

**Maryland's Criminal and
Juvenile Justice Process**

**Legislative Handbook Series
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Foreword

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

This handbook 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 2002 Legislative Handbook Series prepared prior to the start of the General Assembly term by the Office of Policy Analysis of the Department of Legislative Services. Daneen M. Banks, Guy Cherry, Debra A. Dickstein, Kelly G. Dincau, Elizabeth Forkin, Dawn R. Gould, William M. Honablew, Jr., Jeremy M. McCoy, Susan O. McNamee, Karen D. Morgan, Douglas R. Nestor, Lauren C. Nestor, and Deadra Whayland-Daly researched and wrote the material for this volume. Donald J. Hogan, Jr., and Susan H. Russell provided additional writing and review. Sharon Beatty, Sandra Denny, Mary Dwyer, and Elaine Oaks provided administrative assistance.

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

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

Annapolis, Maryland
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Chapter 1. Introduction

Handbook Overview

In General

This handbook is intended to provide policymakers with an overview of the criminal justice process in Maryland. The topics of discussion include the charging process, pretrial disposition, 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. For each component of the criminal justice system statistics are provided to illuminate the process and outcomes of criminal justice in this State.

Items Not Included

This handbook deals primarily with the types of crimes that one normally considers as part of the criminal law. The Annotated Code of Maryland, however, is replete with crimes in other areas. A far from exhaustive list includes environmental crimes, crimes involving failure to obtain required licenses, natural resources violations, labor and employment violations, and tax code violations. Also, this handbook does not discuss 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 organized under three major sections – crimes, the judicial process, and punishment and incarceration. A summary of each chapter is provided below.

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

- Chapter 2. This chapter begins with a discussion of the problem of crime and crime rates. Trends and reports on criminal activity, based on data collected by the Maryland State Police and compiled in the *Uniform Crime Report*, are presented for the most serious offenses (Part I offenses) reported to the State Police. The chapter also discusses adult and juvenile arrest trends. The chapter concludes with information on automated technologies, such as the Maryland Automated Fingerprint Identification System 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 offenses, 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 of 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.
- 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 but before disposition of the case in court. A court commissioner 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 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 law, some defendants with a mental disorder or mental retardation may not be prosecuted or punished. There are two circumstances under which these conditions are considered in a criminal proceeding. The first is whether a defendant is competent (i.e., mentally able) to participate in a trial. The second is whether the defendant was criminally responsible for the crime (i.e., had the necessary mental capacity at the time of the crime). The processes by which the courts determine 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 State Commission on Criminal Sentencing Policy to evaluate and monitor 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.
- Chapter 10. Discussion focuses on the alternatives available to defendants 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 discussed.

- 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, treatment of inmates with mental disorders, and treatment of inmates with substance abuse problems. This chapter examines the evaluation and treatment programs of the only correctional institution that has its own conditional release and supervision authority.
- Chapter 15. This chapter examines the three ways in which 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

The law pertaining to Maryland’s criminal justice process is from several sources. There is constitutional law, statutory law, 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. The constitutional prohibition on ex post facto laws (i.e., a law criminalizing an act or increasing a penalty for an act after it was done) is relevant to criminal laws, including issues relating to parole and diminution credits (see Chapter 15). This provision also prohibits retroactive criminal legislation. These constitutional provisions and court cases interpreting them may not be overturned by statute, and may only be altered by constitutional amendment (or subsequent reversal by a court).

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

Statutory Law

Maryland's statutory criminal law is primarily found in the following volumes of the Annotated Code. Prohibitions and penalties are in the Criminal Law Article. Provisions dealing with criminal procedure are found in both the Criminal Procedure Article and the Courts and Judicial Proceedings Article. The Correctional Services Article contains the law dealing with incarceration and punishment. The Public Safety Article, scheduled for introduction as a bill in the 2003 session, will contain the laws concerning law enforcement, the militia, regulation of firearms, and the State Police.

Common Law

The common law is law based on prior court decisions drawn from the common law of England, which the State adopted 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. By statute, however, Maryland divides murder into first and second degree murder for punishment purposes. Manslaughter is a common law crime that has a statutory maximum penalty of ten years. For common law crimes that do

not have a statutory penalty, the maximum penalty that may be imposed is life imprisonment, with the limitation that the actual penalty may not violate the constitutional prohibition on cruel and unusual punishment.

Also, inchoate crimes (incomplete crimes) are generally common law crimes. For example, a person who attempts but fails to burn down a building is guilty of the crime of attempted arson. The statutory law prohibits arson, not attempted arson, but the common law prohibits the attempt as well. Attempted murder, rape, sexual offense, and robbery have been made statutory felonies with punishment equal to the completed crime. The maximum penalty for these inchoate crimes is the same as the maximum penalty for the completed crime. Other examples of inchoate common law crimes include conspiracy (two or more persons planning to commit a crime) and solicitation (one person requesting another to commit a crime).

Court Rules

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

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

Court Decisions

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

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

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

Felonies and Misdemeanors

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

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

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

In addition, a conviction for a felony also subjects a person to other legal disabilities. A first-time felon may not vote in an election until the full time of the sentence has been served including terms of parole and probation. A second- or subsequent-time felon may not vote until three years have passed since expiration of the sentence, including terms of parole and probation. A person convicted of a second or subsequent crime of violence loses permanently the right to vote. Convicted felons may also be disqualified from obtaining certain State-issued licenses.

Motor Vehicle Offenses

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

Juvenile Law

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

Chapter 2. Crime Rates and Arrest Trends

The Problem

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

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

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.

It should also be noted that in the 1990s there was a significant increase in the State prison population. In 1988 the State prison population was about 13,000 inmates. By 2002,

the State prison population exceeded 23,500 inmates. Whether there is a causal relationship between the rise in prison population and lower crime rates is a matter of conjecture.

Beginning in 1994 some new initiatives by the Maryland State Police and local police agencies were given credit for the declines in crime rates in the State. The federal Violent Crime Control and Law Enforcement Act of 1994 provided major new crime fighting money for State and local governments. The Governor's Office of Crime Control and Prevention has worked with the Cabinet Council on Criminal and Juvenile Justice to develop and revise the Maryland Crime Control and Prevention Strategy. The strategy's four key elements involve: targeting high-risk offenders; reclaiming at-risk neighborhoods; protecting and supporting victims; and preventing youth violence, drug use, and gangs.

Crime Rates

In 1975 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 Federal Bureau of Investigation and its national *Uniform Crime Report*.

It should also be noted that the names and definitions of crimes are those used by the Federal Bureau of Investigation 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 and entering (burglary);

- larceny-theft;
- motor vehicle theft; and
- arson.

