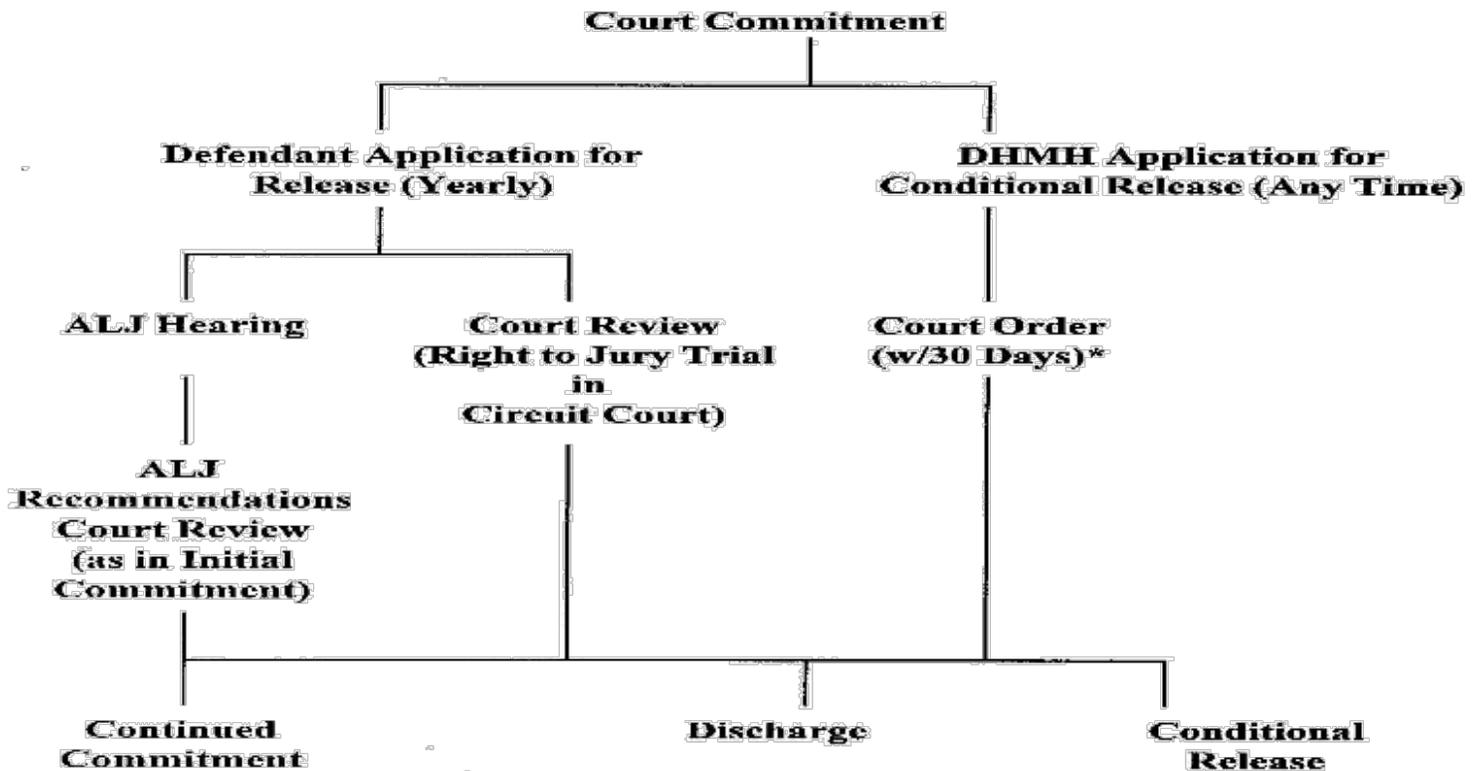
When the court receives the report of the hearings officer, the court may choose to hold a hearing. If the court does not hold a hearing, the court must enter an order in accordance with the Administrative Law Judge's recommendations. If a party files exceptions to the report or the court on its own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

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

In addition, the Department of Health and Mental Hygiene may apply at any time to the court to order the defendant's conditional release. The department is required to send a copy of the application to the defendant, the defendant's counsel, and the State's Attorney. After receipt of the application, the court must issue an order either continuing commitment or allowing the conditional release. See Exhibit 8.4 for procedures relating to a review of not criminally responsible commitment finding.

A defendant who is given a conditional release is supervised by the department's Community Forensic Aftercare Program of the office of Community Forensic Services. This program is staffed by a director, three social workers, and a secretary. The number of defendants supervised on conditional release is between 450 and 500.

**Exhibit 8.4
Not Criminally Responsible Commitment**



*ALJ Hearing Sometimes Held First

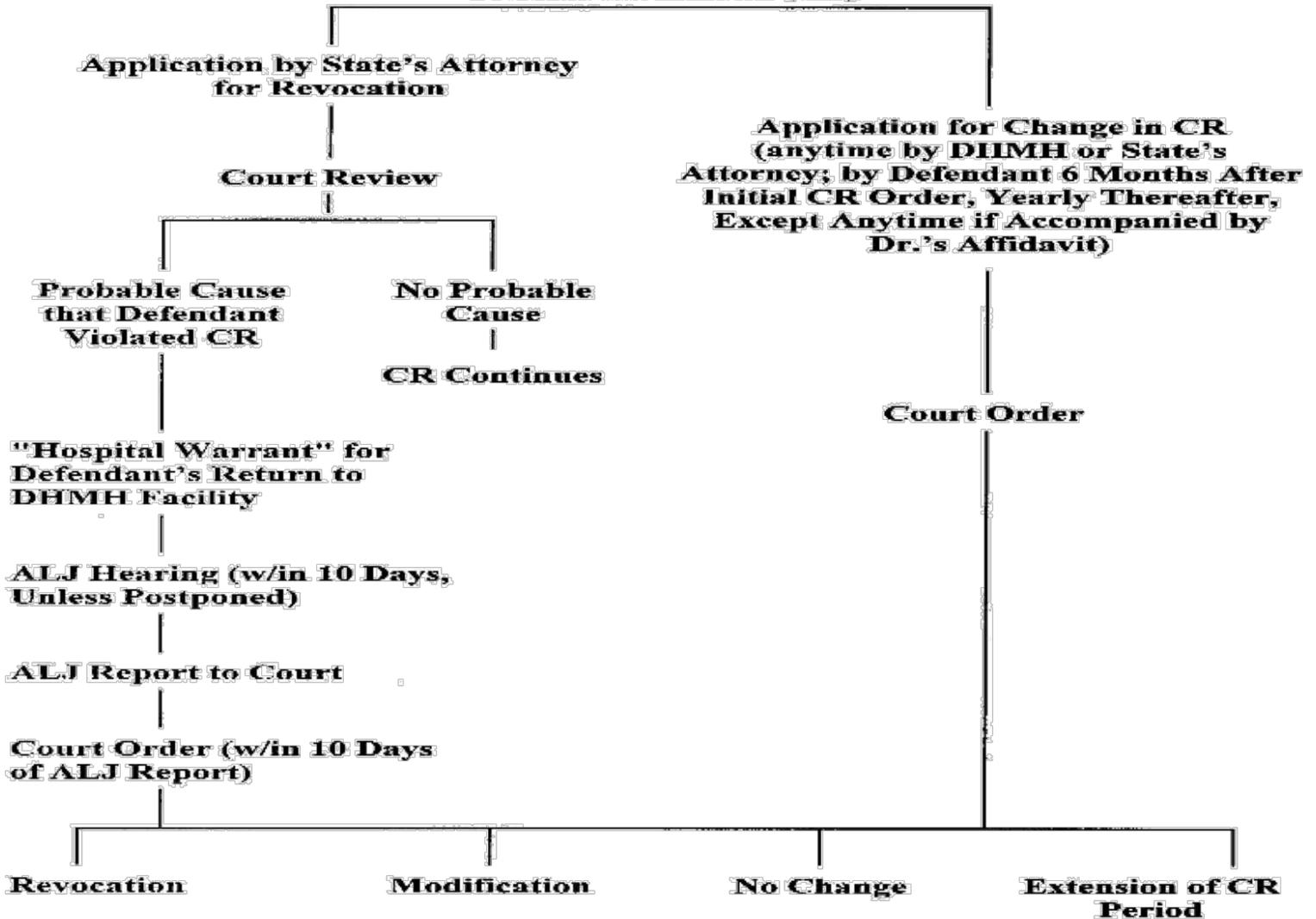
Source: Department of Health and Mental Hygiene

Revocation or Modification of Conditional Release

If the State's Attorney receives a report that a defendant who was given a conditional release has violated a condition of release, the State's Attorney must investigate the report. If the State's Attorney determines that there was a violation and believes that further action is necessary, the State's Attorney must notify the Department of Health and Mental Hygiene and file with the court a petition for modification or revocation of conditional release. The court is required to review the petition. If the court determines that there is not probable cause to believe that a violation occurred, the court shall note this determination on the petition and notify the State's Attorney, the department, and the person reporting the violation. If the court decides that there is probable cause to believe that a violation occurred, the court must issue a hospital warrant for the defendant's arrest and return to the department's jurisdiction, and notify the State's Attorney, the defendant's counsel, the department, the person reporting the violation, and the Administrative Law Judge. Unless all parties agree to an extension or the Administrative Law Judge finds good cause, a hearing must be held within ten days of the defendant's return to the department under the hospital warrant. At the hearing the defendant is entitled to representation by an attorney and all parties are entitled to submit evidence and call witnesses. The State is required to show by a preponderance of the evidence that the violation occurred. If the State meets this burden, the defendant may nevertheless prove by a preponderance of the evidence eligibility for continued release. The Administrative Law Judge is required to report the findings and recommendations to the court promptly. Any party may file timely exceptions. After receipt of the report, and after reviewing any exceptions filed, the court may either revoke the release, continue the release, modify the terms of release, or extend the conditional release for an additional five-year term.

The Department of Health and Mental Hygiene and the State's Attorney may petition a court to change the conditions of release at any time. Unless good cause is shown for an earlier hearing, a defendant on conditional release may petition a court for a change in conditions after six months on release. Thereafter, the defendant may petition for a change annually. If, however, the defendant has a physician's or psychologist's affidavit that the defendant's mental condition has improved, the defendant may petition for a change at any time. See Exhibit 8.5 for procedures relating to a revocation/modification of conditional release.

**Exhibit 8.5
Revocation/Modification of Conditional Release
Conditional Release (CR)**



Source: Department of Health and Mental Hygiene

Victims' Rights

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

1. "Competency to Stand Trial and Criminal Responsibility under Maryland Law", W. Lawrence Fitch, Director of the Office of Forensic Services of the Department of Health and Mental Hygiene.
2. Since the term "mental retardation" is used in the law, and not developmentally disabled or any similar term, that is the term used in this handbook.
3. In addition to the circumstances discussed in this chapter, there are three other circumstances in which a defendant's mental state is relevant. First, an individual who is mentally retarded, even if found to be competent to stand trial and criminally responsible, may not be sentenced to death if found guilty of first degree murder. Second, a person who is sentenced to death who subsequently becomes incompetent may not be executed and must be sentenced to life without parole (see Chapter 9 on sentencing and the death penalty). Third, a convicted defendant's mental condition may be

evaluated as it relates to sentencing issues, including degree of culpability, need for treatment, and risk of future violence.

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

Chapter 9. Sentencing

In large part, Maryland law states a maximum sentence (usually a monetary fine and a term of imprisonment) for offenses but does not identify a minimum sentence, leaving sentencing to the discretion of the court. Aggravating circumstances, such as the use of a handgun in an offense or prior convictions for violent crimes, carry with them specific sentence lengths. It should be noted that even for many offenses in which a minimum sentence is specified, judges have some discretion in imposing a penalty of less than the statutory minimum sentence.

The following circumstances require the application of mandatory minimum sentencing which a judge may not suspend or reduce: (1) use of a handgun or assault pistol in a felony or crime of violence; (2) use of a firearm in a drug trafficking crime; (3) drug dealing as a subsequent offense; and (4) crimes of violence as a subsequent offense. These offenses also have prescribed sentences without parole.⁽¹⁾ Offenders who are sentenced for certain felony drug offenses are also subject to mandatory, nonparoleable sentences. First degree murder carries a mandatory life sentence that may be either with or without the possibility of parole.

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

Sentencing Guidelines

Maryland was one of the first states to initiate a sentencing guideline system. The sentencing guidelines have been in effect statewide since 1983. Maryland's guidelines were designed by judges for judges, although the Sentencing Guidelines Advisory Board includes representatives from the legislature, executive branch, and all parts of the criminal justice system. The guidelines are descriptive of actual sentencing by judges and are not value judgments by the board. They are based on studies of the actual sentences imposed by judges. They are not designed to reflect a policy determination by the board that a crime merits a particular sentence. Among the goals of the guidelines are increased sentencing equity, articulated sentencing policy, provision of information to new or rotating judges, and promotion of understanding of the sentencing process.

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

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

The guidelines are also based upon two types of scores - an offense score and an offender score. In drug and property offenses, the offense score is determined by the seriousness of the offense. In offenses against persons, the offense score is determined by the seriousness of the offense, the injury to the victim (physical or mental), weapon used, and any special vulnerability of the victim (under ten years old, more than 60 years old, physically or mentally disabled). The offender score is determined by whether or not the offender was in the criminal justice system at the time the offense was committed (i.e., on parole, probation, incarceration on work release), juvenile record, prior criminal (adult) record, and prior adult parole or probation violations.

Under these guidelines, the offense and offender scores are calculated for each offense for which there is a conviction. In multiple offense cases, the overall guideline range is determined after calculating guidelines for the individual offenses. The actual sentence also accounts for credit for time served, suspended time, length of probation, fine, restitution, and community service. The guideline sentence range represents only non-suspended time. If a judge imposes a sentence of probation, the length of the probation is left to the judge's discretion, within statutory limits.

The sentencing guidelines are not mandatory and judges may, at their discretion, impose a sentence outside the guidelines. Judges who wish to sentence outside the guidelines, however, are required to submit an explanation as to why the sentence imposed is more appropriate, reasonable, or equitable than a sentence within the guidelines.

A study by the Maryland Commission on Criminal Sentencing Policy (see below) found that the compliance rate from June 1987 to September 1996 (for single count cases) was 54.6 percent within the guidelines for all offenses. Specifically, offenses against persons were 57.2 percent within the guidelines; drug offenses were at 49.2 percent; and property offenses were at 65 percent.

The guidelines are revised every three years to reflect the actual sentences imposed by judges. For example, in 1987 the offense factor for seriousness of the crime was changed for a number of crimes, including attempted first and second degree rape, murder, and assault with intent to murder. The matrices for the actual sentences imposed for drug offenses and offenses against persons and property were also modified.

In 1994 the Advisory Board on Sentencing Guidelines of the Maryland Judicial Conference recommended decreases in sentences for 18 cells (crime groupings) and increases in 14 cells. These recommendations would have been effective for 1995. However, after much public opposition from several quarters, the Chief Judge of the Court of Appeals withdrew these recommendations and advised that the 1987 guidelines would remain in effect.

Maryland Commission on Criminal Sentencing Policy

In 1996 the Maryland Commission on Criminal Sentencing Policy was established to provide "truth in sentencing" for Maryland. Specifically, the commission is charged to evaluate the State's sentencing and correctional laws and policies and make recommendations to the Governor and the General Assembly regarding the efficacy of existing sentencing guidelines and the option of adopting a new guideline system, the retention or elimination of parole, whether to increase minimum sentencing requirements, the amendment or elimination of good time credits, and other matters relating to State and local sentencing laws.

The law requires the commission to study a variety of issues relating to the sentencing and correctional process including truth in sentencing. Truth in sentencing means that the sentence that the judge imposes should accurately reflect the amount of time that an offender will serve. Among the other objectives for the commission are reserving incarceration for career and violent offenders, reducing disparity in sentencing for similar crimes, preserving judicial discretion in sentencing, and ensuring the use of alternative sentencing options for nonviolent offenders.

As discussed above, currently Maryland law authorizes, but does not mandate, the use of judicial guidelines in setting sentences. Among the ideas being considered by the commission are whether the State should adopt presumptive sentencing guidelines for certain crimes. These would require a judge to sentence within a certain range, unless the judge found on the record that there were reasons to deviate from the range. A related issue would be whether there would be a right to appeal to the Court of Special Appeals if the judge deviated from the guidelines. The commission is also considering whether to create a permanent guidelines commission.

The original reporting date and termination date for the commission was established as July 1, 1997. Since then, however, the reporting date of the commission has been extended to December 31, 1998, and the termination date of the commission has been extended to July 1, 1999.

Probation

Probation is a disposition of a case by a court that allows the court to impose conditions on an offender in addition to the sanctions provided in the law that the offender violated. A court has broad authority to impose conditions to fit each case, provided that the conditions are reasonable and have a rational basis. A usual condition of probation will be for the offender not to engage in any further criminal activity. Other conditions may require an offender to obtain drug or alcohol treatment, refrain from taking drugs or alcohol, obtain counseling in domestic violence cases, pay restitution, or refrain from contacting or harassing the victim of the crime and the victim's family.

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

Probation Before Judgment

Probation before judgment is a stay of the entering of a conviction. It requires a finding of guilt by the judge or jury, either after trial or after a guilty plea by a defendant. Instead of entering a judgment of conviction, the judge may give the defendant probation before judgment if the judge finds that it is in the best interests of the defendant and the welfare of the people of the State. This disposition allows the judge to punish a defendant without the defendant having the taint of a conviction that could have adverse consequences in the defendant's life (such as employment disqualification). For motor vehicle offenses, a probation before judgment allows the imposition of a penalty without the defendant being given the points for the offense, avoiding possible license sanctions and insurance issues.

A judge may impose a fine as a condition of probation before judgment. In five counties (Allegany, Charles, Calvert, Garrett, and St. Mary's), a judge may impose a period of incarceration as a condition. Otherwise, a court may impose any condition that is reasonable and rational. A court may not impose probation before judgment for drunk or drugged driving or for a drug offense if the defendant has previously been convicted of or given probation before judgment for drunk or drugged driving (within five years) or a drug offense. A court may also not impose probation before judgment if the offense is a rape or sexual offense (except for fourth degree sexual offense) involving a victim under the age of 16 years. If a person fulfills the conditions of probation before judgment, the court must discharge the person from probation, and the discharge "is without a judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of crime."

Probation Following Judgment

Probation following judgment allows the court to impose any sentence provided by law and to impose conditions on an offender after the sentence is completed. Probation following judgment requires a court to enter a judgment of conviction. The court may then suspend the imposition or execution of a sentence and place the offender on probation. Often courts will impose a split sentence, requiring the offender to serve part of the sentence, while suspending the remainder and placing the offender on probation. In the event the court orders a term of imprisonment, the court may order that the term of probation commence on the date the offender is released from imprisonment. The term of probation may not exceed five years, unless the period is extended with the offender's consent for the sole reason of allowing the offender to make restitution.

Supervised Probation

If a court imposes probation, the court may order the probation to be supervised or unsupervised. For example, if the court orders probation before judgment for a minor speeding ticket, the court most likely will not order supervised probation. For more serious offenses, however, a court will order the offender to be supervised by the Division of Parole and Probation of the Maryland Department of Public Safety and Correctional Services. An offender placed on supervised probation is required to pay a monthly fee of \$25 to the division unless exempted by law. An offender will be given a written case plan, specifying the conditions of probation, and will be assigned to a probation agent. On average a parole and probation agent has 80 active cases. The parole and probation agent's job is to maintain contact with the offender, including face-to-face contact at specified intervals and a home visit within 20 days of being assigned the case, and to ensure that any special conditions are being met. For intensive supervision, the agent must

also verify employment of the offender. As of August 31, 1998, the Division of Parole and Probation had nearly 70,000 offenders under supervised probation by approximately 600 parole and probation agents. Although individual caseloads may vary greatly, the average number of probationers supervised by each agent is approximately 116. See Chapter 15 for further information on the caseload of the Division of Parole and Probation.

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

Death Penalty

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

Recent Interpretation of the Death Penalty Statutes

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

States developed two types of responses: mandatory sentences or guided discretionary sentences. Through Chapter 252 of 1975, Maryland imposed a mandatory sentence of death for first degree murder under certain circumstances. In a series of cases in 1976, the United States Supreme Court approved the use of guided discretion and rejected mandatory sentences. The court ruled that the United States Constitution requires individualized sentencing in death cases.

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

In Maryland, a person tried for murder is tried in a circuit court by either a jury or a judge. The State is represented by the State's Attorney. If the defendant is convicted of first degree murder and the State has given notice it seeks the death penalty, a separate sentencing proceeding is held before the original jury or a new jury if the defendant pled guilty or was convicted by a judge. The defendant may choose to waive the right to a jury and have the judge decide. The trier must consider whether beyond a reasonable doubt any of ten specific statutory aggravating circumstances exist. If the trier determines that one or more aggravating circumstances exist, the trier must then consider whether by a preponderance of the evidence there are one or more mitigating factors. The statute lists eight, non-exclusive factors. The trier must then find by a preponderance of the evidence that the aggravating factors outweigh the mitigating factors in order to impose the death penalty.

If a death sentence is imposed, the case is automatically reviewed by the Court of Appeals. As in other appeals, the Attorney General represents the State. The Court of Appeals is required to review not only errors alleged in the case, but also the sentence of death. The court must determine whether the sentence was arbitrarily imposed, whether the evidence supports the finding of the existence of an aggravating circumstance, and whether it outweighs mitigating circumstances.

If the death penalty sentence is upheld, the defendant usually will file a petition for writ of *certiorari* in the Supreme Court of the United States. If this is unsuccessful, the defendant will next file a petition for post conviction relief in circuit court. Federal *habeas corpus* review may then be available. See Chapter 10 for a full discussion of judicial review.

In recent years Maryland has exempted certain persons from imposition of the death penalty. A minor or mentally retarded person found guilty of murder in the first degree may not be sentenced to death.

The appeal process can be very lengthy. There have been two executions in the State since the death penalty was reinstated. John F. Thanos was executed on May 17, 1994, after he declined to pursue any further appeals. His was the first execution in Maryland in 33 years. In 1997 Flint Gregory Hunt's second petition for post-conviction relief was denied for his 1986 jury conviction of first degree murder and handgun violations. This was actually the fourth time Hunt had asked the Court of Appeals to review his capital conviction and sentence. Hunt was executed on July 2, 1997. As of October 1, 1998, there were 15 people sentenced to death in Maryland.

Because pursuit of the death penalty is lengthy and costly, some jurisdictions, such as Baltimore City, do not seek the death penalty in every eligible case and instead request life imprisonment without the possibility of parole. The 1993 *Report of the Governor's Commission on the Death Penalty* found that as a proportion of all homicide cases, Baltimore City was the least aggressive in pursuing the death penalty while Baltimore County was the most aggressive in seeking the death penalty in 8.2 percent of all homicides.

Another type of appeal that may be filed is for the defendant to claim incompetence at the time of execution despite his or her sanity at the time of the crime and competence to stand trial. In *Ford v. Wainwright*, 1986, the Supreme Court reaffirmed that an insane person may not be executed and that a person is entitled to a judicial determination on the issue of competency at the time of execution. Still another means by which a defendant subject to capital punishment can avoid the death sentence is for the Governor to commute the sentence from death to imprisonment for life or a term of years. See Chapter 15 for a discussion of the Governor's pardon power, including power to commute a sentence.

Sexual Offenses

Over the past few years, many states have enacted laws requiring the registration of sex offenders. These laws have become known as "Megan's Law" in memory of a child in New Jersey who was sexually assaulted and murdered by a convicted sex offender who had moved into a neighborhood without any notice provided to the neighborhood.

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register offenders who commit certain crimes against children, sex offenders, and sexually violent predators. Failure to comply with the federal law by September 1997 would have resulted in a loss of federal money, although the law allowed a two-year extension for states making good faith efforts to comply. In 1997 Maryland law was expanded with the intent of complying with the federal law.

The following persons are required to register with a supervising authority on release from incarceration or at the court if not incarcerated: (1) offenders who commit certain other offenses against children (e.g., kidnapping, pandering, prostitution offenses); (2) child sexual offenders; (3) sexually violent offenders; and (4) sexually violent predators. Current law defines the term "registrant" to cover all four types of offenders who were required to register, and most provisions apply to all four categories. In addition to the initial registration, registrants are required to provide notice of a change of address. With the exception of sexually violent predators, annual registration is required for a period of ten years.

A "sexually violent predator" is defined in Maryland as a person who has committed at least two sexually violent offenses and, at the request of the State's Attorney, has been determined by the court before or at sentencing to be at risk of committing another sexually violent offense. These offenders are required to verify their addresses every 90 days. In addition, they must register for life, unless after having registered for at least ten years, they petition the court and the court finds that they are no longer at risk of re-offending. A "sexually violent offense" is: (1) first or second

degree rape; (2) first, second, or third degree sexual offense; (3) attempted first or second degree rape or sexual offense; or (4) assault with intent to commit rape or sexual offense in the first or second degree.

Even after some corrective and clarifying legislation was enacted in 1998, Maryland was still found to be short of full federal compliance with the Wetterling Act. This was due to some technical shortcomings under current federal rules that may change substantially prior to the 1999 legislative session. Maryland was however granted a two-year waiver under the federal law.

Home Detention

An incident in Prince George's County, whereby a private monitoring agent was caught in a scheme to provide lax supervision of an inmate in exchange for drugs, led to a county grand jury finding that private home detention companies were in need of regulation. The grand jury found, in part, that the lack of regulation, with accompanying rules and standards, limited the extent to which such a supervisor or inmate could be held accountable.

A recent survey by the Department of Legislative Services' fiscal staff (*Implementation of Alternatives to Incarceration at Local Detention Centers*, April 1997) showed that alternative-to-incarceration programs have been implemented by many local jurisdictions and that they have been expanding in recent years. However, the vast majority of home detention carried out in the local jurisdictions does not involve the use of private home detention companies.

Post conviction home detention is a type of alternative confinement that is used for persons who have been convicted of a crime. It allows the person to continue to live in the person's residence and continue to work but is designed to provide supervision over the person's activities. Electronic monitoring, usually by way of an anklet, is designed to ensure that the person is at home when not working. Monitoring is also undertaken in person or over the telephone.

The Commissioner of Correction or the commissioner's designee may approve an inmate committed to the custody of the commissioner for participation in the State home detention program. In addition, the Department of Public Safety and Correctional Services has been authorized to regulate private home detention companies. The department may also request national and State criminal history record checks on the operators and employees of such companies. A more comprehensive discussion of alternatives to incarceration can be found in Chapter 13.

1. Except for persons serving sentences in the Patuxent Institution as Eligible Persons. See Chapter 14 for a discussion of the eligible persons program.

Chapter 10. Judicial Review

A person convicted of a crime has a number of alternatives for seeking review of a conviction, a sentence imposed by the trial court (District Court or circuit court), and the length of the sentence. The options include review at the trial court level, appeal to a circuit court (if the trial was in the District Court), review by the Court of Special Appeals, and review by the State's highest court, the Court of Appeals. Cases also can be brought to the federal courts through *habeas corpus* petitions. In general, a defendant is not limited to any particular option for judicial review. A defendant can pursue most of the options discussed in this chapter simultaneously with other options.

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

- a dismissal or quashing of a criminal charge before trial;
- failure of a judge to impose a statutorily required sentence; and
- a decision excluding evidence in certain felony drug cases and in crimes of violence cases.

Review by Trial Court

Motion for a New Trial

After the verdict a defendant has ten days to file a motion for a new trial. The decision to grant a new trial is at the discretion of the trial court. Some common grounds for seeking a new trial include:

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

In addition to the ten day rule, a motion for a new trial in a circuit court can be granted for newly discovered evidence which could not have been discovered by due diligence within one year after imposition of a sentence or after receipt of a mandate (i.e., ruling) from the Court of Special Appeals or Court of Appeals. The one year rule applies to a motion for retrial in the District Court if an appeal was not taken to a circuit court.

Revisory Power of Court

A court may correct an illegal sentence at any time. A court may also revise at any time a sentence in cases of fraud, mistake, or irregularity.

A defendant has 90 days to file a motion to revise a sentence. After an open hearing on this motion, the court may revise a sentence. It may not increase a sentence, except if there was an evident mistake. In the District Court a defendant may file a motion to revise a sentence only if the defendant has not filed an appeal that has been perfected. In a circuit court there is no such limitation on appeals.

Circuit Court Trial *De Novo*

A defendant tried and convicted in the District Court in a criminal case has an absolute right to appeal and have the

case tried *de novo* in a circuit court. A *de novo* trial is a completely new trial. In essence, the first trial in the District Court is treated as if it never took place. A defendant also has a right to trial by jury in a *de novo* proceeding if any period of incarceration is possible. The practical effect of this appeal is that a defendant who is not entitled to request a jury trial in the first instance does have the right to a jury trial after conviction in the District Court even if the maximum sentence is less than 90 days.

Review of Criminal Sentence by Three Judge Panel

Every person convicted of a crime by a circuit court and sentenced to serve a total of more than two years' imprisonment, including where a sentence or part of a sentence is suspended to be less than two years' imprisonment, is entitled to have the sentence reviewed by a panel of three or more trial judges of the judicial circuit in which the sentencing court is located. The sole purpose of the review is to determine whether the imposed sentence is just. The sentencing judge may sit with the review panel, in an advisory capacity only, if requested by a majority of the panel. The defendant is entitled to only one such hearing.

The law provides that the defendant has a right to counsel retained by him or her, appointed by the sentencing judge, or provided by the Office of Public Defender. This right to assistance includes assistance in determining whether to seek such review, preparing the petition, and representation at the hearing.

The three judge panel may increase, decrease, or suspend the sentence. The panel must hold a hearing before increasing or decreasing the sentence or to order service of a suspended sentence. A sentence for life, life without parole, or a term of years may not be increased to a death sentence. If the panel holds a hearing, the defendant, the State's Attorney or Assistant State's Attorney, and defendant's counsel are entitled to be present. The motion for sentence review must be filed within 30 days after sentencing and the panel has 30 days after the motion to render a decision.

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

***In Banc* Hearing by a Circuit Court**

The Maryland Constitution provides for reservation of points or questions for consideration by a court *in banc* (the spelling used in the Maryland Constitution; the generally accepted spelling is "*en banc*"). In any trial conducted by less than the whole number of the circuit court judges of that judicial circuit, the defendant can make a motion for an *in banc* consideration of the ruling. Although the law contains no prohibition on the State moving for *in banc* review, there are serious questions as to whether this would be allowed. As a practical matter, it is always the defendant who would seek this review. An *in banc* hearing is conducted before a three judge panel of the circuit court. The constitutional provision excludes cases considered on appeal from the District Court. The provision also excludes criminal cases that are not felonies except where the law provides that any term of confinement is to be served in the penitentiary.

An *in banc* hearing was originally designed to provide an inexpensive form of appellate review without incurring great expenditures of time and money traveling to Annapolis where the appellate court sat. It has been called the "poor man's appeal." As with appeals, the review panel decides questions of law properly preserved at trial but more expeditiously and without the expense and formality of an appeal. *In banc* review is rare because it precludes any further appeal of the conviction by the party seeking the review. If the *in banc* court rules in favor of the party seeking the review, the other party has the right to appeal to the Court of Special Appeals. A review of sentence by a three judge panel (discussed earlier in this chapter under "Review of Sentence by a Three Judge Panel") is not an *in banc* appeal, but rather a separate statutory mechanism to review the appropriateness of a sentence only. *In banc* review is a constitutional procedure designed to review all legal issues raised at trial.

The notice for the *in banc* hearing must be filed within ten days after an entry of judgment or ten days after a motion

for a new trial is denied. A hearing must be held as soon as practicable unless both parties notify the clerk of the court that the requirement for a hearing is waived. It is likely that a motion for an *in banc* hearing would follow a denial of a motion for a new trial.

A defendant who seeks *in banc* review would be precluded from bringing an appeal before the Court of Special Appeals and any further appellate review. The only recourse would be to file a petition for post conviction act relief (discussed later in this chapter under "Uniform Post Conviction Procedure Act"). For this reason, *in banc* review is rarely sought by a defendant.

Maryland Appellate Court Review

There are two appellate courts in Maryland: the Court of Special Appeals and the Court of Appeals. The Court of Appeals is the highest court in Maryland. The Court of Special Appeals is the intermediate appellate court.

A defendant who is tried in District Court and appeals to a circuit court may not subsequently appeal to the Court of Special Appeals. Rather, the defendant must file a petition for writ of certiorari with the Court of Appeals. A defendant originally convicted in a circuit court may appeal to the Court of Special Appeals and request further review by the Court of Appeals. In cases where the death penalty is imposed, the Court of Appeals is required to review the sentence on the record. The State is represented by the Criminal Appeals Division of the Attorney General's office rather than the local State's Attorney in all appellate cases.

On appeal, the following two issues are most frequently litigated following the conviction of a defendant. First, was there legally sufficient evidence to convict the defendant? Secondly, did the trial judge make any errors in conducting the trial, such as in admitting evidence that should not have been admitted or in giving improper jury instructions? If the appellate court determines that the trial judge did commit an error, it is presumed that the error is reversible error, which requires the reversal of the conviction and either the conducting of a new trial or the acquittal of the defendant. The appellate court cannot affirm the conviction unless it is persuaded that the error was harmless error. Harmless error means that the error was minor or not significant in light of the other evidence and the rest of the trial, and the conviction would be upheld despite the error.

As discussed at the beginning of this chapter, only in very limited circumstances does the State have the right to appeal in a criminal case. In the event of a reversal of a conviction by an appellate court, the State does have the same right to seek further appellate review in the same manner as the defendant.

A party may file a motion for reconsideration within 30 days after filing of the opinion of the court or before issuance of the mandate by one of the appellate courts. At least half of the judges who concurred in the opinion or order must agree to the reconsideration.