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

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

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

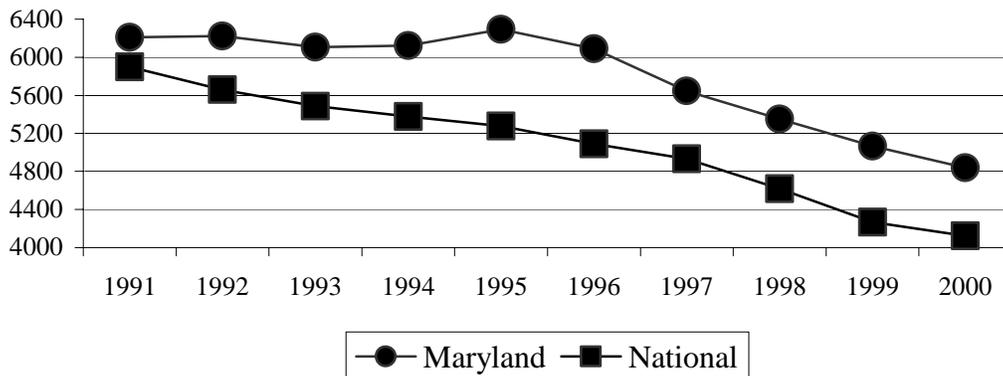
Finally, juvenile crime and arrest statistics can cause some misunderstanding. Many juvenile offenders are handled informally. As a consequence, inaccurate or incomplete recording of the event or action may result. Procedures for handling juveniles vary between departments more so than the handling of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

Based upon reported offenses, a crime rate is calculated for the number of offenses per 100,000 inhabitants. In 2000 Maryland's crime rate was 4,839 victims for every 100,000 population, a 4 percent decrease from the 1999 rate of 5,064. The 2000 violent crime rate was 790 victims per 100,000 population, a 3 percent decrease from the 1999 rate of 816. Property crime had a rate of 4,049 victims, a 5 percent decrease from 1998 (4,248).

By further comparison, 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 has continued a steady decline from 1995 through 2000. (It should be noted that the Federal Bureau of Investigation announced in June 2002 that preliminary 2001 data indicate a 2 percent increase in the Nation's Crime Index from the 2000 figure.)

Exhibit 2.1
Maryland and National Crime Rate Trends
Offenses per 100,000 of Population
CY 1991 - 2000



Source: 2000 *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 about 12,300 in 1996 to about 11,300 in 2000. However, arrests for possession have risen from 24,300 in 1996 to 30,200 in 2000. These numbers are reflective of continuing efforts to curtail the sale and distribution of controlled dangerous substances.

Offense Trends

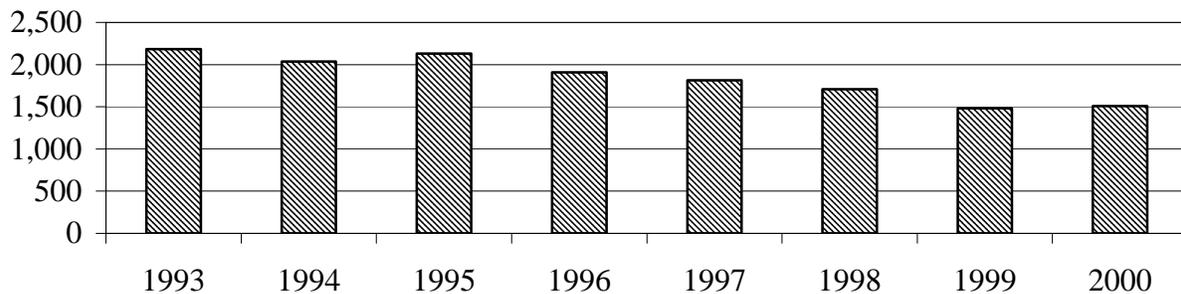
Calendar year trends in each of the eight reported Part I offense areas are discussed in further detail below. Offense trends over the most recent four-year period for which there is complete data (1997 through 2000) are compared with similar occurrences from 1993

through 1996. As of the fall of 2002, complete *Uniform Crime Report* data for calendar 2001 was not available. Arrest totals for calendar 2000 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 1993 through 1996 the number of reported rape offenses declined by an average of 3.6 percent annually, from 2,280 to 1,907 reported cases (see Exhibit 2.2). Although the number of reported rapes increased from 1999 to 2000, from 1996 through 2000 there was an average annual decline of 4.9 percent to 1,508 offenses. In 2000, 526 persons were arrested for forcible rape. In 2000, Maryland’s crime rate for rape was 28.5 offenses per 100,000 persons, while the national rate for this offense in 2000 was 32.0.

Exhibit 2.2
Offense Trends
Rape

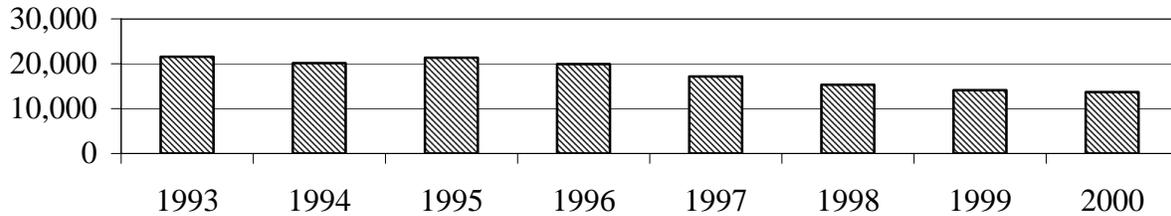


Source: 2000 *Uniform Crime Report*, Maryland State Police

Robbery

Robbery is defined as the taking, or attempted taking, of anything of value by force. The number of robberies declined from 21,580 in 1993 to 19,935 in 1996, an average annual decrease of 2.1 percent (see Exhibit 2.3). This category declined by an average of 3.1 percent annually from 1997 to 2000, from 17,158 to 13,707 offenses. In 2000, 3,449 persons were arrested for robbery. In 2000, Maryland’s crime rate for robbery was 258.8 offenses per 100,000 persons, while the national rate for this offense in 2000 was 144.9.