Court of Special Appeals

The 13-member Court of Special Appeals typically sits in panels of three to hear cases, although the court in exceptional cases may elect by a decision of the majority of the judges of the court to sit *in banc*, or as a whole (for *in banc* cases, six judges constitute a quorum). The court's review is on the record which means that only those issues addressed in the trial will be considered. It is not a reconsideration of the entire criminal trial. The types of cases heard by the Court of Special Appeals include:

- *First appeal of right* - All persons convicted of a crime first tried in a circuit court are entitled to a direct appeal to the Court of Special Appeals for a review of their trials. This first direct appeal is an appeal of right because the Court of Special Appeals must hear the case. The first appeal must be taken within 30 days after final judgment of a circuit court or 30 days after a motion for new trial is denied or withdrawn.
- *Application for leave to appeal to the Court of Special Appeals* - Certain defendants do not have a right of appeal to the Court of Special Appeals. These defendants may still ask the court to review their cases. Such requests are called application for leave to appeal because the granting of a hearing by the Court of Special

Appeals is discretionary, not mandatory. An application for leave to appeal would be made if the defendant: (1) had pleaded guilty in a circuit court; (2) had filed an appeal from an order denying relief under the Uniform Post Conviction Procedure Act; or (3) is appealing a circuit court's order revoking probation.

Court of Appeals

The Court of Appeals is the highest court in Maryland. It is composed of seven judges. Although the constitution only requires five judges to consider a case, in practice all judges hear cases as a whole. Its criminal jurisdiction is generally discretionary, meaning the court may select which cases it will hear. The court has exclusive jurisdiction over appeals where the death penalty has been imposed. Criminal cases are brought before the Court of Appeals in one of the following ways:

- *Writ of certiorari* - Any party, including the State, may file a petition for a writ of certiorari which means an application for the Court of Appeals to review a case in the Court of Special Appeals. The petition must be filed while the case is still pending or within 15 days of issuance of the Court of Special Appeals' mandate. *Certiorari* review is discretionary with the Court of Appeals; the court may either grant or deny the petition.
- *Court initiative or motion* - The Court of Appeals may decide on its own initiative or motion to take the case from the docket of the Court of Special Appeals.
- *Direct appeal* - The Court of Appeals has exclusive appellate jurisdiction over a criminal case in which the death penalty is imposed. When a sentence of death is imposed there is an automatic appeal to the Court of Appeals of both the determination of guilt and the sentence. The Court of Appeals reviews the sentence on the record.

Uniform Post Conviction Procedure Act

Any person convicted of a crime in either the District Court or a circuit court has a right to institute a proceeding for post conviction relief in a circuit court to set aside or correct a verdict. This right extends to a sentence of probation, as well as confinement. A post conviction proceeding is not an inquiry into guilt or innocence; the trial and appellate review are where these issues are determined. Post conviction proceedings focus on whether:

- the sentence or judgment imposed is in violation of the United States or Maryland Constitutions or laws of the State;
- the court was without jurisdiction to impose the sentence or the sentence exceeded the maximum allowed by law; or
- the sentence or judgment could otherwise be attacked under a writ of *habeas corpus*, writ of *coram nobis*, or other common law or statutory remedy.

Unless extraordinary cause is shown, a petition for post conviction relief must be filed within ten years of the sentence. A person may only file one petition arising out of each trial as long as the alleged error is not finally litigated or waived in the proceedings, or in any other proceeding that the petitioner has taken to secure relief from conviction. In the interests of justice, a court may reopen a post conviction proceeding that was previously decided. A defendant is entitled to assistance of counsel. Usually counsel will be provided by the Public Defender or court appointed counsel.

An allegation of error is litigated finally when an appellate court of the State has rendered a decision on the merits, either upon direct appeal or upon any consideration of an application for leave to appeal. An issue also is finally litigated if disposed of by petition for a writ of *habeas corpus* or *coram nobis* unless that disposition was clearly erroneous. In other words, collateral attack is precluded under the Uniform Post Conviction Procedure Act if the defendant either already litigated the issue at trial or could have litigated the issue and failed to do so. Examples of this are failure to give proper jury instructions, use of involuntary confessions, and use of illegally seized evidence.

The most common reason for seeking post conviction relief is a claim of ineffective assistance of counsel. It has been said that there are three trials in a criminal case. The first is the trial of the defendant (the actual trial). The second is

the trial of the judge (on direct appeal): that is, did the judge make a mistake at the trial? The third is the trial of the attorney (the post conviction proceeding): that is, did the attorney make a mistake at the trial?

Federal Court Review of State Convictions

A defendant can seek review of a State court conviction in the federal courts. This usually takes place by the defendant filing a writ of *certiorari* to the United States Supreme Court on constitutional grounds. After exhausting all appellate review in State courts, a defendant may petition the United States Supreme Court to consider the case. In addition, a defendant may start all over again by filing a writ of *habeas corpus* in a federal district court, go to the federal circuit court of appeals, and then to the United States Supreme Court. The petition can be filed at any time after the case is pursued in the State courts or collaterally while the case is still under appeal in the State courts.

Issues brought into the federal courts must be presented as a federal constitutional issue. Only those claims that were litigated fully and fairly in state court will be considered for review by the United States Supreme Court. This means that if the issue was not brought up as a constitutional issue in state court it cannot be brought up in federal court.

Governor's Power of Pardon and Commutation

In the event that a defendant has exhausted the remedies discussed in this chapter, the defendant can always seek to have the Governor issue a pardon or commutation. For a fuller discussion on the Governor's pardon power, see Chapter 15 of this handbook.

Chapter 11. Victims' Rights

Maryland law explicitly provides rights for crime victims and their representatives. In November 1994 the citizens of Maryland ratified Article 47 of the Maryland Declaration of Rights requiring the State to treat crime victims with "dignity, respect, and sensitivity during all phases of the criminal justice process." Article 47 further provides that for circuit court cases, a crime victim, upon request and if practicable, has the right to be notified of, to attend, and to be heard at a criminal justice proceeding, as those terms are defined by law. Maryland statutes provide that victims of a crime or delinquent act and the representatives of the crime victims have a broad range of rights during the criminal justice process. This chapter will discuss these rights.

Victim Notification

State's Attorneys, law enforcement officers, District Court commissioners, and juvenile intake officers are responsible for giving each identified victim a copy of a pamphlet developed by the State Board of Victim Services which describes a victim's rights and a notification request form through which a victim may request to be notified of various proceedings in a criminal case involving the victim. Once a victim has filed the notification request form, the State's Attorney is required to notify the victim of all trial court and sentencing proceedings affecting the victims' interests as soon as practicable. The notification request form must also accompany an offender's commitment order, and if an appeal is filed in the case, a copy of the form must be sent to the Attorney General and the court to which the case has been appealed. The notification request form also allows a victim to be notified about post sentencing proceedings such as an offender's parole hearing or release under mandatory supervision, and if an offender escapes, is recaptured, or dies. The exercise of many of the rights discussed in this chapter depends on a victim completing a notification request form or otherwise requesting notifications and rights.

Specific Rights

A victim of a crime or delinquent act (or a representative in the event of the victim's death or disability) is also entitled to the following rights in a criminal case:

- to be present at the criminal trial or juvenile delinquency hearing after initially testifying at the trial or hearing. A representative has the right to be present for the whole trial;
- to address the judge (or jury in a death penalty case) before the imposition of a sentence or other disposition;
- to advance notification and to present oral testimony at a parole hearing, if the victim has made a request for the hearing to be open to the public;
- to address the judicial review panel before a change of an offender's sentence;
- to file a leave to appeal to the Court of Special Appeals from an order of a trial court that denies or fails to consider the right to be present at trial, to speak at sentencing, or to have a victim impact statement considered at sentencing;
- to be sent prior notification, if practicable, of the terms and conditions of a plea agreement or any change in the sentence of an offender;
- to be advised of the protection available, and, on request, to be protected by criminal justice agencies, to the extent reasonable, practicable, and (in the agency's discretion) necessary from harm or threats of harm arising out of the crime victim's or witness's cooperation with law enforcement and prosecution efforts;
- during any phase of the investigative proceedings or court proceedings, to be provided, to the extent practicable, a waiting area that is separate from a suspect and the family and friends of a suspect;

- to be informed by the appropriate criminal justice agency of financial assistance, criminal injuries' compensation, and any other social services available; and
- to be informed, in appropriate cases by the State's Attorney, of the right to request restitution and, on request, be provided assistance in the preparation of the request and advice as to the collection of the payment of any restitution awarded.

Victims of juvenile offenders are entitled to similar rights.

In addition to these rights, a victim impact statement may be prepared if the case is a felony or misdemeanor involving death or serious injury. A victim impact statement identifies any damages or injuries sustained by the victim, any request that the offender be prohibited from contacting the victim as a condition of release, and other information related to the impact of the crime on the victim.

Prior to sentencing, either on its own motion or by request of the State's Attorney, a circuit court may order the Division of Parole and Probation of the Department of Public Safety and Correctional Services or the Department of Juvenile Justice to complete a pre-sentence investigation. The report will include the victim impact statement.

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

Board of Victim Services

The State Board of Victim Services was originally established in 1988 under the Office of the Attorney General. In 1995 the board was transferred to the Governor's Office of Crime Control and Prevention. The board consists of 22 members and is chaired by the Governor or the Governor's designee. The board advises the Governor on services needed by victims of crime. However, the primary function of the board is to administer funding and provide technical support for efforts to assist victims of crime through a Victim Services Coordinator who is appointed by the Executive Director of the Governor's Office of Crime Control and Prevention.

The Board of Victim Services is also responsible for developing informational pamphlets to notify victims of the rights, services, and procedures relating to the periods before and after the filing of a charging document other than an indictment or information in the circuit court, and the period after the filing of an indictment or information in circuit court. The board administers the Maryland Victims of Crime Fund described below.

Special Funds

When an offender is convicted of a crime, the offender is required to pay two costs: court costs and Criminal Injuries Compensation costs. Court costs are \$80 in the circuit courts and \$20 in the District Court. The Criminal Injuries Compensation costs are \$45 in the circuit court and \$35 in the District Court (except for nonincarcerable motor vehicle offenses, where the costs are \$3). Portions of these costs are divided among the Maryland Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund as described below.

Maryland Victims of Crime Fund

The Maryland Victims of Crime Fund is a special continuing, nonlapsing fund that receives funding primarily from court costs. The Board of Victim Services administers the fund to help implement Article 47 of the Maryland Declaration of Rights (Rights of Victim of Crime) and other laws designed to help crime victims and to assist other agencies and persons providing services to crime victims.

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

Maryland Victims of Crime Fund. Any grant by the Board of Victim Services or costs for the administration of the fund are paid from the Maryland Victims of Crime Fund.

Victim and Witness Protection and Relocation Fund

From the \$20 court cost assessed in the District Court, \$125,000 is dedicated to the Victim and Witness Protection and Relocation Fund. This fund goes to the Victim and Witness Protection and Relocation Program administered by the State's Attorneys' Coordinator. The program is designed to protect victims and witnesses and their families, and to relocate these persons for purposes of protection or to facilitate their participation in court proceedings.

Criminal Injuries Compensation

The Criminal Injuries Compensation Board was established in 1968 under the Department of Public Safety and Correctional Services to assist victims of crime. The board administers a compensation program for victims of crime, persons who have made efforts to prevent crime, or the dependent survivors of such persons. It is the board's responsibility to review and evaluate claims for monetary awards, which are dispensed from the Criminal Injuries Compensation Fund.

The Criminal Injuries Compensation Fund is a special, nonlapsing fund that receives funding from several sources including investment earnings and federal matching funds. However, the fund's principal source of monies involve costs imposed in criminal cases in the District Court.

Specifically for the purpose of providing monies to this fund, \$20 of the Criminal Injuries Compensation costs described above are dedicated to the Criminal Injuries Compensation Fund.

If a person is convicted of any criminal or traffic offense in the District Court, a court cost of \$20 is assessed. From the collection of this cost, the Criminal Injuries Compensation Fund annually receives \$500,000.

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

Restitution

In General

A victim may seek restitution if, as a direct result of the crime, the victim incurred personal injury resulting in out-of-pocket expenses, incurred property damage, or received other benefits as a result of a crime paid by a governmental entity or board. If a defendant is convicted or given probation before judgment or a child is adjudicated delinquent or given probation, the courts are generally required to order restitution to victims when requested by the victim. The court must state why restitution was not ordered if it was requested.

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

Delinquent accounts may be turned over to the Central Collection Unit of the Department of Budget and Management

for further action, such as interception of lottery prizes, income tax refunds, and other measures. The department adds a 17 percent collection fee to the unpaid amount.

Juvenile Restitution

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

If the juvenile or the liable parent does not have the ability to pay the judgment of restitution, or there is good cause shown to establish that restitution is inappropriate in the case, the court need not issue a judgment of restitution.

The Department of Juvenile Justice is required to notify the court when the juvenile or liable parent does not make restitution. If after a hearing the court determines that the juvenile or liable parent intentionally became impoverished to avoid payment of the restitution, the court may find the juvenile in contempt of court or in violation of probation.

The Patuxent Institution

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

The Patuxent Board of Review must include a member of a victims' rights organization. Also, the board of review must give the victim or victim's representative an opportunity to comment in writing on any action before the board. For further discussion on the Patuxent Institution, see Chapter 14.

HIV Testing of Offenders

The law also allows a victim of a sexual offense or another criminal offense that may have resulted in a victim being exposed to an offender's bodily fluids to request a court to order the offender to be tested for HIV (the acronym for virus that causes AIDS - acquired immunity deficiency syndrome). On conviction or a granting of probation before judgment, a court is required to order an offender to submit to a test for an HIV. The court may also order an offender to submit to an HIV test pretrial if the court finds there is probable cause that an exposure occurred.

Miscellaneous

A "Son of Sam" provision was intended to prohibit a defendant from profiting from crime by writing a book or contracting to reenact the crime for press or media. Instead, any money payable under a contract would go to settle claims of the victim of the crime or to the Maryland Victims of Crime Fund. This provision of law was declared unconstitutional by the Court of Appeals in the 1994 case of *Curran v. Price*, and is therefore currently unenforceable.

Chapter 12. Adult Incarceration in Local Detention Centers

State Payments for Local Detention Centers

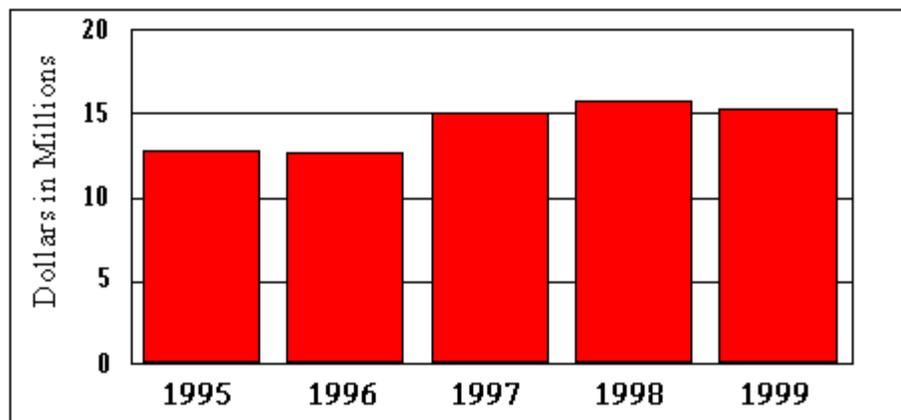
Under current law the minimum sentence for incarceration in the State prison system is a sentence of more than one year. For offenders given sentences over one year up to 18 months, judges have the discretion to send them to either a local detention center or the State prison system. Any inmate with less than the minimum sentence (12 months and under) is sentenced to a detention center. The counties are reimbursed for those inmates sentenced to the local detention centers who actually serve between 91 and 365 days. The State pays these costs in one of the following two ways depending on which calculation provides for the highest payment:

- 50 percent of the per diem cost of housing an inmate for the 91st through the 365th day of confinement; or
- 85 percent of the per diem cost of housing an inmate for every day that the actual number of prisoner days⁽¹⁾ exceeds the average number of prisoner days that occurred during fiscal 1984 through 1986.

Exhibit 12.1 shows the amount of State payments for local detention centers from fiscal 1995 to 1999. These payments have remained fairly level in recent years. They are projected to decline slightly in fiscal 1999, from an estimated level of \$15.7 million in fiscal 1998 to \$15.3 million in fiscal 1999. This correlates with the population levels in local facilities.

The State does not pay for pretrial detention time in a local detention facility. The State does pay, at the per diem rate, time spent in a local detention center for inmates sentenced to and awaiting transfer to the State prison system.