Exhibit 2.3
Offense Trends
Robbery

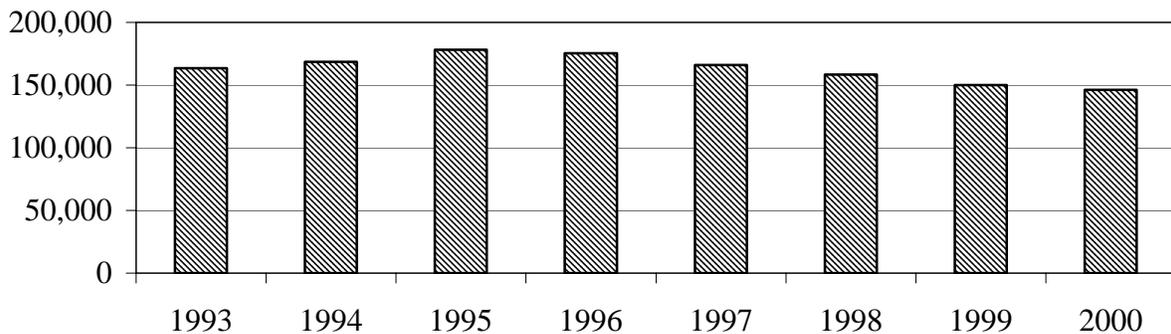


Source: 2000 Uniform Crime Report, Maryland State Police

Larceny-Theft

Larceny-theft is the unlawful taking of property from the possession of another person. The number of offenses of larceny-theft reported increased annually by an average of 0.3 percent for the 1993 through 1996 period. From 1997 through 2000 the average annual change was a decrease in reports of 2.8 percent (see Exhibit 2.4). There were 146,156 reported offenses for larceny in 2000, and 25,028 arrests. In 2000, Maryland's crime rate for larceny-theft was 2,759.5 offenses per 100,000 persons, while the national rate for this offense in 2000 was 2.475.3.

Exhibit 2.4
Offense Trends
Larceny-Theft



Source: 2000 Uniform Crime Report, Maryland State Police

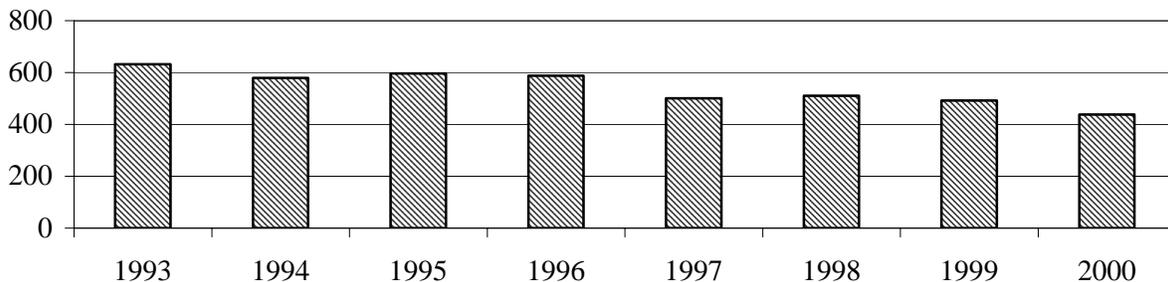
Murder

In 2000, 438 murders were reported to law enforcement agencies in Maryland. This is a decline of 150 murders from 1996, and a decline of 194 from the all-time high of 632 reported in 1993 (see Exhibit 2.5). The average annual decrease in murders statewide from 1997 through 2000 was 2.9 percent. Maryland’s annual number of murders had hovered near 600 from 1990 through 1996. In 2000, Maryland’s crime rate for murder was 8.3 offenses per 100,000 persons, while the national rate for this offense in 2000 was 5.5.

In 2000 a majority of the victims (345 or 79 percent) were African American. When the race of both the victim and offender is known, they tend to be of the same race. Drug-related murders remained at 4 percent from 1999 to 2000, but declined from the 8 percent figure of 1996. Family-related murders increased by 5 percent (over 1999), while boyfriend or girlfriend murders increased from 1999 to 2000 by 17 percent. Handguns were used in 66 percent of the reported murders in 2000, which is a 17 percent increase over 1999. Most murders occurred in either Baltimore City (261 or 60 percent) or Prince George’s County (72 or 16 percent).

In a related recent development of note, researchers from the University of Massachusetts and the Harvard Medical School have found that improvements in emergency care over the past 40 years have helped to reduce deaths among assault victims by nearly 70 percent and, in the process, lowered the nation’s homicide rate. The extent to which these findings may relate to reductions in the murder rate in Maryland is unknown.

Exhibit 2.5
Offense Trends
Murder

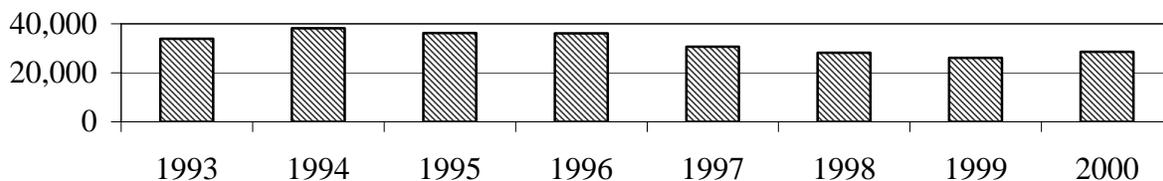


Source: 2000 Uniform Crime Report, Maryland State Police

Motor Vehicle Theft

In 2000, 28,622 motor vehicle thefts were reported. This represents a 2.7 percent rate of annual decline since 1997. However, this number also represents a 10 percent increase from 1999. From 1992 through 1996, motor vehicle theft offenses rose 2.5 percent annually (see Exhibit 2.6). There were 4,888 persons arrested in Maryland for motor vehicle theft during 2000. Of the vehicles reported stolen in 2000, a total of 19,371 (68 percent) were recovered. In 2000, Maryland's crime rate for motor vehicle theft was 540.4 offenses per 100,000 persons, while the national rate for this offense in 2000 was 414.2.

Exhibit 2.6
Offense Trends
Motor Vehicle Theft

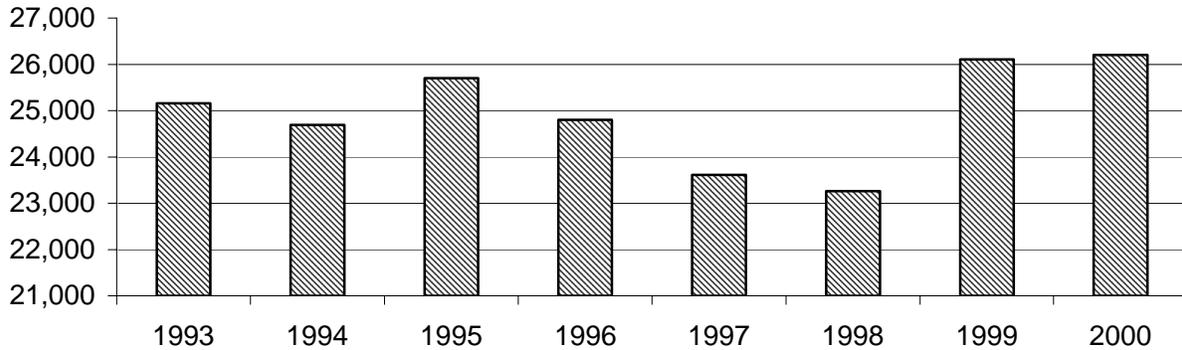


Source: 2000 Uniform Crime Report, Maryland State Police

Aggravated Assault

Aggravated assault is the unlawful attack by one person upon another for the purpose of inflicting severe bodily injury. During 2000 there were 26,201 aggravated assaults reported. After steady declines in such offenses for the three-year period from 1996 through 1998, aggravated assaults saw a marked increase of over 12 percent in 1999 and increased again very slightly in 2000 (see Exhibit 2.7). In 2000, 3,715 (14 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 8,290 in 2000. In 2000, Maryland's crime rate for aggravated assault was 494.7 offenses per 100,000 persons, while the national rate for this offense in 2000 was 323.6.