Exhibit 12.1
State Payments for Local Detention Centers
FY 1995 - 1999



Source: Department of Public Safety and Correctional Services

Community Adult Rehabilitation Centers

Local jurisdictions are also authorized to administer Community Adult Rehabilitation Centers. First built in the 1970s with State construction and operating funds, Community Adult Rehabilitation Centers place eligible offenders in community-based facilities, allowing offenders to go to work or perform community services. This maintains an

offender's community ties while serving his or her sentence. Offenders are eligible to participate in this program if they have less than six months remaining on their sentence prior to a predetermined parole date or they have a total sentence of less than 36 months. Because of community concerns, these facilities have been established in only two jurisdictions, Montgomery and Cecil Counties. Originally constructed in 1978 to house 44 offenders, the Montgomery County facility has been increased to accommodate a total of 122 beds. The Cecil County facility was initially constructed in 1981 with 30 beds but has subsequently been enlarged to accommodate 70. The majority of the inmates housed in these units are county-sentenced rather than State inmates. As of August 1998 there were 44 Division of Correction inmates housed in the Cecil County facility. There were no Division of Correction offenders residing in Montgomery County's facility.

Local Detention Center Construction Program

The State operates a Local Detention Center Construction Program that assists jurisdictions with the planning, improvement, and construction of local detention centers and work release and other correctional facilities. Subdivisions make application to the Department of Public Safety and Correctional Services for inclusion in the construction program, which provides either 100 percent or 50 percent funding for construction or expansion of local detention centers. For example:

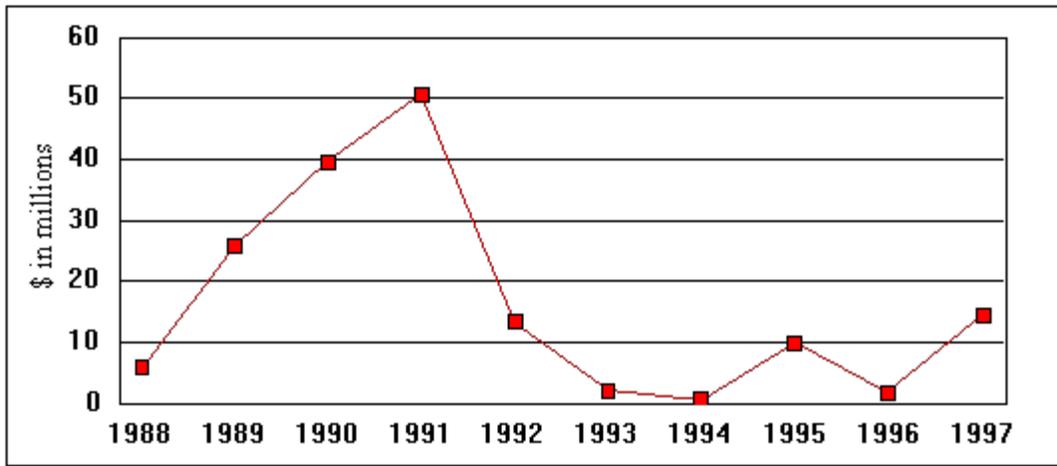
- a funding grant of 100 percent is provided for bed space and support facilities to house the increase in inmates serving a sentence between 181 and 365 days; and
- a grant of 50 percent applies to construction of bed and support facilities to house inmates serving 180 days or less or over 365 days up to 18 months. Most assistance grants require the local subdivision to provide equal or matching funds.

Since fiscal 1988 the State has appropriated nearly \$257 million in local detention center construction grants. Exhibit 12.2 shows that most of the funds were authorized from fiscal 1989 to 1991.

Local Detention Center Population

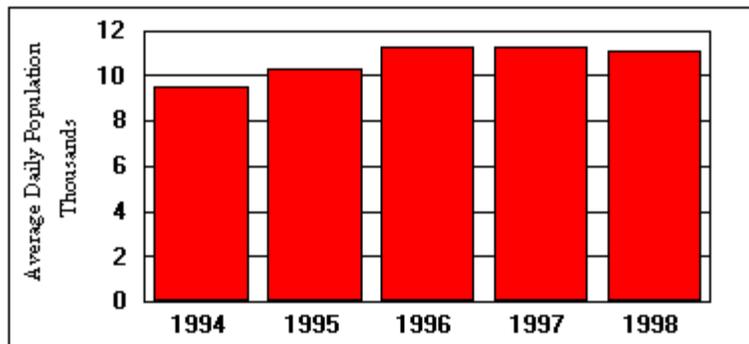
From fiscal 1994 to 1998 the average daily population of local detention centers rose from 9,590 to nearly 11,300 an 18 percent increase as seen in Exhibit 12.3. As Exhibit 12.4 shows, over 60 percent of the population is still pretrial. Within the population sentenced to local jurisdictions, it is interesting to note the changes in the lengths of sentences in the sentenced population. Exhibit 12.5 shows the number of inmates in local detention centers by the length of sentence.

Exhibit 12.2
Local Detention Center Capital Appropriations
FY 1988 - 1997



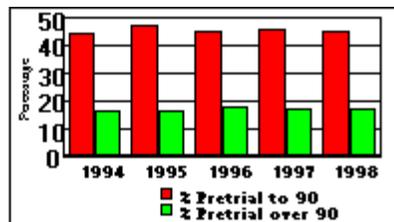
Source: Department of Public Safety and Correctional Services

Exhibit 12.3
Local Detention Centers
Average Daily Population
FY 1994 - 1998



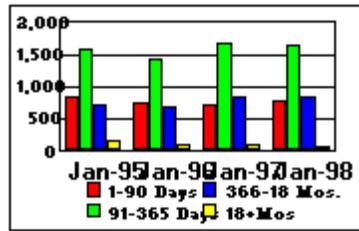
Source: Department of Public Safety and Correctional Services

Exhibit 12.4
Local Detention Centers
Percentage Pretrial
FY 1994 - 1998



Source: Department of Public Safety and Correctional Services

Exhibit 12.5 Locally Sentenced Inmates Last Day Population - January



Source: Department of Public Safety and Correctional Services

In fiscal 1991 the General Assembly directed the local jurisdictions to make greater use of alternatives to incarceration. Implementation has been directed largely toward local pretrial populations and includes programs such as community service, electronic monitoring, intensive supervision, and pretrial release. In fiscal 1998 over 300 individuals were placed on home detention each month by the counties and the Baltimore City Detention Center. For more information on alternatives to incarceration, see Chapter 13.

1. Prisoner days means the actual total prisoner days served by sentenced prisoners, not the length of the sentence. The per diem (daily) cost of housing Division of Correction prisoners in local detention centers and prisoners sentenced to local detention centers is determined by dividing the total actual prisoner days of the facility for the previous fiscal year into the total actual annual operating costs of that local facility for the previous fiscal year.

Chapter 13. Adult Incarceration in State Prisons

Division of Correction Facilities

The Division of Correction of the Department of Public Safety and Correctional Services has the responsibility for operating 25 State correctional facilities whose combined average daily populations exceed 22,000. More than 6,000 State correctional employees maintain order in these institutions and ensure inmates' health, safety, welfare, and secure confinement.

Security Classifications

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

Maximum Level II Security

Maximum Level II is the highest security level for special problem inmates who have shown a pattern of violent and predatory behavior or are very high escape risks. Features include single cells, 23 hours a day in-cell time, constant observation, extremely limited programs and privileges, very limited inmates to staff contact, no inmate-to-inmate contact, and supervised non-contact visitation. Movement inside the institution is with restraints and escort. Outside movement is with full restraints (handcuffs, leg irons, waist chain, and black box) and armed escorts. The Maximum Level II Security facilities are:

- Maryland Correctional Adjustment Center (known colloquially as "Supermax"), Baltimore City
- Maryland Correctional Institution for Women, Jessup (Anne Arundel County)

Maximum Level I Security

Maximum Level I security is for inmates who pose a high risk of violence and escape, have a history of serious behavior problems, or are likely to have serious behavior problems. Inside the perimeter, movement is scheduled and closely observed. Inmates have access to jobs and programs inside the institution, contact and non-contact supervised visitation, weekly commissary, telephone use, scheduled recreational periods, and radio and television. Movement outside the perimeter requires full restraints and armed escorts. The Maximum Level I Security facilities are:

- Maryland House of Correction, Jessup (Anne Arundel County)
- Maryland House of Correction Annex, Jessup (Anne Arundel County)
- Maryland Reception, Diagnostic and Classification Center, Baltimore City
- Maryland Correctional Institution for Women, Jessup (Anne Arundel County)

Medium Security

Medium security inmates have some risk of violence, moderate risk of escape, or a limited history of behavior problems. Housing units are under continuous supervision and movement is scheduled and supervised. Inmates receive periodic observation inside the perimeter with access to jobs, programs and services; contact and non-contact supervised visitation; commissary; telephone, radio, and television; and self-help, religious, and recreational activities. Movement outside the perimeter requires full restraints and armed escort. The medium security facilities are:

- Eastern Correctional Institution, Somerset County
- Maryland Correctional Training Center, Hagerstown (Washington County)
- Roxbury Correctional Institution, Hagerstown (Washington County)
- Maryland Correctional Institution, Hagerstown (Washington County)
- Maryland Correctional Institution, Jessup (Anne Arundel County)
- Western Correctional Institution, Cumberland (Allegany County)
- Brockbridge Correctional Facility, Jessup (Anne Arundel County)

Minimum Security

Minimum security facilities have fewer security features for inmates having less risk of violence or escape and a satisfactory behavior record. Movement within the institution may occur with or without direct supervision. Participation in jobs and rehabilitative programs may be inside or outside the facility. Supervised visitation may be contact or non-contact. Inmates may have access to commissary, telephone, radio, television, movies, and recreational privileges. Movement outside the perimeter is without restraint under an unarmed escort by on-duty staff. The minimum security facilities are:

- Central Laundry Facility, Carroll County
- Herman L. Toulson Correctional Boot Camp, Jessup (Anne Arundel County)
- Baltimore City Correctional Center
- Metropolitan Transition Center (formerly called the Maryland Penitentiary), Baltimore City
- Eastern Correctional Institution Annex, Somerset County

Pre-Release Security

Pre-release security is the lowest security level with fewest security features for inmates who present the least risk of violence or escape and have a record of excellent behavior. Besides the programs, services, and privileges allowed in minimum security, inmates may have access to the community, without an escort, for work release, special leave, compassionate leave, and family leave. The pre-release facilities are:

- Baltimore Pre-Release Unit
- Baltimore Pre-Release Unit for Women and Annex
- Jessup Pre-Release Unit (Anne Arundel County)
- Eastern Pre-Release Unit, Church Hill (Queen Anne's County)
- Southern Maryland Pre-Release Unit, Charlotte Hall (St. Mary's County)
- Poplar Hill Pre-Release Unit, Quantico (Wicomico County)

Special Housing Classifications

Maximum and medium security institutions have special confinement areas:

- *Disciplinary Segregation:* Disciplinary segregation isolates an inmate from the population for punishment when found guilty of an infraction. Inmates receive meals in their cells, at least one hour daily out-of-cell time, regular medical and dental care, mail privileges, and reading material requested through the institutional library. Visitation and other privileges are restricted or revoked.
- *Administrative Segregation:* Administrative segregation isolates inmates to prevent escape, for medical and mental health reasons, pending investigation or disciplinary action, and to house inmates under a death sentence or protect other inmates and staff. Following the warden's placement of an inmate on administrative segregation, a case management team must decide within five hours whether the inmate should remain in this status. As much as possible, conditions and privileges are the same as for general population inmates.
- *Protective Custody:* Protective custody is used when verified information shows that the inmate would be in danger if housed in the general prison population, the inmate has physical traits or health-related issues that make the inmate susceptible to harm, or there is valid reason to show the inmate is in danger.

Division of Correction prison populations by region and facility are reflected in Exhibit 13.1. Each facility is identified by security classification and the estimated cost per inmate.

Alternatives to Incarceration and Intermediate Sanctions

Home detention with electronic monitoring is an alternative to incarceration for nonviolent offenders, and boot camp is an intermediate sanction for youthful nonviolent offenders. The State's Correctional Options Programs, administered by the Division of Parole and Probation, combines community supervision with drug treatment and rehabilitative programs as appropriate punishment for low-risk offenders. These programs divert inmates from traditional prison and reduce the time inmates spend in prison.

Home Detention and Electronic Monitoring

The 1990 General Assembly enacted legislation instituting the home detention program, a pre-release system program for eligible inmates from Baltimore and adjacent counties. Most participants are low-risk offenders with less than 18 months remaining on their sentences, although some participants are pretrial detainees, probationers, and parolees.

Since 1990 more than 12,000 of the 17,000 offenders placed in the department's home detention program successfully completed the program; 4,800 were returned to incarceration for violating a program rule; and 203 were removed for committing a new crime. In fiscal 1997, 302 inmates participated in home detention and more than 370 are projected for fiscal 1998 and 1999.

Home detention allows inmates to live in approved private homes and work in the community. Public service or gainful employment is mandatory, and substance abuse treatment, school, and self-help programs may be required. Supervision is by electronic monitoring equipment and intensive 24-hour oversight by correctional officers and other staff. A band around the offender's ankle maintains electronic contact with a verification unit in the home. If the offender breaks contact, the Home Detention Unit is alerted that a violation is in progress. Armed correctional officers in patrol vehicles respond to the alert. Offenders also receive random voice tests approximately four times per day.

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

Herman L. Toulson Correctional Boot Camp

Herman L. Toulson Correctional Boot Camp in Jessup offers a reduced period of confinement, three to six months, in which regimens of strict discipline, military-style drill and ceremony, physical exercise, and physical labor are combined with rehabilitative programs.

To be considered for boot camp, often called shock incarceration, offenders must be younger than 32 years old; serving their first major adult incarceration; serving a sentence for a nonviolent crime; classified at least to minimum security; have at least nine months to serve on their sentence; have no history of escapes or absconding from supervision; and be medically, physically, and psychologically fit.

Every enrollee negotiates a contract with the Division of Correction and the Maryland Parole Commission that stipulates the inmate's performance objectives and guarantees parole release upon successful completion of the terms of the contract. Parole release is under intensive supervision by the Division of Parole and Probation. Researchers from the National Council on Crime and Delinquency completed a study in 1997 that concluded that boot camp graduates who participated in strict, structured community-based supervision programs after release from prison had approximately half the rate of recidivism of nonparticipants in such aftercare programs.

More than 3,250 inmates, including 120 females, have been assigned to boot camp since it started in 1990. A total of 2,220 inmates (69 percent) completed the program, including 62 females. Under expanded eligibility criteria adopted in 1991, an additional 836 inmates participated in boot camp without a guarantee of parole. In 1997 total enrollment in boot camp was 595 inmates. Twenty-one were female. Eleven females and 290 males graduated. More than 96 percent of offenders in the boot camp are male.

Correctional Options Program

The Correctional Options Program places carefully screened, low risk, non-violent offenders under rigorous community-based supervision. Current participation in the various COP components is approximately 2,700 offenders. This program has enabled the department to avoid potential substantial capital and operating costs. To date, the prison bed savings attributable to the program average 1,568 per day. In addition, a recent independent evaluation of one of the program components suggested that participants were 50 percent less likely to be rearrested for new crimes than they would have been without the program, and 75 percent of the participants did not commit new crimes during the six month follow-up study period.

Exhibit 13.1 reflects the various correctional units within the State.

Exhibit 13.1
Division of Correction Prison Population by Region
January 1999 Projections

Jessup Region

	Security Classification	Average Population ¹	Cost per Inmate FY 1998
MD Correctional Institution for Women	Multi-Level	825	\$17,268
MD House of Correction	Maximum Level I	1,200	21,594
MD House of Correction Annex	Maximum Level I	1,800	26,607
MD Correctional Institution-Jessup	Medium	1,143	18,873
Total		4,968	\$22,066

Baltimore Region

	Security Classification	Average Population ¹	Cost per Inmate FY 1998
MD Correctional Adjustment Center	Maximum Level II	250	\$48,874

Metropolitan Transition Center	Minimum	1,311	22,849
MD Reception, Diagnostic and Classification Center	Maximum Level I	825	28,160
Total		2,386	\$27,412

Hagerstown Region

	Security Classification	Average Population ¹	Cost per Inmate FY 1998
MD Correctional Institution-Hagerstown	Medium	1,850	\$19,328
MD Correctional Training Center	Medium	2,900	12,042
Roxbury Correctional Institution	Medium	1,910	13,546
Total		6,660	\$14,497

Eastern Shore Region

	Security Classification	Average Population ¹	Cost per Inmate FY 1998
Eastern Correctional Institution	Medium	2,620	\$16,676
Eastern Correctional Institution-Annex	Minimum	420	16,676
Poplar Hill Pre-Release Unit	Pre-Release	177	13,422
Total		3,217	\$15,758

Western Region

	Security Classification	Average Population ¹	Cost per Inmate FY 1998
Western Correctional Institution	Medium	1,259	\$19,551
Total		1,259	\$19,551

Maryland Correctional Pre-Release System

	Security Classification	Average Population ¹	Cost per Inmate FY 1998
Brockbridge Correctional Facility	Medium	635	\$16,808
Jessup Pre-Release Unit	Minimum	560	15,821
H. L. Toulson Correctional Boot Camp	Minimum	300	19,864
Central Laundry Facility	Minimum	490	13,646
Baltimore City Correctional Center	Minimum	500	14,114
Baltimore City Pre-Release Unit	Pre-Release	220	12,572
Baltimore Pre-Release Unit for Women	Pre-Release	171	17,672
Eastern Pre-Release Unit	Pre-Release	177	14,477

Southern Maryland Pre-Release Unit	Pre-Release	177	14,400
Total		3,230	\$15,521

Division of Correction Population in Non-Division Housing

	Security Classification	Average Population ¹	Cost per Inmate FY 1998
Home Detention Unit ²	n/a	370	\$15,136
Local Jail Backup	Multi-Level	94	n/a
Contractual Pre-Release Units	Pre-Release	130	20,077
Patuxent Institution-Annex ³	Maximum	250	27,719
Patuxent Central Mental Health Unit ³	Maximum	180	27,719
Total		1,004	\$20,049 ⁴

¹Population projections for January 1999.

²Although the projected population is 370, the operating capacity is 450.

³Patuxent Institution is an agency of the Department of Public Safety and Correctional Services, but is not part of the Division of Correction. The Patuxent Annex houses Division of Correction overflow population as well as the division's Central Mental Health Unit.

⁴ Figure excludes Local Jail Backup.

Source: Department of Public Safety and Correctional Services

Inmate Case Management Process

The case management process begins at reception and continues throughout incarceration.

Reception

The Division of Correction has two reception, diagnostic, and classification centers to receive offenders and classify them to a security level. The Maryland Reception, Diagnostic, and Classification Center in Baltimore receives and classifies men. The reception, diagnostic, and classification center within the Maryland Correctional Institution for Women in Jessup receives and classifies women. Both reception centers are Maximum Level I security. New inmates go through identification (fingerprinting and photographing), general orientation, medical and psychological screenings, AIDS education, and various addictions and educational assessments and tests.

A case manager interviews the inmate and assembles a confidential case record from interviews, assessments, test results, identification records, and criminal history documents. Case record information is entered on the division's automated offender database, the offender-based State Correctional Information System. In 1997 a program to apply diminution credits and calculate release dates was added to the system.

Initial Classification

Within 45 days of reception, the case manager will apply a numerical point system to assess the inmate's potential for violence, escape, and misbehavior, and assign a risk score that is translated to the least restrictive security level necessary to control the inmate's behavior. A supervisory correctional officer, the inmate's case manager, and senior

supervisor or manager comprise a case management team that may also include psychologists, vocational or academic instructors, social workers, or other employees designated by the warden. The team may agree with the scored security level or recommend overriding to a higher or lower security level. A written explanation of the reasons to deviate from the scored security level must accompany a decision to override.

Reclassification

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

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

Case Management Services

Limited resources restrict inmates' participation in remediation programs. Exhibit 13.2 shows the various programs available at Division of Correction facilities. Currently 34 percent of the population receives no services. However, the Division of Correction has an obligation to ensure that programs and services are delivered systematically to inmates at the most beneficial time. Therefore, as inmates approach their final years of incarceration, case managers may use one of two protocols to reevaluate inmates' needs and reserve slots for programs and services to meet those needs: Case Management Programming and Mutual Agreement Programming.

Exhibit 13.2
Correctional Remediation Program Availability

<u>Type of Program</u>	<u>Number of Institutions with Programs</u>
Substance Abuse Education	14
Recovery Group	12
Alcoholics Anonymous	21
Narcotics Anonymous	21
Cognitive Counsel Group	12
Parenting	8
Domestic Violence	11
HIV Support	11
HIV Prevention	4
Academic Education	23
Vocational Education	11
Employ Readiness/Life	9
State Use Industries	9
Work Release	9
Work Crew/Road Crew	12

Source: Department of Public Safety and Correctional Services

Case Management Programming

Within two years before the inmate's anticipated release date, a case manager prepares a reassessment to decide the programming that an inmate most needs before release. Using this information, the inmate and classification team develop a comprehensive Case Management Plan to address the remainder of the inmate's incarceration. Case managers monitor inmates' compliance with their plan to ensure that programming is provided and the inmate is participating.

Mutual Agreement Programming

The second protocol available to case managers is Mutual Agreement Programming which targets inmates within three years of their next parole hearing. A Mutual Agreement Programming contract signed by the inmate and representatives of the Division of Correction and Maryland Parole Commission guarantees a parole release date and requires the inmate to meet strictly defined behavioral standards, complete specific programming, and develop a stable home plan and full-time job in consideration for the guaranteed release date.

Diminution of Confinement

Diminution of confinement is a means of recognizing an inmate's good behavior and participation in programs through reductions in the term of confinement by awarding various categories of time credits. Inmates may receive reductions of up to 20 days per month beginning the first day of commitment. These time credits may be for (1) good conduct; (2) performance of industrial, agricultural, or administrative tasks; (3) participation in vocational, educational, or other training courses; and (4) involvement in special projects. See Chapter 15 of this handbook for a full discussion of diminution credits.

An additional category of diminution credit is special credit for housing in a double cell at certain institutions. Reports show an average of 200 inmates released each month after receiving double-cell housing credits.

Educational, Vocational, and Remediation Programs

A variety of programs are available to assist inmates in improving their educational, vocational, and social skills. Programs also provide support for those in recovery from addictions or with serious or terminal medical conditions.

Religious Services

The Division of Correction provides worship and study activities for 24 religions and nondenominational activities for all others. Operational and budgetary realities of the prison environment limit religious practice to one group worship, one study session per week, and holy day observances. In 1997, 23 full-time and seven part-time chaplains coordinated participation of 11,300 inmates in more than 290 weekly worship and study activities and handled 50,000 inmate's requests to meet for spiritual guidance and counseling.

Volunteer Services

About 2,350 volunteers registered with the Division of Correction and provided at least 43,500 hours of service providing many services to inmates and institutions in 1997. Sixty percent of donated time supports chaplaincy services. Other areas benefitting from volunteer services include inmate self-help groups and organizations; education programs; classification; social work, psychology, and medical services; and mail rooms and fiscal offices. For example, several organizations sponsor Girl Scouts Beyond Bars at the Maryland Correctional Institution for Women, a program designed to help improve the mother-daughter relationship with the goal of ending the generational cycle of crime. Other volunteers deliver an alternative to violence project at six correctional institutions; 906 inmates completed the three-day basic course in conflict resolution.

Victims Assistance Services

Victims' Affairs Unit staff coordinate responses to victims' requests to be notified when the offender is released or escapes and to have a victim's impact statement read at any hearing to consider temporary leave or provisional release.

Division of Correction staff cooperate with the Maryland Parole Commission to provide open parole hearings, should the victim request it, and to carry out procedures to comply with the State's sex offender notification and registration statute.

Health Care Services

The division maintains an adequate range of medical, dental, and mental health services for inmates. Contractual health care providers deliver primary, secondary, and chronic care services through a managed care program for most institutions. Personal services contracts provide primary care services at the Western Correctional Institution, and a partnership with the Allegany County Detention Center provides speciality and secondary care.

Medical Co-Payment

A medical co-payment requirement enacted in 1994 promotes inmates' responsible participation in health care and reduces misuse of the sick call system without restricting access to care. In the first year under the medical co-payment law, there was a 33 percent reduction in sick call requests and \$42,250 collected for 21,125 visits at \$2 per visit; 46,964 visits were not chargeable because of indigency or other reason. Medical co-pay is only for an initial sick call request by an inmate. There is no co-payment for other health services.

Tuberculosis Program

The Division of Correction provides programs to control tuberculosis include skin testing, education, and isolation if necessary. Among new inmates receiving intake screening in 1997, two inmates had active tuberculosis; however, testing identified no cases of tuberculosis in the standing population. Among 14,734 inmates skin tested for tuberculosis, 183 (1.2 percent) had skin tests converted from negative to positive. This represents a decrease from previous years.

HIV/AIDS

At intake 6,408 inmates elected to be tested for HIV infection. Of those 270 were HIV seropositive. The number of inmates with HIV infection increased to 782 (700 male and 82 female) inmates in 1997, compared with 769 in 1996. Inmates diagnosed with AIDS increased from 265 in 1996 to 275 in 1997. The AIDS-diagnosed population includes 13 females.

Medical Parole

The medical parole program affords early release for inmates with serious irreversible medical problems who no longer present any risk to public safety. Social workers assist individuals who are HIV-positive, have special needs, or are terminally ill in a pre-release planning process. In 1997 social workers developed aftercare plans for 82 candidates for medical parole.

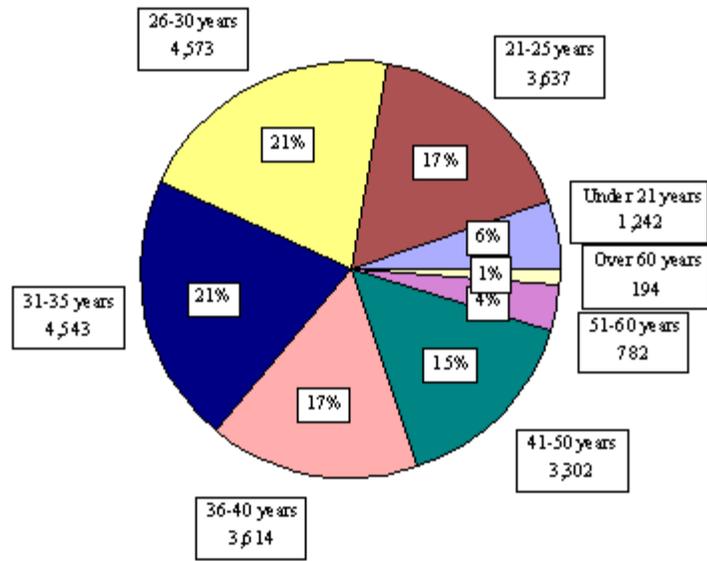
Palliative Care Unit

For terminally ill inmates who are not approved for medical parole, a palliative care unit has been set up at the Maryland House of Correction. Jessup region staff who work with terminally ill inmates have been trained in a unique alliance with the Joseph Richey Hospice whose nurses visit the division's four-bed unit regularly to consult on care issues.

Inmate Characteristics

The characteristics of the inmate population have remained stable for the past four years. As Exhibit 13.3 shows, inmates in their twenties still comprise the largest group; however, there has been a gradual decrease from this segment accompanied by a small increase in those in their thirties. As the population continues to age, there will continue to be a gradual shift upwards between age groups. While this trend will not have serious implications on housing in the future, ultimately an older prison population will require more health care and other services.

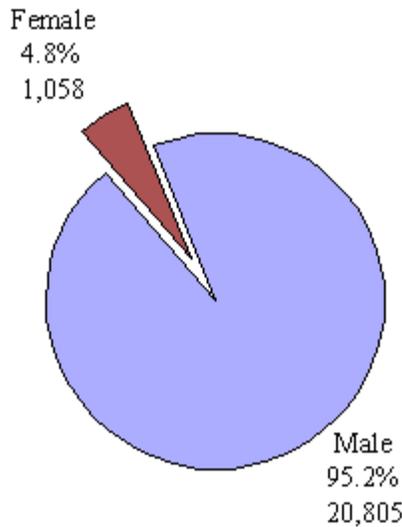
Exhibit 13.3
Division of Correction
Inmate Population by Age



Source: *Inmate Characteristics Report*, Department of Public Safety and Correctional Services, April 1998

Exhibits 13.4a and 13.4b contain sex and race data for the inmate population. As of April 1998, 95.2 percent of the population is male and 4.8 percent female.

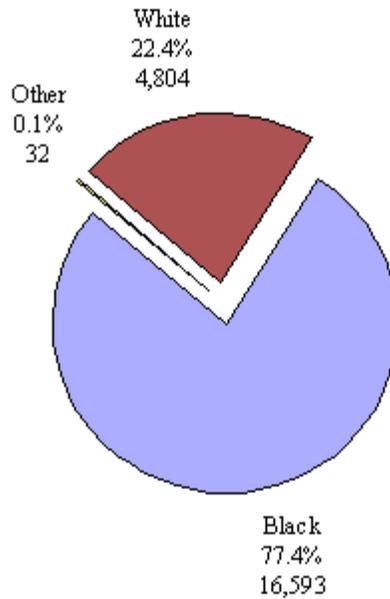
Exhibit 13.4a
Sex Data for the Inmate Population



Source: *Inmate Characteristic Report*, Department of Public Safety and Correctional Services, April 1998

Exhibit 13.4b

Race Data for the Inmate Population



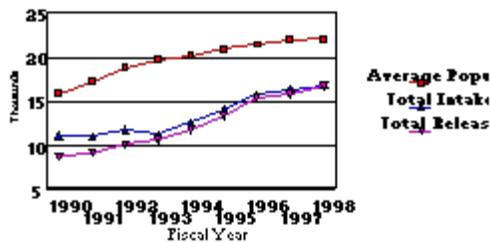
Source: *Inmate Characteristic Report*, Department of Public Safety and Correctional Services, April 1998

African-Americans comprised 77.4 percent of the inmate population, whites comprised 22.4 percent of the population, and all other races were less than 1 percent of the population. About 71 percent of offenders are natives of Maryland, and about 68 percent are convicted in Baltimore City courts.

Population Growth

Because intakes have always exceeded releases, since 1988 the inmate population has expanded from an average of almost 13,000 to more than 22,000 in 1998. The disparity in intakes over releases decreased to 33 inmates per month in 1993 as releases began to catch up to intakes. In 1997 intakes nearly equaled releases as the disparity dropped to only 12 inmates per month. Exhibit 13.5 displays the annual average intakes and releases over the last ten years.

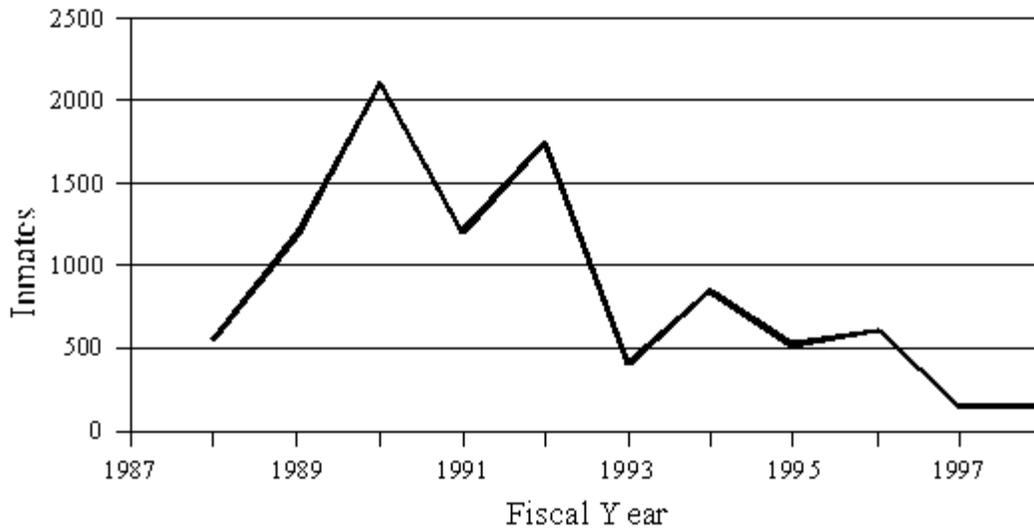
Exhibit 13.5
Division of Correction
Population Trends
FY 1990 - 1998



Source: Department of Public Safety and Correctional Services

Exhibit 13.6 shows the annual population growth measured by the difference between the end of the year populations. Population growth dropped from an average yearly increase of nearly 1,500 inmates between 1987 and 1992 to about 600 inmates annually for 1992 to 1996. More recently, average growth through 1998 dropped below 200 per year, and the standing population has grown to about 22,700 as of the end of October 1998.

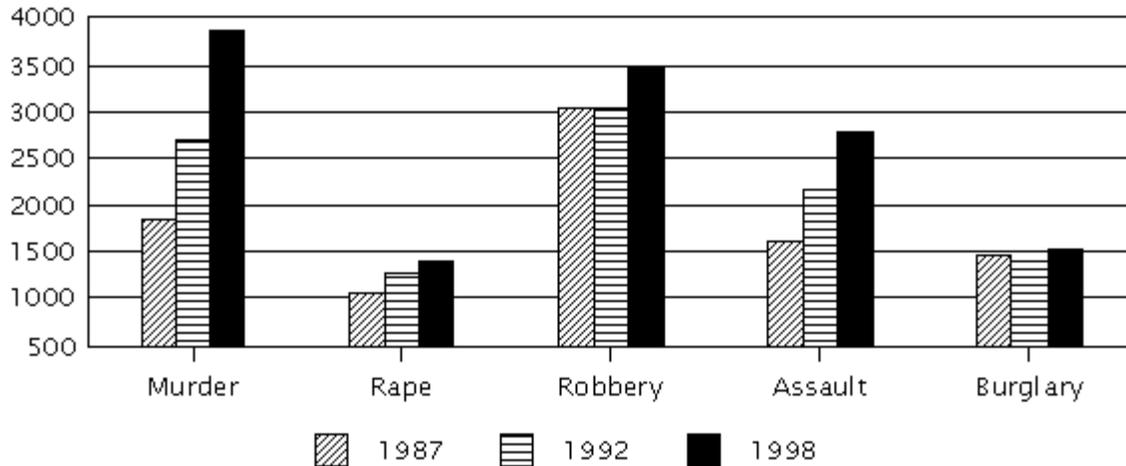
Exhibit 13.6
Annual Population Growth
FY 1987 - 1998



Source: Department of Public Safety and Correctional Services

Concurrent with limited growth in the total prison population in recent years, the composite of the prison population has shifted. Since 1987 there has been an increase in the percentage of the prison population committed with longer sentences for violent crimes, such as murder, robbery, and assault. Of these crime categories, murder is perhaps the most alarming. The number of offenders committed for murder increased from 1,853 to 3,864 during this period. Exhibit 13.7 compares standing Division of Correction populations by major violent offenses and burglary as of July 1 for the years 1988, 1992, and 1998.