Exhibit 2.7
Offense Trends
Aggravated Assault

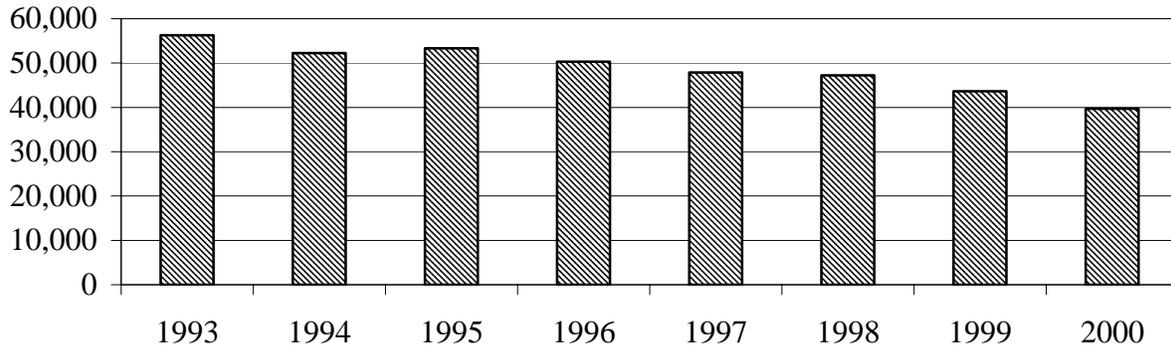


Source: 2000 Uniform Crime Report, Maryland State Police

Burglary

Burglary, defined as the unlawful entry of a property to commit a felony or theft, has continued to decline over the last eight years. From 1997 through 2000 reported offenses decreased from 47,839 to 39,654 (see Exhibit 2.8). In 1993, that number had been 56,237. Approximately 67 percent of burglaries in 2000 involved forcible entry, and 67 percent of the offenses were committed in a residence. The average dollar value loss during 2000 was \$1,196. In 2000, 7,600 individuals were arrested for burglary. In 2000, Maryland's crime rate for burglary was 748.7 offenses per 100,000 persons, while the national rate for this offense in 2000 was 323.6.

Exhibit 2.8
Offense Trends
Burglary

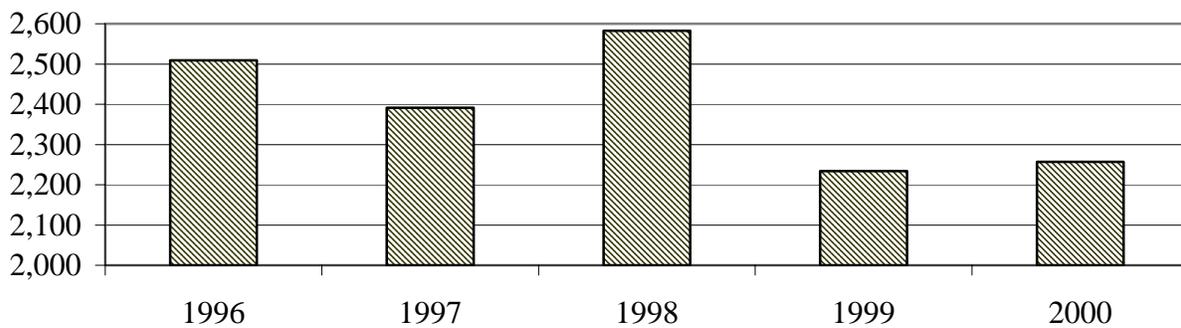


Source: 2000 Uniform Crime Report, Maryland State Police

Arson

In 2000 there were 2,257 incidents of arson reported, a 1 percent increase over 1999 (see Exhibit 2.9). Reflecting the difficulty of identifying the perpetrators, there were 506 persons arrested for arson in 2000.

Exhibit 2.9
Offense Trends
Arson

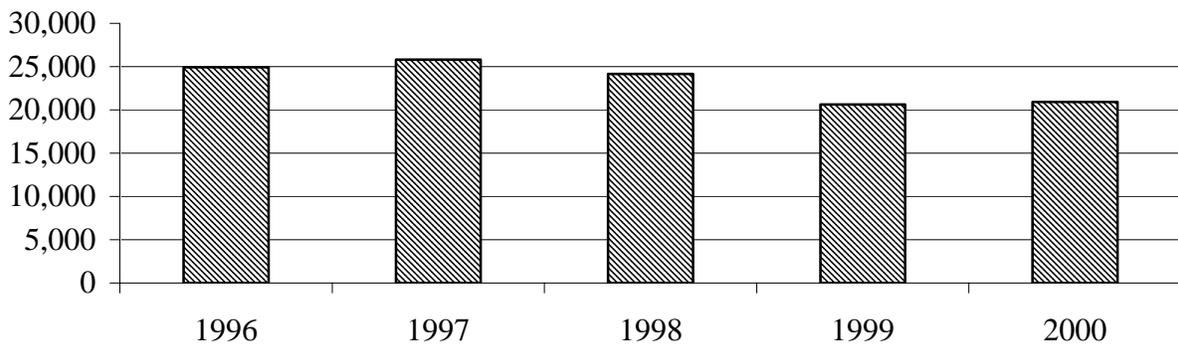


Source: 2000 Uniform Crime Report, Maryland State Police

Domestic Violence

Under the Domestic Violence Act of 1994, reports of incidents involving domestic violence were added to the compilations maintained under the annual *Uniform Crime Reports*. (It should be noted that procedures for handling domestic violence crimes vary among law enforcement agencies and counties of occurrence.) In 2000 there were 20,928 reported incidents characterized as domestic violence, an increase of 1.4 percent over 1999 (20,632). However, from 1997 through 2000, there was a decrease of 23 percent in such reports (down from 25,792). The vast majority (approximately 95 percent) of such reports involve assaults. Of the number of domestic violence assaults, 22 percent were classified as aggravated assaults. There were an average of 21 domestic violence homicides per year from 1997 through 2000.

Exhibit 2.10
Offense Trends
Domestic Violence



Source: 2000 *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 1999 there were 311,513 arrests. A total of 318,249 arrests for Part I and Part II criminal offenses were reported during calendar 2000, representing a 2 percent increase over 1999.

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

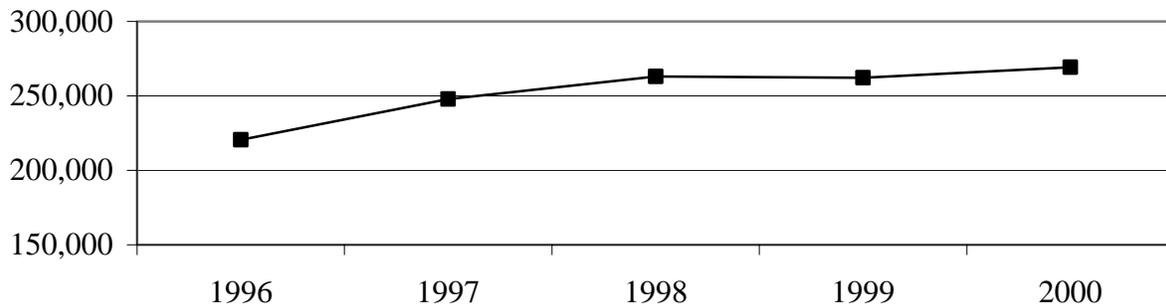
Arrest figures do not indicate the number of different individuals arrested or summoned because, as stated above, one person may be arrested several times during the month. However, arrest information is useful in measuring the extent of law enforcement activities in a given geographic area as well as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

During calendar 2000, 16 percent of all reported arrests were for Part I offenses. The majority of arrests were for larceny-theft, which accounted for 50 percent of the total for Part I offenses. About 41 percent of all Part II offenses were made up of arrests in the categories of drug abuse, driving under the influence, violations of liquor laws, and assaults.

Aggregate Arrest Trends

From 1997 through 2000, all adult arrests rose (about 8.6 percent) from 247,774 to 269,167 (see Exhibit 2.11).

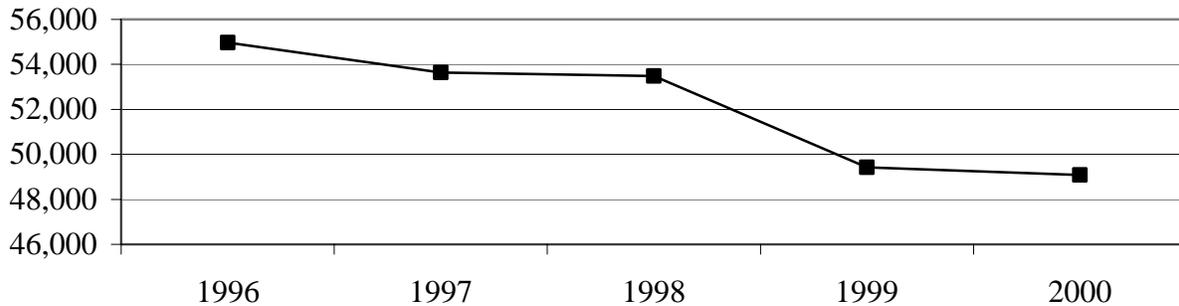
Exhibit 2.11
Adult Arrest Trends



Source: 2000 Uniform Crime Report, Maryland State Police

On the other hand, juvenile arrests from 1997 through 2000 showed a decline of about 8 percent. After rising significantly from 1992 through 1996, from 1996 through 2000 the trend in juvenile arrests is down. (see Exhibit 2.12).

Exhibit 2.12
Juvenile Arrest Trends



Source: 2000 Uniform Crime Report, Maryland State Police

Information Management and Technology

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

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

The division also supports numerous links to national criminal justice and related systems including: the Federal Bureau of Investigation’s National Crime Information Center, which is the centralized national compendium of criminal history record information; the Interstate Identification Index System, which allows states to exchange criminal history record information directly; the National Law Enforcement Telecommunications System,

which links the nation's law enforcement and motor vehicles agencies; and the National Sex Offender Registry.

Within Maryland, the division supports nine Arrest/Booking System sites at the Baltimore Centralized Booking and Intake Center and in Charles, Frederick, Harford, Howard, Montgomery, Prince George's, St. Mary's, and Wicomico counties. The Arrest/Booking System is an electronic system that tracks offenders as they are processed through booking and performs identification functions via four other automated systems carrying fingerprint, mug shot, arrest/disposition, and criminal history information. The Information Technology and Communications Division is also developing, in collaboration with law enforcement and the judiciary, the Maryland Statewide Warrant System, which will integrate the complementary functions of these agencies in the processing and follow-up of criminal and civil warrants and court orders.

The information management systems serving the department's correctional agencies will be gradually replaced over several years by the Maryland Integrated Offender Management System, designed to track an offender as the offender moves through the correctional system. The Maryland Integrated Offender Management System is being inaugurated by implementation of an automated case management system for the Division of Parole and Probation with other agencies to follow. This information management system will eventually become interoperable with the other State systems described above. The department's short- and long-term information technology and management strategies are detailed in an Information Technology Master Plan.

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, if the officer has probable cause to believe that a person has committed certain other serious offenses such as driving while under the influence or impaired by drugs or alcohol, or for any offense if the person does not have satisfactory evidence of identity or the officer reasonably believes the person will disregard a citation.

A police officer may also issue a citation (i.e., a ticket) 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. For offenses for which incarceration is not a penalty, a citation will have a preset fine amount stated. This amount is set by the Chief Judge of the District Court and includes court costs. This allows a person to admit guilt and pay a fine without having to appear for trial.

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.

Exhibit 3.1 shows the number of motor vehicle offense charges filed over the most recent five-year period, as well as the number of cases that were tried, the number of other dispositions (i.e., *nolle prosequi* dispositions, stet dispositions, or jury trial prayers), and the number of citations paid. Just under two-thirds of all motor vehicle violators pay the citations rather than appear in court. This figure does not reflect the number of drivers charged because multiple citations may be given in certain situations.

Exhibit 3.1
Motor Vehicle Offense Statistics in the
District Court of Maryland
Fiscal 1998 – 2002

<u>Year</u>	<u>Total # of Charges Filed</u>	<u>Total # of Cases Tried</u>	<u>Total # of Non-trial Dispositions</u>	<u>Total # of Fines Paid</u>
2002	1,104,533	307,730	181,727	598,543
2001	1,064,864	303,876	159,982	598,035
2000	1,114,503	339,818	151,830	609,014
1999	1,187,130	359,719	142,571	632,666
1998	1,107,493	308,837	130,768	566,104

Source: District Court of Maryland

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. The hearing or trial will be held in the District Court in the county in which the offense occurred. 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. If the person fails to appear, pay the fine, or post bond for a new trial or hearing date after notification from the administration, the administration may suspend the person's driving privileges.