Exhibit 13.7
Standing Population by Major Offenses
as of July 1, 1987, 1992, and 1998



Source: Department of Public Safety and Correctional Services

Among the current population, the combined major crime categories of assault, burglary, murder, rape, and robbery increased significantly in number from 8,994 to 13,042, although they decreased as a proportion of the current population (68 percent in 1987 down to 58 percent in 1997).

During the same period, the number of offenders serving a life sentence increased by 80 percent and offenders serving more than 15 years increased by more than 60 percent. Offenders serving life without parole increased by 68 percent since 1994.

Prison Construction

As seen in Exhibit 13.8, capital projects from fiscal 1987 through 1996 for prisons added 10,556 prison beds at a cost of more than \$400 million.

The 1997 General Assembly authorized funds for a new maximum security prison to be built next to the Western Correctional Institution near Cumberland. This facility will be a high security, 512-bed, single cell institution. With the latest in correctional technology, it will be completely self-contained and separate from the Western Correctional Institution. The estimated cost is \$45 million, including federal funds of approximately \$12 million and State funds of \$33 million.

Exhibit 13.8
Capital Construction Projects
Summary of Capital Projects
FY 1987 - 1996

Project	Date Opened	Cost (\$ in Millions)	Beds Added
Maximum Beds			
Maryland Correctional Adjustment Center, Baltimore	1987	\$ 20.7	288
Maryland House of Correction Annex, Jessup	1994	92.7	2,064
Medium Beds			
Eastern Correctional Institution, Westover	1987	99.6	2,592
Three 192-Cell Housing Units, Hagerstown Complex	1991	22.3	1,152
Western Correctional Institution, Cumberland	1996	111.3	1,296
Minimum Beds			
Central Laundry Pre-Release Unit, Sykesville	1990	4.2	256
Jessup Pre-Release Unit, Jessup	1990	6.4	400
Jessup Pre-Release Unit, Jessup	1992	1.0	140
Pre-Release Unit for Women, Baltimore	1992	3.6	72
Metropolitan Transitional Services Center, Baltimore	1995	15.8	400
Eastern Correctional Institution Annex, Westover	1993	6.8	420
Total New Construction		\$384.4	9,080
Non-Conventional Beds/Housing Improvements		16.8	1,476
Total		\$401.2	10,556

Source: Department of Public Safety and Correctional Services

Violence, Drug Abuse, and Other Rule Violations

Inmate Assaults

As the prison population becomes more violent, inmate-on-inmate violence increases. Correctional officers also face assaults on an increasingly regular basis, including the throwing of "correctional cocktails" (mixtures of body fluids such as urine, feces, semen, saliva, vomit, etc.). Exhibit 13.9 displays inmate assaults and homicides for fiscal 1997.

Exhibit 13.9
Division of Correction
Assaults and Homicides
FY 1997

FY 1997	ECI	MHC	MCI	MCI	MCI	MC	MH	MP	MC	MCP	MRD	RCI	WC	TOT
Assault: Sexual	3	3	0	1	0	0	1	0	0	0	0	1	2	10
Assault: Staff	54	123	19	11	11	25	9	38	80	16	2	58	13	459
Assault: Inmate	226	103	106	55	24	247	36	76	6	56	34	196	35	1,200
Homicide: Inmate	0	1	0	1	0	0	0	0	0	0	0	0	0	2
Total	283	230	125	68	35	272	46	114	86	72	36	255	50	1,671

Source: Department of Public Safety and Correctional Services

Inmate Drug Testing

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

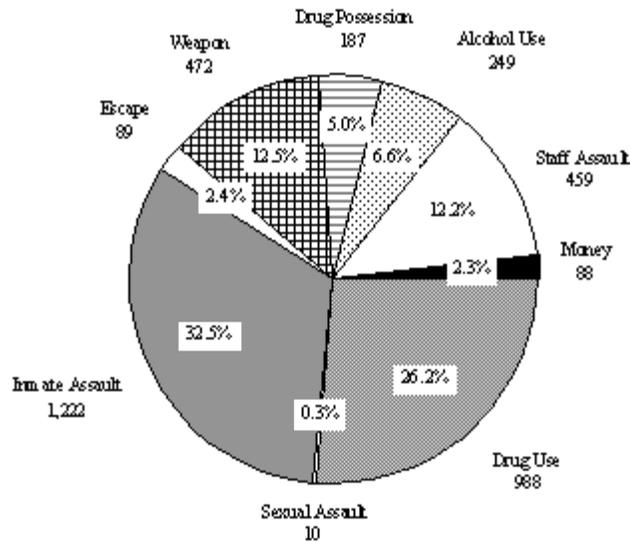
Employee Drug Testing

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

Disciplinary Hearings

At reception, each inmate receives a handbook that explains all rules, regulations, and inmate rights. Any inmate charged with violating any rule has the right of due process assured through an impartial hearing. When a hearing officer finds an inmate guilty of an infraction, that officer may recommend a penalty such as a reprimand, restriction of privileges, revocation of good conduct time, a term of disciplinary segregation, or reclassification to greater security. The Investigation Unit of the Division of Correction may also pursue criminal charges for serious violations. In 1997 hearing officers adjudicated 19,338 cases and found 13,434 inmates guilty of an infraction. Sixty-six percent of guilty findings resulted in a segregation sanction, and 60 percent resulted in revocation of good conduct credit. Exhibit 13.10 shows that for the more serious violations inmate-on-inmate assault/fighting is the most frequent violation, followed by drug use, weapons, and inmate-on-staff assault.

Exhibit 13.10
Division of Correction
Guilty Verdicts on Select Disciplinary Reports
FY 1997



Source: Department of Public Safety and Correctional Services

Inmate Grievance Procedures

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

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

Prisoner Litigation Reform

In 1997 the General Assembly, consistent with the federal Prison Litigation Reform Act, passed legislation that established numerous restrictions on civil actions filed by prisoners. The law requires a prisoner who files a civil action to pay all or a portion of the applicable filing fee, as determined by the court based on seven factors. Unless a waiver is granted by the court, the fee charged by the court must be at least 25 percent of the entire filing fee otherwise required for a civil action.

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

The law further requires the court to review a prisoner's initial complaint and identify cognizable claims before serving the complaint on the named defendants. The court must dismiss the civil action, or any part of the action, if it finds that the civil action is frivolous, seeks monetary damages from a defendant who has immunity, or is barred because the

prisoner has not exhausted administrative remedies.

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

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

Recidivism

The Department of Public Safety and Correctional Services uses a Repeat Incarceration Supervision Cycle to follow-up on offenders. The Repeat Incarceration Supervision Cycle sample includes only new convictions resulting in return to incarceration in the Division of Correction or to supervision under the Division of Parole and Probation within three years of release from the Division of Correction. Excluded would be subsequent commitments to local detention centers or re-arrests without conviction. Based on this very narrow definition of the criminal event that triggers recidivism, the findings show that in 1995 the rate of recidivism for Division of Correction prisoners who were released after serving a sentence ranged from 19.2 percent the first year after release to a cumulative percent of 43.4 percent after the third year. (See Exhibit 13.11.)

Exhibit 13.11
Department of Public Safety and Correctional Services
Recidivism Rates for FY 1992 Releases
Cumulative Totals and Percentages

Release Type	Total Releases	1st Year		2nd Year		3rd Year	
	9,495						
Return to Probation		913	9.6%	1,696	17.9%	2,201	23.2%
Return to Division		914	9.6%	1,538	16.2%	1,922	20.2%
Total Returned		1,827	19.2%	3,234	34.1%	4,123	43.4%

Source: Department of Public Safety and Correctional Services

Chapter 14. Incarceration at the Patuxent Institution

The Patuxent Institution is a maximum security correctional treatment facility located in Jessup. The institution is a separate agency within the Department of Public Safety and Correctional Services. The Director of Patuxent is appointed by, and reports directly to, the Secretary of the Department of Public Safety and Correctional Services. There are currently three categories of inmates at the institution: (1) eligible persons; (2) Youth Program participants; and (3) Division of Correction inmates. This chapter will discuss each of these categories.

History

Originally, the Patuxent Institution served a special group of criminal offenders known as "defective delinquents." These individuals were involuntarily committed to Patuxent under an indeterminate sentence. In 1977 revisions to the law abolished the definition of "defective delinquent" and the involuntary commitment of offenders under an indeterminate sentence. In its place the "Eligible Person" Program was created to provide specialized treatment services to offenders accepted into it. The focus of this program was the rehabilitation of habitual criminals.

However, in 1988 incidents involving Patuxent inmates on early release led to the creation of a special committee to review the institution, culminating in legislation enacted to codify a new mission for the facility. The law was amended to revise the mission of Patuxent Institution from one of rehabilitating higher risk, chronic offenders to one which focuses on remediating youthful offenders. Patuxent's treatment philosophy was revised to reflect the remediation model rather than the rehabilitation one. Remediation focuses on educational and vocational programs and substance abuse treatment rather than the psychological programs emphasized by the rehabilitation model.

The Eligible Persons Program

The 1988 legislation made the following major changes to the Eligible Persons Program:

- required the institution to provide remediation services for youthful offenders;
- limited the eligible population to 350 offenders; and
- altered and restricted the institution's parole and release authority.

The Eligible Persons Program continues, however, to provide the institution with many unique characteristics by placing the responsibility for diagnostic and rehabilitative services, conditional release decision-making, and conditional release supervision under the control of a separate correctional agency.

Eligibility

Inmates convicted of first degree murder, first degree rape, or a first degree sex offense are not eligible for the Eligible Persons Program, unless the sentencing judge has recommended referral for evaluation for potential admission. Inmates serving multiple life sentences or life sentences with aggravating circumstances are also excluded. All other Division of Correction inmates may apply for admission to the program on their own, or be recommended by the commissioner of the Division of Correction or the State's Attorney. Further, at least three years must remain on an inmate's sentence in order to be admitted to Patuxent program.

Evaluation and Admission

All inmates considered for admission must be evaluated and approved by an institution evaluation team, which consists of clinical, administrative, and custodial personnel. The evaluation process involves extensive psychiatric and psychological testing and a thorough review of the inmate's social history. In order to be found eligible for the program the evaluation team must find that an inmate:

- has an intellectual deficiency or emotional imbalance;

- is likely to respond favorably to the institution's treatment programs; and
- can be better remediated through these programs than by other types of incarceration.

Inmates who are found not eligible for the Eligible Persons Program are returned to the Division of Correction.

Program

While incarcerated at the Patuxent Institution, the eligible person is assigned to one of the following treatment units:

- remediation programs including academic education;
- vocational training;
- psychotherapy;
- institutional work assignments;
- gradual community re-entry; and
- any other treatment deemed necessary by the professional staff of the unit treatment team.

Each treatment unit has its own graded tier system consisting of four levels, with the first level being the entry tier. As each inmate successfully completes the requirements of the inmate's individualized treatment plan, that inmate may progress to a higher tier and be accorded additional privileges and responsibilities.

The individualized treatment plan developed for each eligible person is reviewed every six months by the director or the associate director. In addition, the institution's Board of Review evaluates each eligible person's progress and treatment plan at least once each year and may exclude the inmate from further participation in the program if that offender no longer meets the criteria for eligibility. For example, evidence that an inmate has failed to participate in the institution's programs, has committed a major violation of the institution's disciplinary rules, or has in any other way abused the institution's programs would be considered grounds for expulsion.

Board of Review

Patuxent Institution is the only State correctional facility with its own conditional release authority, known as the Board of Review. The board is composed of nine members, including the director, three associate directors, and five members of the general public, of whom one must be a member of a victims' rights organization. Prior to making any decision concerning conditional release status, the board must notify the victim and allow the victim a reasonable opportunity to comment. In addition, the agreement of seven of the nine board members is required before an eligible person can be approved for any conditional release status (leaves, school release, work release, or parole).

Conditional Release

The law places additional limits on the authority of the Board of Review in relation to the conditional release status of parole. While the board may make recommendations concerning parole for non-life sentences, final approval for parole status is required by the Secretary of Public Safety and Correctional Services. The parole of eligible persons serving life sentences must be approved by both the Secretary of Public Safety and Correctional Services and the Governor. In addition, an eligible person serving a life sentence for first degree murder, first degree rape, or a first degree sex offense may not be released on parole until the inmate has served the same minimum time required for Division of Correction inmates (25 years for murder with an aggravating circumstance and 15 years for other life sentences, less diminution of confinement credits).

To ensure the protection of the public, eligible persons granted conditional release status are closely monitored and required to abide by a number of special conditions. These include:

- frequent reporting schedules;
- prohibitions on drug and alcohol use;
- routine testing for illicit drug or alcohol use;
- unannounced home and job site checks;
- regular criminal history checks; and

- regular contacts with the eligible person's family and friends.

An eligible person's first major violation of a release condition requires mandatory revocation from the status for at least six months, with the possibility of expulsion from the institution. A second major violation automatically leads to expulsion.

Community Re-entry Program and Re-entry Facility

Inmates are gradually exposed to the community through pre-parole programs. As an integral part of the institution's community re-entry program, a re-entry facility is operated in Baltimore City. The facility provides housing for a maximum of 25 eligible persons on school release, work release, or parole status. On site staff provide supervision services and continued treatment services to all eligible persons housed at the facility or paroled to independent living situations in the State. Eligible persons housed at the re-entry facility are required to contribute room and board from their wages.

Patuxent Institution Youth Program

In 1994 the Patuxent Institution Youth Program was established. This program is non-voluntary and authorizes the courts to order juvenile and youthful offenders, adjudicated as adults and meeting certain eligibility criteria, to the institution for evaluation for the program. Eligibility criteria for this program are similar to those of the Eligible Persons Program. In addition, the offender must be under the age of 21 at the time of referral and must be referred to the institution at the time of sentencing. It is anticipated that the program will evaluate approximately 100 offenders per year.

Division of Correction Inmates

In General

The Patuxent Institution has a capacity of slightly over 1,000 inmates, which includes a 48-cell housing unit for women opened in August 1990. In fiscal 1997 the institution housed an average of 945 inmates, of whom 506 were under the jurisdiction of the Division of Correction. These Division of Correction inmates are housed at Patuxent for one of three reasons: (1) to alleviate crowding throughout the State correctional system; (2) to be scheduled for technical parole revocation hearings; or (3) to participate in the Regimented Offender Treatment Center program. While these inmates do not participate in the institution's treatment program as eligible persons or youth, they are provided with educational services.

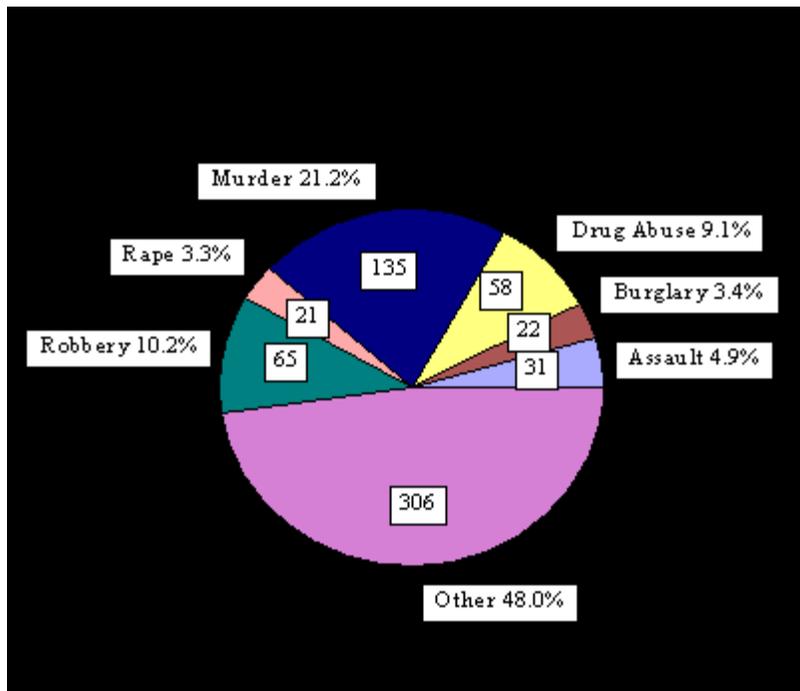
Mental Health Program

In 1992 mental health services for the Division of Correction were consolidated under the management of the Director of the Patuxent Institution. Thus, Patuxent Institution became the administrative headquarters and the residential treatment center for housing mentally ill offenders in the correctional system. In 1997 the position of Director of Mental Health Services was created with the mandate to create a systematic plan for the management and treatment of the mentally ill offender from the point of reception within the correctional system, throughout incarceration, to the time of release back to the community.