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. Most violations are punishable only by a fine. Certain offenses are punishable by a fine as well as a 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 system, 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 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 impaired by alcohol is an eight point offense, while driving while under the influence of alcohol 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 the individual's 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 under the influence of alcohol, while "under the influence of alcohol per se," or while impaired by alcohol, drugs, or controlled dangerous substances. The specific offense and the severity of the sanction are 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 "under the influence of alcohol per se" if an alcohol test result indicates blood alcohol concentration (BAC) of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath. Since driving with a 0.08 blood alcohol concentration is a per se offense, the focus of a prosecution is limited to whether or not a person had an alcohol concentration of 0.08 at the time of testing. Any evidence unrelated to whether the individual was the driver or 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 0.08, the test is prima facie evidence that the individual was driving while impaired by alcohol. If an individual has a blood alcohol concentration above 0.05, but less than 0.07, there is no presumption, but the blood alcohol concentration may be considered with other competent evidence in determining if one of the offenses has occurred. Finally, if an individual has a blood alcohol concentration of 0.05 or less, there is a presumption that the individual was neither under the influence of alcohol nor impaired by alcohol.

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

Additionally, an individual is prohibited from driving or attempting to drive any vehicle while so far impaired by any drug, any combination of drugs, or a combination of

one or more drugs and alcohol that the individual cannot drive a vehicle safely. Finally, an individual is also prohibited from driving or attempting to drive any vehicle while impaired by any illegal controlled dangerous substances.

Exhibit 3.2 shows the number of total highway deaths and the number of highway deaths in which alcohol was a contributing factor from calendar 1992 through 2001.

Exhibit 3.2
State of Maryland
Highway Fatalities and Alcohol Involvement
Calendar 1992 – 2001

<u>Year</u>	<u>Total # of Traffic Fatalities</u>	<u>Fatality Rate (Fatalities per 100 Million Vehicle Miles)</u>	<u>% in Which Alcohol was a Contributing Factor</u>	<u>Fatalities in Which Alcohol was a Contributing Factor</u>
2001	662	1.3	32.6%	216
2000	617	1.2	31.6%	195
1999	598	1.2	34.3%	205
1998	606	1.3	29.4%	178
1997	608	1.3	33.0%	201
1996	608	1.3	36.3%	221
1995	677	1.5	18.5%	125
1994	651	1.5	16.6%	108
1993	672	1.6	39.6%	266
1992	664	1.5	34.5%	229

Source: State Highway Administration

Criminal Penalties

A first offense of driving while under the influence of alcohol or under the influence of alcohol per se is punishable by up to a \$1,000 fine and/or imprisonment for up to a year. Subsequent offenses may subject the offender to a fine of up to \$3,000 and/or imprisonment for up to three years. If a subsequent offense is committed within five years of the first offense, a second offender is subject to a mandatory minimum penalty of five days' imprisonment or 30 days of community service, while a third or subsequent offender is subject to a mandatory minimum penalty of ten days' imprisonment or 60 days of community service. Subsequent offenders are also required to undergo a comprehensive alcohol abuse assessment, and if recommended, participate in an alcohol treatment program.

Driving while impaired by alcohol, drugs, or a controlled dangerous substance is punishable by up to a \$500 fine and/or imprisonment up to two months. A person convicted of a subsequent offense of driving while impaired is subject to imprisonment for up to a year. Additionally, a conviction of driving while under the influence of alcohol or while impaired by alcohol qualifies as a prior offense for the purpose of imposing penalties for the subsequent convictions of either driving while under the influence of alcohol or while impaired by 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 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/or a \$5,000 fine.

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

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 under the influence of alcohol or under the influence of alcohol per se, the individual is guilty of a misdemeanor known as "life threatening injury by motor vehicle while under the influence of alcohol," which is punishable by a maximum of three years in prison and/or a \$5,000 fine. Causing a life threatening injury by motor vehicle while impaired by

alcohol, drugs, or controlled dangerous substances is also a misdemeanor punishable by a maximum of two years in prison and a \$3,000 fine.

Administrative Per Se Sanctions

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

Post-conviction Administrative Sanctions

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

Sanction and Treatment Programs

The State, along with many counties, has established alternative sanction programs that include drug and alcohol treatment, ignition interlock restrictions, weekend confinement as a condition of probation, and probation with home detention and electronic monitoring and ignition interlock restrictions for drinking drivers. These programs give judges more sentencing options for repeat or serious offenders.

Drinking Driver Monitor Program

The Drinking Driver Monitor Program is a specialized program under the Division of Parole and Probation of the Department of Public Safety and Correctional Services for persons convicted of drunk or drugged driving offenses. The program emphasizes abstinence from alcohol and other drugs, alcohol education and treatment, and rehabilitation. Offenders may be referred to the program through special conditions

established by court-ordered probation, including abstinence, or through assignment by the Motor Vehicle Administration as a condition for reinstating a motor vehicle license after it has been suspended or revoked.

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

Ignition Interlock Program

An ignition interlock system is a device that connects a motor vehicle ignition system to a breath analyzer that measures a driver's blood alcohol level and prevents the ignition from starting if the driver's blood alcohol level exceeds the device's calibrated setting. The law prohibits tampering with or attempting to circumvent the use of an ignition interlock system, for example, by having another person attempt to start the ignition. A court may order a person to participate in the ignition interlock program after conviction for a drunk driving offense. The Motor Vehicle Administration may also order participation in conjunction with administrative sanctions imposed for drunk driving.

Other Sanctions

Home detention and electronic monitoring programs also provide alternative sentencing options for drug and alcohol offenders, as well as weekend confinement and treatment programs served as a condition of probation for various offenses.

Chapter 4. Commencement of the Criminal Justice Process

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

Arrest

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

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

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

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

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

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

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

Exhibit 4.1
Summary of Charging Documents

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

Source: Department of Legislative Services

Citation

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

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

Statement of Charges

Before arrest, a statement of charges is a charging document that a judicial officer files with the District Court based on an application of a law enforcement officer or another individual. The application contains an affidavit demonstrating probable cause that the defendant committed the crime charged.

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

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

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

Information

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

- a misdemeanor (provided that the circuit court has jurisdiction);
- a felony that is within the concurrent jurisdiction of the circuit court and the District Court; and
- any other felony (including any lesser included offense) if the defendant: (1) requests or consents in writing to be charged by information; (2) requested a preliminary hearing for a felony within the sole jurisdiction of the circuit court and the hearing

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

Indictment by Grand Jury

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

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

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

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

Summons or Arrest Warrant

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

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

Chapter 5. Pretrial Procedure

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

Police Procedures

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

Initial Appearance

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

At the initial appearance, the commissioner must also determine whether the defendant is eligible for release from custody prior to trial and, if so, under what conditions. A defendant who is denied pretrial release by the commissioner, or one who remains in custody 24 hours after the commissioner has set the conditions of release, is entitled to a bail review hearing before a judge. The primary purpose of the bail review hearing is to determine whether the conditions set by the commissioner should be amended.

Right to Counsel

Criminal defendants are advised of their right to legal representation upon arrest and at their initial appearance. Written notice of this right is included with the charging document, which is given to and discussed with the defendant at the initial appearance. The notice is read to those who are unable to read it themselves, and is signed by all

defendants to acknowledge its review and receipt. The notice explains how a lawyer can be helpful to the defendant, and advises the defendant that the Office of the Public Defender provides free legal representation to those unable to afford private counsel.¹ The defendant is referred to the clerk of court for assistance in locating and applying for assistance from the public defender.

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

If the defendant is served with a criminal summons or citation rather than arrested, the initial appearance is before a judge on the date of arraignment or trial. The judge will advise the defendant of the nature of the charges and the right to counsel, and confirm that the defendant received a copy of the charging document. If an appropriate judicial officer has not previously advised the defendant of these rights, the case will be postponed so the defendant can have an opportunity to obtain counsel and prepare a defense.

Pretrial Release/Detention

In General

A criminal defendant will be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release to ensure the defendant's appearance at trial and the safety of the alleged victim. Most defendants are eligible for and will be released on personal recognizance if the commissioner or judge believes that the defendant will appear in court as required. If a judicial officer determines that release on personal recognizance alone will not ensure the defendant's appearance and the victim's safety, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial by posting a suitable bail. Whether released on recognizance or bail, one or more conditions may be imposed, including:

¹The 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 fiscal 2001, 418 attorneys in the Office of Public Defender handled 182,652 cases.

- releasing the defendant to the custody of a designated person or organization (including a private home detention company) that agrees to supervise the defendant and assist in ensuring the defendant's future appearance in court;
- placing the defendant under the supervision of a governmental pretrial services unit, which in some jurisdictions can provide home detention, electronic monitoring, and drug testing or treatment pending trial;
- restricting the defendant's travel, associations, or residence;
- prohibiting contact with the alleged victim; and
- any other conditions that will reasonably: (1) ensure the appearance of the defendant as required; (2) protect the alleged victim; and (3) if charged with a violent crime or certain drug offenses, ensure that the defendant will not pose a danger to the community.

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

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

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

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

Basis for Pretrial Release Determinations

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

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

In some jurisdictions, a pretrial investigation services unit provides verified factual information that becomes available to assist the judge in setting conditions for release at a bail review hearing. The investigation by the pretrial services unit could include a community background check, verification of employment, information provided by the defendant or the defendant's family, and additional factors concerning the defendant's criminal history that were not available to the commissioner. Where local conditions provide for it, a pretrial release plan can be designed by the pretrial services unit so that the defendant can be released under supervision of that unit, providing an option for the release of some offenders who are unable to make bail or who ordinarily would be confined until trial. Supervision may include residential placement, house arrest, electronic monitoring, and testing or treatment for alcohol and drug use.

For more discussion of alternatives to incarceration, see Chapter 8 of this handbook.

Release on Bail

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

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

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

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

Confinement Awaiting Trial

In Maryland, offenders who are arrested but not released on recognizance or who do not make bail are held in local detention centers. There is a local detention center in each of the State's 23 counties. Each county is responsible for funding and operating its

detention center, although the State does provide assistance for both capital and operating expenses. The State assumed operation of the Baltimore City Jail in 1991. Renamed the Baltimore City Detention Center, the jail was placed within the Division of Pretrial Detention and Services of the Department of Public Safety and Correctional Services.

In fiscal 2002, of the 11,729 persons confined in local detention centers, 6,592 were awaiting trial or sentencing. (See Exhibit 5.1) Local detention centers also house defendants who have been convicted and sentenced to terms of 18 months or less. See Chapter 12 of this handbook for a more complete discussion of local detention centers.

Exhibit 5.1
Local Detention Centers
Average Daily Population (ADP) and Pretrial Detainees
Monthly Averages FY 1999 - 2002

Jurisdiction	1999		2000		2001		2002	
	ADP	Pretrial	ADP	Pretrial	ADP	Pretrial	ADP	Pretrial
Allegany	86	36	92	44	119	54	136	68
AnneArundel	868	418	853	385	956	418	1,010	373
Baltimore City	3,816	3,494	3,480	3,143	3,140	2,685	3,536	3,025
Baltimore	1,111	651	1,149	662	1,166	624	1,119	593
Calvert	156	44	159	45	144	47	158	50
Caroline	80	35	98	41	103	40	95	33
Carroll	170	64	188	86	240	96	283	124
Cecil	154	66	170	72	188	85	154	62
Charles	351	106	354	113	377	132	384	123
Dorchester	172	67	177	57	163	51	155	45
Frederick	356	149	371	139	378	152	429	166
Garrett	38	11	56	18	61	18	56	19

Jurisdiction	1999		2000		2001		2002	
	ADP	Pretrial	ADP	Pretrial	ADP	Pretrial	ADP	Pretrial
Montgomery	796	346	891	314*	986	281**	923	340
Prince George's	1,331	1,017	1,247	958	1,109	797	1,023	718
Queen Anne's	81	21	94	23	89	23	77	25
St. Mary's	178	54	169	55	165	47	195	59
Somerset	85	33	84	22	79	21	83	22
Talbot	103	37	106	33	109	32	99	30
Washington	341	167	342	171	314	153	349	174
Wicomico	511	179	511	224	535	195	532	173
Worcester	234	142	223	126	216	115	219	128
Statewide Total	11,683	7,362	11,448	6,955	11,330	6,315	11,729	6,592

*Fiscal 2000 data for Montgomery County is estimated based on prior and subsequent year data.

**Fiscal 2001 data for Montgomery County is based on June 2001.

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 has a right to a preliminary hearing to determine whether probable cause exists to felonies, such as murder, rape, robbery, first degree assault, and possession with the intent to distribute narcotics. There is no right to a preliminary hearing in cases alleging felony theft or similar offenses that may be tried in either the District Court or a circuit court (such as bad checks, credit card misuse, forgery, and insurance fraud), or in cases charging only misdemeanors. There also is no right to a preliminary hearing after a grand jury has returned an indictment, because the grand jury already would have found sufficient probable cause before returning the indictment.

A District Court judge conducts the preliminary hearing. Only the prosecution may call witnesses, who are subject to cross-examination by the defense. Strict rules of evidence are not applied, and the only question to be decided is whether the State has established a *prima facie* case that there is probable cause to believe that the defendant committed the felony charged. If so, the State then has 30 days to file a criminal information in the circuit court, secure a grand jury indictment, or dismiss the charges. If

the judge determines that no probable cause has been shown, the felony is dismissed. Such a dismissal is without prejudice, so the State may seek to charge the defendant again.