Statistics/Fiscal Information

Exhibit 14.1 shows the percentage of Patuxent inmates by offense committed.

Exhibit 14.1
Patuxent Institution
Inmates by Offenses



Source: *Inmate Characteristics*, Department of Public Safety and Correctional Services, April 1998

The average annual cost per inmate at Patuxent is expected to be \$29,496 in fiscal 1999, as compared to \$28,549 at the Maryland House of Correction, which is another maximum security facility in Maryland. In contrast to Division of Correction facilities, Patuxent Institution has its own paroling authority in the Board of Review and its own parole agents. As a result, the slightly higher cost (3.3 percent) of incarceration at Patuxent includes many services not directly provided by division facilities, such as diagnostic services, academic education, conditional release decision-making, and conditional release supervision. These services are provided to division inmates by other agencies, such as the Parole Commission and the Division of Parole and Probation and are not included in the calculation of per capita costs at the facilities of the Division of Correction.

Future

The Patuxent Institution has long been controversial. Starting with legislation enacted in 1988, the institution's role has become more similar to the role of the Division of Correction. Legislation was introduced by the Governor in the 1998 session that would have further reduced Patuxent's unique status, in part by eliminating the role of the Board of Review to recommend parole. Even though this legislation failed, the institution's future remains uncertain.

Chapter 15. Release from Incarceration

There are three ways for an inmate to be released from imprisonment before completion of the term of confinement (excluding death and escapes): parole, mandatory release, and pardon. This chapter will examine each of these methods.

Of these three methods of release, the overwhelming number of inmates are released either through parole or on mandatory supervision. The *ex post facto* clauses of the United States Constitution and the Maryland Constitution provide that terms of confinement are governed by the laws and regulations in force when the crime was committed, not to later laws which may be more punitive. As applied to parole eligibility and mandatory supervision, these clauses require that inmates are subject to the laws and regulations in force at the time the offense was committed. Later laws that are more restrictive may only be applied to future inmates, and may not constitutionally be applied to current inmates.

Parole and the Maryland Parole Commission

Parole

Parole is a discretionary and conditional release from imprisonment. It is up to the Maryland Parole Commission to decide whether an inmate who is legally eligible for parole is to be released on parole. If after a hearing the commission decides to grant parole to an inmate, the inmate is allowed to serve the remainder of his or her sentence in the community, provided that the offender complies with the terms and conditions specified in the written parole order by the parole commission.

The parole commission has jurisdiction over inmates sentenced to local correctional facilities and those sentenced to the Division of Correction. Inmates admitted to Patuxent Institution and eligible for parole are under the jurisdiction of the Patuxent Board of Review (see Chapter 14).

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

- All inmates convicted of violent crimes (for offenses committed on or after October 1, 1994) who do not receive a mandatory minimum sentence are required to serve at least one-half of their sentences before becoming eligible for parole.
- Inmates serving a term of incarceration that includes a mandatory minimum sentence for which they are not eligible for parole (e.g., use of a handgun in a felony or crime of violence, subsequent offenders of crimes of violence, subsequent felony drug offenders) are not eligible for parole until they have served the minimum amount of time required under the law, less diminution credits.
- The minimum time to be served for offenders sentenced to life imprisonment is 15 years less diminution credits.
- The minimum time to be served for a sentence of life imprisonment is 25 years less diminution credits if the offender was given a life sentence for first degree murder in lieu of a sentence of death.
- Offenders who are age 65 or more who have served at least 15 years of a mandatory sentence for a crime of violence may apply for and be granted parole.
- Inmates serving a term of life imprisonment (including those at Patuxent Institution as eligible persons) shall only be paroled with approval of the Governor.

Parole Hearings Before Maryland Parole Commission

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

A parole hearing is held before a hearing officer or a parole commissioner acting as a hearing officer except where the inmate is convicted of homicide or serving a sentence of life imprisonment. Before the hearing, the hearing officer is required to give timely notice to the inmate of a scheduled hearing. Immediately after the hearing, the hearing officer must verbally inform an inmate of the hearing examiner's decision. The hearing officer must submit a written report of findings and recommendations to the Commissioner of Correction, the parole commission, and the inmate within 21 days after the hearing. The recommendation of the hearing officer is then reviewed by a commissioner. The inmate, the Commissioner of Correction, and the parole commission on its own motion have five days to file a written exception to the hearing officer's recommendations that have been adopted by the commission. Also, recommendations of a hearing officer that are not adopted by the commission are heard on appeal.

The parole commission hears cases which cannot be heard by a hearing officer (i.e., cases involving life sentences or homicide) or cases which are appealed. A panel of at least two commissioners will hear the appeals on the record. Decisions of a panel of commissioners are by majority vote. Decisions of a two-commissioner panel must be unanimous. When the members of a two-commissioner panel disagree the chairman of the parole commission shall convene a three-member panel to hear the case.

The parole commission may decide to consider any matter *in banc*, or as a whole. In this event, a majority of the members then serving on the commission constitute an *in banc* panel. A case heard by an *in banc* panel is decided by a majority of the commissioners considering the matter.

An inmate has a right to see any document in his or her file except diagnostic opinions, confidential victim impact statements, or other privileged information. On request, the commission has the responsibility of providing the substance of any information withheld from the inmate.

When deciding whether to grant parole, the commission must consider:

- the circumstances surrounding the crime;
- the physical, mental, and moral qualifications of the inmate;
- the likelihood that the inmate will commit additional crimes if released;
- whether release is compatible with the welfare of society;
- whether the release would diminish the seriousness of the crime or promote disrespect for the law;
- the progress of the inmate during confinement, including academic progress in mandatory education programs;
- whether release would adversely affect prison discipline; and
- whether release would enhance the individual's ability to lead a law abiding life.

The parole commission examines a non-exclusive list of 12 items when making its decision, including the offender's prior adult and juvenile record, employment plans, past substance abuse problems, family status and stability, and emotional maturity. The commission must also consider any recommendation of the sentencing judge and any information provided by a victim (see discussion below on Notification and Participation of Crime Victims).

The commission may either grant parole, deny parole, or decide to rehear the case at a specified future date. If the commission grants parole, the individual must have a verified and approved home plan and generally must have employment. Conditions of parole include required reporting to a parole agent, working regularly, getting permission

from a parole agent before changing a job or home, or leaving the State, and no involvement with drugs or weapons. Other terms may be imposed if appropriate to an individual.

The commission may also negotiate and sign contractual parole release agreements such as the Mutual Assistance Program in which the inmate agrees to accomplish certain goals (such as education or job training) to earn a predetermined release date.

Notification and Participation of Crime Victims

Victims of crime are also entitled to certain rights concerning the parole of inmates. These rights apply to victims who suffer injury or death, child abuse victims, victims of violent crime, and designated representatives if the victim is deceased, a minor, or disabled. If a victim has filed a request for notification, the Department of Public Safety and Correctional Services is required to notify the victim at least 90 days before a parole release hearing. On written request of a victim, a parole hearing is required to be open to the public. At an open parole hearing, the victim is entitled to present oral testimony. The parole commission may restrict the attendance of certain individuals under certain circumstances. On the written request of the chief law enforcement official responsible for an investigation, some hearings may be closed in order to protect the investigation.

In addition, a victim of a violent crime has 30 days from the date of the parole commission's notice to request the Division of Parole and Probation to complete an updated victim impact statement and provide it to the commission within 30 days. The victim may also make a written recommendation of the advisability of parole and may request a meeting with a commission member. The victim may further request that the inmate be prohibited from contacting the victim as a condition of parole. The commission is required to consider any information received from a victim when making its decision. A victim is also entitled to be notified when a Mutual Assistance Program agreement is entered into with an inmate, when an inmate is being considered for a pardon or commutation, or when an inmate is released from incarceration under any circumstances. For a full discussion of victims' rights, see Chapter 11 of this handbook.

Mandatory Supervision

Mandatory supervision is the way in which inmates are released from prison before the end of their term of incarceration because of the credits they have earned while incarcerated. Credits are days either granted or earned on a monthly basis that serve to diminish the period of incarceration. The law establishes the types of credits that an inmate may be allowed (in addition, the law also provides credits for persons held pretrial or presentence). These are loosely called good time credits, although there are a variety of other credits that are allowed in addition to good conduct credits that relate to work, educational, and special project credits. The purpose of these credits is to encourage good inmate behavior and activities that will occupy inmates in prison and prove useful after release. Inmates serving sentences for violent crimes or drug distribution are awarded good conduct credits at the rate of five days per month, and may earn up to ten days of other credits, for a maximum of 15 days per month. Other inmates are awarded good conduct credits at the rate of ten days per month, and may also earn up to ten days of other credits, for a maximum of 20 days per month. Release is by operation of law after an inmate has served the term of incarceration, less the amount of diminution credits. There is no discretion involved; the inmate must be released.

Both offenders on mandatory supervision who are serving sentences of more than one year and offenders on parole are supervised by the Division of Parole and Probation until the end of the sentence. An individual on mandatory supervision is subject to the same terms and conditions as parolees. An inmate who is serving a sentence of one year or less and who is released before the expiration of sentence due to earned diminution credits is not subject to supervision by the division.

Prior to 1992 all inmates were awarded good conduct credits at a rate of five days per month. Chapter 588 of 1992 amended the law to provide that persons sentenced on or after October 1, 1992, for a crime other than a crime of violence or certain felony drug crimes would be awarded good conduct credits at the rate of ten days per month. Under the 1992 enactment, persons sentenced for crimes of violence and serious drug crimes would continue to be awarded good conduct credits at the rate of five days per month. However, recent cases in the Court of Appeals have altered the method of how the Division of Correction is awarding diminution credits to persons who are incarcerated for two or

more crimes, at least one of which occurred before Chapter 588 took effect on October 1, 1992, and at least one taking place after Chapter 588 took effect. It does not appear that these cases will result in any inmates serving longer sentences. There will therefore not need to be an increase in prison capacity as a result of these cases.

Governor's Pardon Power

Article II, Section 20 of the Maryland Constitution authorizes the Governor to grant reprieves and pardons (including, by implication, commutation of a sentence as recognized by the Court of Appeals), provided that the Governor "shall give notice, in one or more newspapers, of the application made for it." The only limitation on this power is that the Governor may not grant a pardon or reprieve in cases of impeachment or in cases in which the constitution otherwise limits power.

Also, statutory law authorizes the Governor to commute or change a death penalty into a period of confinement, provided that the constitutional notice requirement has been met. It also authorizes the Governor to pardon a person or remit part of a sentence subject to the same constitutional notice requirements.

A pardon is an act of clemency, evidenced by a written executive order signed by the Governor under the great seal, absolving the grantee from the guilt of criminal acts and exempting the individual from any pains and penalties imposed on the individual by law. It is presumed that the grantee of a pardon had been lawfully and properly convicted of the crime unless the order states that the grantee has been conclusively shown to have been convicted in error. The Governor may issue a conditional pardon which requires the grantee to do or refrain from doing something as a condition for granting the pardon. The Governor may also issue a partial pardon. The Governor has the power to pardon an individual long after the individual has served any sentence imposed.

A reprieve is the withdrawal of a sentence for an interval of time whereby the execution of the sentence is suspended. A commutation of sentence is a remission of the part of the punishment -- a substitution of a lesser penalty for the one originally imposed.

When the Governor is considering whether to issue a pardon, reprieve, or commutation the Maryland Parole Commission is usually consulted. The commission is required to make recommendations to the Governor concerning applications for pardons, reprieves, and commutations. Also, if delegated by the Governor, the commission hears cases involving a violation of conditions of a conditional pardon.

Although the exercise of these powers by a Governor may prove controversial in particular cases, few inmates are released early from incarceration in this manner. Many of the commutations are "Christmas commutations" where the Governor commutes the sentence of an individual due to be released shortly after the holidays in order to allow the person to spend the holidays with his or her family. Exhibit 15.1 shows the number of commutations and pardons from calendar 1993 to 1997.

Exhibit 15.1 Commutation Releases and Pardons CY 1993 - 1997

<u>Year</u>	<u>Commutations Resulting in Release from Incarceration</u>	<u>Pardons</u>
1993	3	36
1994	7	37
1995	0	5
1996	1	5
1997	0	18

Supervision of Inmates After Release

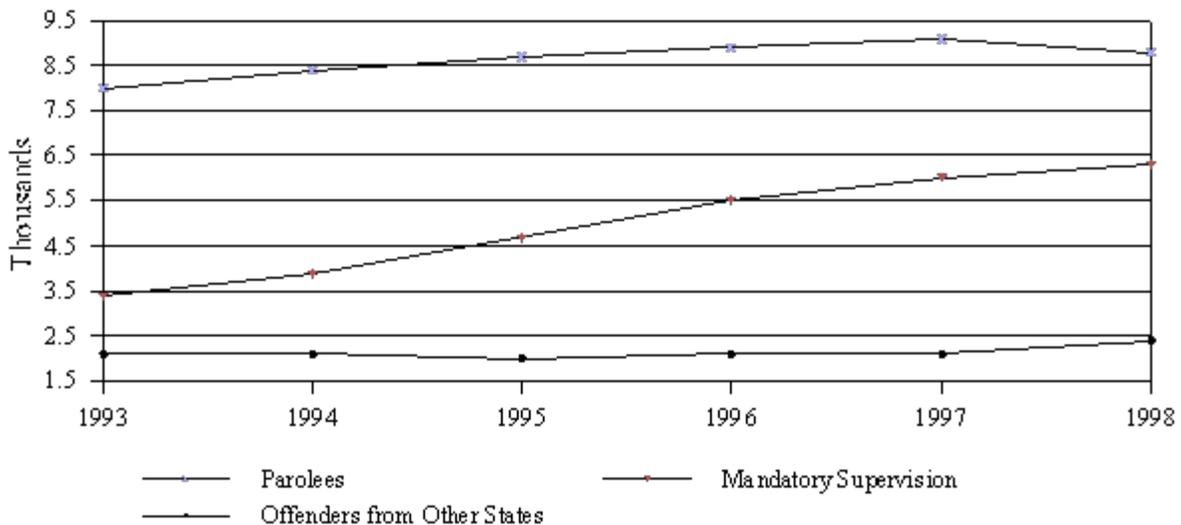
After being released on parole or under mandatory supervision, an inmate serving a sentence of longer than one year is assigned to the Division of Parole and Probation of the Department of Public Safety and Correctional Services. After the initial intake is completed, the offender is assigned a parole agent. Each offender is evaluated as to his or her risk to the community. An assessment includes an evaluation of the offender's criminality and social needs. Based upon this assessment, which is updated every six months, offenders will be actively supervised at one of the levels of supervision, intensive, standard high, or standard low. These are similar to those described in Chapter 9 for supervision of persons on probation. An offender is required to pay a monthly fee of \$40 to the division unless exempted by law.

Based on the division's recommendation or on its own initiative, the parole commission may at any time modify for good cause the conditions of release. This may include imposing home detention or alcohol or drug abuse treatment as a condition. The offender must be given an opportunity to contest any additional conditions, although this does not mean that there is the right to a hearing or right to appeal.

The parole caseload of the Division of Parole and Probation has not increased dramatically from fiscal 1993 to 1998. As shown in Exhibit 15.2, the number of parolees has increased from 7,979 cases at the end of fiscal 1993 to 8,786 estimated cases at the end of fiscal 1998, an increase of only 10 percent. In fact, for fiscal 1998 the number of parolees actually decreased from 9,147 in fiscal 1997, a decrease of 4 percent. However, the mandatory supervision caseload nearly doubled from fiscal 1993 to 1998. This growth has been the result of increases in offender incarceration trends, as discussed under Chapter 13 of this handbook. Exhibit 15.3 shows the number of persons on supervised probation from calendar 1993 to 1998. The division has approximately 600 agents responsible for supervising offenders on parole, on mandatory supervision, from other states, and on supervised probation.

Exhibit 15.2

**Parolees and Mandatory Supervisees Under Supervision at the End of Fiscal Year
FY 1993 - 1998**

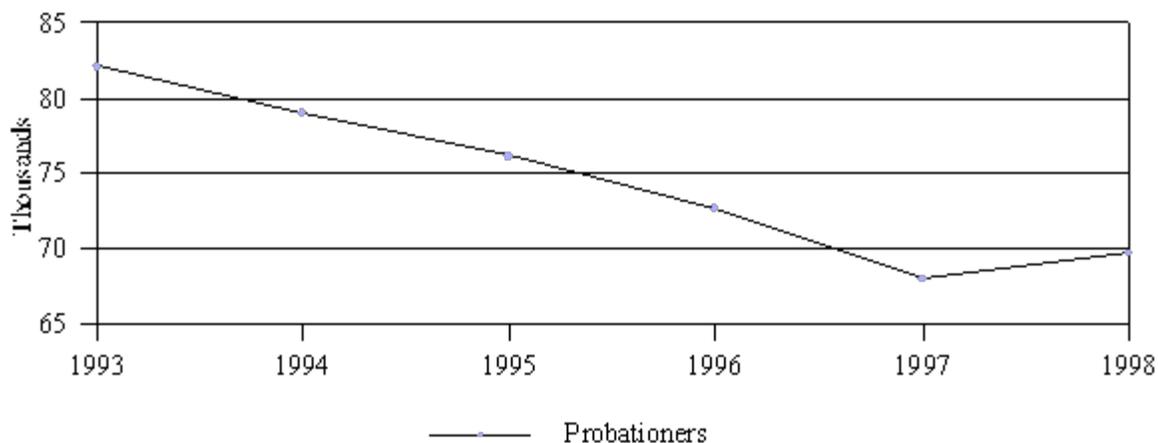


Source: Division of Parole and Probation

Exhibit 15.3

Probationers Under Supervision

CY 1993 - 1998



Source: Division of Parole and Probation

Revocation of Release

If an individual is alleged to have violated a condition of release, the Maryland Parole Commission or the Division of Parole and Probation (if this power is delegated to the division) must decide whether to issue a warrant or subpoena for purposes of conducting a parole violation (revocation) hearing. A subpoena is requested from the parole commission if the agent is of the opinion that the offender is not a public safety threat or that the offender will not flee. Otherwise, a parole agent must request a warrant in the event of an alleged violation. In this event, the agent must submit a written report to the commission on the alleged violation. The commission either will concur with a no action recommendation, or may decide to issue a warrant. The commission may, in its discretion, consult with the parole agent or other responsible person if additional information concerning the offender is necessary. A violation is either "technical," which means that it involves a violation that is not a crime (e.g., failure to attend a required meeting, losing a job, or testing positive for drugs), or it may involve the commission of a new crime.

A person on parole or mandatory supervision detained by a warrant may not be released on bail. Unless waived by the individual, an alleged violator taken into custody as a result of a technical violation is entitled to a preliminary hearing before a hearing officer. The hearing officer may:

- determine that there is probable cause to hold the parolee for a revocation hearing; or
- withdraw the retake warrant and substitute a subpoena requiring the violator to appear before the commission at a certain time and date for a revocation hearing.

This second alternative allows a violator to be released pending the parole revocation hearing.

In the event that the hearing officer determines that there is probable cause to believe there was a violation or the individual waived the right to a preliminary hearing, and in all cases where the alleged violation is for a crime, a commissioner holds a hearing within 60 days after apprehension of the violator on a warrant. As with parole hearings, the commission may elect to hear the revocation hearing *in banc*. The violator is entitled to counsel and may produce witnesses, provided that the commission is notified five days in advance of the revocation hearing. The commission may issue subpoenas to compel the appearance of witnesses.

If the parole commission finds by a preponderance of the evidence⁽¹⁾ that the individual has committed a violation, it may continue the individual on release, subject to any new conditions that it may impose. The commission may also revoke parole and either order the violator to serve the remainder of the original term of incarceration, or set a future

date for parole reconsideration. Unless the violator was on parole for a violent crime and the violation was for another violent crime, the commission may in its discretion grant the violator credit off the term of incarceration for time spent on parole before the violation. This is known as "street time." A violator who was on parole for a violent crime who committed another violent crime while on parole may not receive street time credits. Unallowed time spent on parole supervision is added to the legal expiration date of the original sentence.

The violator may appeal a decision to revoke parole to a circuit court, which will decide the case on the record made by the commission.

1. This is the same standard of proof applicable in most civil cases, and means that there must only be more evidence than not that the violation occurred. It is a much lesser burden than the criminal standard of proof "beyond a reasonable doubt."

Chapter 16. Conclusion

Changes in criminal justice policy are usually the result of events that trigger a reaction. A bad accident caused by a drunk driver may spur the enactment of additional laws against drunk driving and a greater emphasis by law enforcement on enforcing the laws. A victim who is not allowed to be present at an offender's trial starts a victims' rights movement. The murder of a child by a released sex offender gave rise to "Megan's Law" in this State and throughout the country.

Two commissions have recently studied issues relating to criminal policy. The Maryland Commission on Criminal Sentencing Policy will issue its final report by December 31, 1998 (see Chapter 9). The Commission on the Future of Maryland Courts issued its final report on December 15, 1996, and made several recommendations in the criminal law and procedure area (see Chapter 6). It is not known whether any of the recommendations of these commissions concerning criminal law and procedure will be adopted.

Beginning in 1994 the federal Violent Crime Control and Law Enforcement Act of 1994 provided significant new crime fighting monies for State and local governments. Maryland's new initiatives in the area of crime control and prevention have included increased community policing, identification of high-risk offenders, targeting high crime areas, and computerization of police reporting methodologies. Fresh efforts have also been aimed at reducing violence against women, increasing seizures of illegal guns, and improving the use and availability of DNA testing.

However, Maryland still experiences overloaded court dockets, increased use of plea bargaining, placement of offenders on probation supervision, overcrowded detention centers and prisons despite additional construction, and high rates of recidivism. Despite decreasing crime rates recently, the extent to which overall current policies related to criminal justice and law enforcement have been permanently effective remain somewhat unclear.

The purpose of this handbook has been to increase the reader's understanding of the criminal justice process in Maryland. The presentation of caseload statistics and trends highlight the problems of the system. The State has limited resources to address the problem of crime in particular and the needs of the State in general. It is hoped that future efforts to address the problems of crime and punishment in this State will recognize the potential impacts on all elements of the criminal justice system.

Glossary

Adjudication - the decision rendered by the juvenile court at an adjudicatory hearing.

Adjudicatory hearing - a juvenile court hearing to determine whether the allegations in a petition that a child has committed a delinquent act are proven beyond a reasonable doubt.

Administrative per se - the administrative offense of driving or attempting to drive with an alcohol concentration of 0.10 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath, or refusing to submit to a test for alcohol concentration. The penalty for this offense is a suspension of a driver's license by the Motor Vehicle Administration.

Aftercare - the supervision and ancillary services that a child who has been adjudicated delinquent receives after the completion of a long-term residential placement.

Aggravated assault - includes first degree assault (felony), as well as the misdemeanors of second degree assault and reckless endangerment. The term is used for national crime reporting purposes only (see *Uniform Crime Report*). Aggravated assault is not technically a crime in Maryland.

Alternatives to incarceration - programs which divert criminal offenders from prison or local detention centers. Examples are public and private home detention (both pretrial and post-conviction), boot camp, community court, Drinking Driver Monitor Program, and drug court.

Appeal - a petition to a higher court to review the decision of a lower court. An appeal may either be *de novo* (meaning a new trial), where the decision of the lower court is irrelevant to the new proceeding, or on the record, where the decision of the lower court is reviewed on the record for legal errors.

Bail - a procedure for obtaining the release of an individual charged with a criminal offense by securing the appearance of the individual at trial by offering money or other security.

Burglary - in Maryland the unlawful entry of a structure, either with or without intent to commit a crime. There are felony and misdemeanor degrees of burglary, depending on the type of structure entered and whether a crime was intended.

Case management - applicable to all inmates within two years of an estimated release date, case management services involve the development of a coordinated program designed to ensure that offenders receive the services they most need to facilitate successful re-entry into society.

Certiorari, writ of - an order by a superior court to a lower court to produce a certified record of a case decided in the inferior court. Used by the Court of Appeals and the United States Supreme Court when they decide to hear a criminal (or other) case. It is discretionary with the court to grant a petition for writ of *certiorari* filed by a defendant or the State.

Charges - formal accusation of a criminal offense, typically in the form of a charging document.

Charging document - written accusation alleging that a person has committed a criminal offense. The document may be in the form of a citation, statement of charges, information, or indictment.

Collateral review - review limited to sentencing or other matters not directly bearing on guilt or innocence.

Commitment - the action of a judicial officer ordering that a person subject to judicial proceedings be placed in the legal custody of the Department of Juvenile Justice, the Department of Health and Mental Hygiene, or the Department of Public Safety and Correctional Services for a specific reason authorized by law; also, the result of the action and

admission to the program.

Common law - law made up of prior court decisions, conventions, and traditions as opposed to statutory law which is produced by the General Assembly. Common law is the written and unwritten laws of England used by the American colonies and adopted in Maryland through the Maryland Declaration of Rights. Most states have abolished English common law, but Maryland retains the common law in many areas.

Complaint - a written statement from a person or agency having knowledge of facts that may cause a child to be subject to the jurisdiction of the juvenile court.

Coram nobis - bringing to the court's attention errors of fact which were not presented at trial through no fault of the defendant, and which would have led to a different result in the trial. Now superseded in Maryland by the statutory post conviction process.

Crime rate - the number of offenses per 100,000 population. Crime rates may be computed for particular areas, such as Anne Arundel County, or for particular crimes, such as murder.

Criminal Justice Information System (CJIS) - an event-based computerized system maintained by the Department of Public Safety and Correctional Services for the reporting

of all criminal activity in Maryland. At the federal level, CJIS also means Criminal Justice Information Services Division of the FBI.

De novo - a new proceeding. In criminal procedure, it is used to refer to an appeal in which a party is given a new trial, as if the original trial did not occur.

Defendant - a person who has been arrested for or charged with a criminal offense, but who has not been convicted.

Delinquent - *n.* a child who has committed a delinquent act; *adj.* requiring the guidance, treatment, or rehabilitation of the juvenile court because of the commission of a delinquent act.

Delinquent act - an act that would be a crime if committed by an adult.

Detainer - a notice in a criminal defendant's file directed to prison authorities informing them that charges are pending in another jurisdiction against an inmate.

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

Detention, community - an alternative to secure detention in which a child is placed on supervision in the community while awaiting a juvenile court hearing.

Diminution of confinement credits - credits earned by criminal inmates which reduce the period of confinement. In Maryland, inmates can earn up to 20 days per month (15 days for violent criminals and drug dealers) by displaying good conduct and participating in vocational, educational, or other programs. Often referred to colloquially as "good time credits."

Dismissal - an order or judgment of a court to terminate adjudication of charges brought against a person.

Disposition - the action by the juvenile court that prescribes the nature of the assistance, guidance, treatment, or rehabilitation to be provided to a child who has been adjudicated delinquent.

Disposition hearing - the juvenile court hearing held after the adjudicatory hearing to determine disposition.

Felony - any criminal offense declared a felony under statute, or recognized as a common law felony (murder, manslaughter, robbery, rape, burglary, larceny, arson, sodomy, and mayhem). A felony offense typically carries a stricter penalty than most misdemeanor offenses.

Grand jury - a random group of people from a fair cross section of the citizens of the State who reside in the county where the court convenes who determine if probable cause exists that a criminal offense has been committed by a certain person, and may issue an indictment charging the person with the offense.

Habeas corpus, writ of - an order to release a person from unlawful imprisonment. Used by courts, especially federal courts, to review the constitutionality of convictions and sentences. In Maryland courts the statutory post conviction review process now primarily is used for this purpose. This writ is still used in Maryland where the conviction was legal but the continued incarceration is challenged.

In banc - (actual spelling used in Maryland law; technically "*en banc*" would be the correct spelling) generally refers to a session where the entire membership of a court or more than the usual number of judges will participate in the decision. In Maryland, *in banc* review also refers to the constitutional provision allowing a review of a conviction by three judges of the same circuit in lieu of the regular appeal process.

Incarceration - confinement of an individual in a local detention center or a State-correctional facility (prison). This can include individuals who are sentenced or are detained prior to trial.

Incompetency to stand trial - the standard for determining whether a defendant is able to understand the nature or object of the trial and to assist in the defense of the charges.

Indictment - a charging document returned by a grand jury and filed in a circuit court.

Informal supervision - time-limited counseling, referral, or supervision of a child by the Department of Juvenile Justice without formal court intervention.

Information - a charging document filed in a court by a State's Attorney.

Intake, criminal - the arrival and classification of individuals who have been recently sentenced by the court or returned for violation of parole. Upon intake, inmates are fingerprinted, personal property is inventoried, criminal history is verified, physical and mental examinations are conducted, and educational skills are assessed.

Intake, juvenile - the first point of contact that a child has with the juvenile justice system; the process for determining whether the interests of the public or the child require the intervention of the juvenile court.

Intoxicated per se - the criminal offense of driving or attempting to drive with an alcohol concentration of 0.10 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath. The penalties for this offense are a fine and imprisonment.

Jury, petit - a group drawn at random by a jury commissioner to determine issues of fact in a criminal or civil trial. In death penalty cases, the jury may also determine whether or not the convict shall be executed.

Larceny - the unlawful taking of property from the possession of another person. Under Maryland law, the crime of theft includes most crimes of larceny. Felony theft occurs when the value of the property or services taken has a value of \$300 or more.

Mandate - official communication from a superior court to an inferior court directing action be taken or a disposition made by the lower court, often accompanied by a written opinion of the reasons for the decision.

Mandatory supervision - a nondiscretionary release from prison required by law after a criminal offender has served his or her sentence less diminution of confinement credits earned.

Maryland Rules - the regulations promulgated by the Court of Appeals that govern the operation of the judicial branch and court procedures.

Master, juvenile - a person appointed by the circuit court and approved by the Chief Judge of the Court of Appeals to

hear juvenile cases and make recommendations to the juvenile court.

Misdemeanor - any criminal offense that is not a common law felony or declared a felony under statute (see: Felony).

Nolle prosequi (nol pros) - termination or dismissal of part or all of a charging document or charge by a State's Attorney that is made on the record and explained in open court.

Not criminally responsible - the term used to describe a defendant who committed a crime while having a mental disorder or mental retardation and lacked the substantial capacity to appreciate the criminality of that conduct or to conform the defendant's conduct to the requirements of law. Commonly referred to as the insanity defense, it in actuality is broader because of the inclusion of mental retardation.

Parole - a discretionary, conditional release from criminal imprisonment granted by the Maryland Parole Commission.

Petition - document filed in the juvenile court containing allegations that provide a basis for the court's assuming jurisdiction over the child (e.g., that the child is delinquent).

Preliminary hearing - hearing requested by a defendant charged with a felony and held before a District Court judge to determine only if there is probable cause that a criminal offense has been committed and if the defendant participated in the commission of the offense. There is no right to a preliminary hearing after a grand jury indictment.

Pretrial detention - confinement of a defendant prior to trial due to inability to post sufficient bail or if a judge or District Court commissioner determines that the defendant is either a risk to public safety or is unlikely to appear in court at trial.

Probable cause - the legal standard for issuance of a charging document or a search warrant. Probable cause means a reasonable ground for belief of facts, or more evidence for than against. It is a lesser standard than the proof beyond a reasonable doubt required for a conviction.

Pro se - a person who is appearing in court without a lawyer.

Probation, adult - a disposition under which a court defers imposition of a sentence (or suspends the sentence), and releases an individual, under prescribed terms and rules for a specified period of time.

Probation, juvenile - a juvenile court disposition imposing restrictions and conditions on a child who has been adjudicated delinquent and who remains in the community.

Proof beyond a reasonable doubt - the legal standard required for a criminal conviction or an adjudication of delinquency. It is proof that would convince a person of the truth of a fact to an extent that the person would be willing to act without reservation in an important matter in the person's business or personal affairs. It is not proof beyond all possible doubt or to a mathematical certainty.

RAP sheet - report of arrests and prosecutions for a suspect.

Recidivism - a new conviction for an offender previously convicted of another crime resulting in a return to a correctional facility or to probation supervision.

Recidivism rate - a measure of subsequent criminal activity by individuals previously incarcerated by a correctional agency or under probation supervision.

Remediation - an attempt to alter offenders' crime-related behaviors and deficits by placing emphasis on learning social and coping skills, while de-emphasizing global personality changes. Remediation connotes the ability of offenders to learn new behaviors, to adopt specific coping strategies, and to develop compensatory strengths that will decrease their involvement in crime.

Robbery - the felony of taking or attempting to take anything of value by force or threat of force.

Shelter care - temporary care and services provided in a physically unrestricting setting to a child awaiting a juvenile court hearing.

Stet - a disposition by a State's Attorney to indefinitely postpone trial against a person accused of committing a criminal offense. Charges may be rescheduled for trial within a year of the stet order.

Summons - a notification that a person is required to appear in court on a certain date and time.

Trial - a judicial proceeding, in accordance with the law of the State, either civil or criminal, to determine issues of fact and law between parties to a cause of action.

Uniform Crime Reports - reports prepared annually by states which track crime rate and arrest data on a statewide basis. Maryland's *Uniform Crime Report* is prepared by the Maryland State Police and uses definitions consistent with Federal Bureau of Investigation (FBI) definitions. Data provided by each state report is submitted to the FBI and other national databases.

Warrant, arrest - a written order by a judicial officer directing a law enforcement officer to take a person into custody.