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

Plea Bargaining

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

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

The defendant may enter into an agreement with the prosecutor to enter a plea of guilty on any proper condition. When the State has agreed only to make a particular recommendation as to sentencing, that recommendation is not binding on the judge. In such situations, the defendant is advised that the judge may impose a sentence higher than the one recommended by the State. For this reason, the State and defendant often

submit the terms of their agreement to the judge in advance, to determine whether the judge will also agree to be bound by the terms of the agreement and impose a particular sentence, or at least agree not to exceed certain sentencing parameters. If the judge will not agree, the defendant may nonetheless proceed with the plea, or withdraw it and go to trial.

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

Chapter 6. The Circuit Courts and the District Court

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

Circuit Courts

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

Jurisdiction

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

The circuit courts are the only trial courts that provide for trial by jury. A jury trial is guaranteed under the Sixth and Fourteenth Amendments of the U.S. Constitution, for all but petty offenses, as well as under the Maryland Constitution. In general, a defendant has the right to trial by jury in the first instance under Maryland law in any misdemeanor or felony case with a potential sentence of over 90 days and the District Court is divested of jurisdiction if the defendant requests a jury trial.³

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

²Misdemeanor 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.

³In 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.

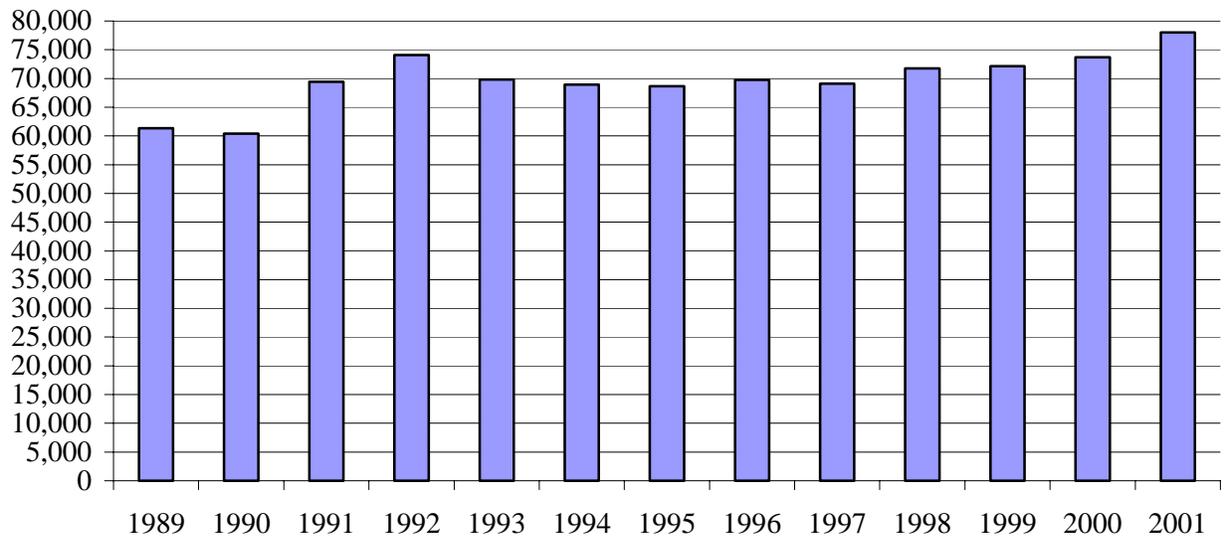
Appellate Jurisdiction

The circuit courts exercise appellate jurisdiction over convictions in the District Court. Under statutory law, a defendant who is not entitled to request 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 of this handbook for a discussion of appeals and judicial review.

Caseloads

Exhibit 6.1 depicts the circuit court criminal caseloads from fiscal 1989 through 2001. Caseloads rose dramatically during the period of fiscal 1989 through 1992 with as few as 60,428 filings in fiscal 1990 and as many as 74,062 in fiscal 1992. In the period of fiscal 1993 through 1997, filings remained fairly constant and never exceeded 70,000 annually. In fiscal 1998 through 2001, filings increased sufficiently each year to reflect a definite upward trend with 78,028 filings in fiscal 2001. In the past five years, a 12.8 percent increase in filings occurred, but almost half of the increase is attributable to fiscal 2001, making the magnitude of the recent trend unclear. However, the approximate 27.2 percent increase in filings from fiscal 1989 to 2001 clearly reflects a sustained upward trend.

Exhibit 6.1
Circuit Court Criminal Caseload
Fiscal 1989 – 2001



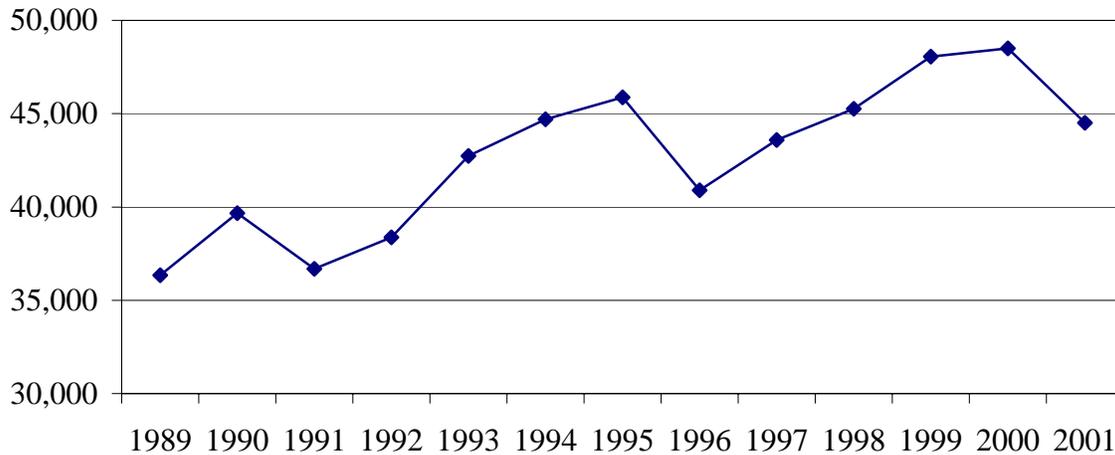
Source: *Annual Reports of the Maryland Judiciary*

Cases bound over, or forwarded, to the circuit courts from the District Court have stayed relatively stable. 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 an arrest without a warrant for a felony.

Juvenile Disposition

The circuit courts also oversee the operation of the juvenile justice system (in Montgomery County this function was handled by the District Court until March 30, 2002). Exhibit 6.2 shows the increase in the number of juvenile cases from fiscal 1989 through 2001. See Chapter 7 of this handbook for a full discussion of the juvenile justice system.

Exhibit 6.2
Circuit Court Juvenile Cases
Original and Reopened
Fiscal 1989 – 2001



Note: Includes Montgomery County District Court
Source: *Annual Reports of the Maryland Judiciary*.

The District Court

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 July 5, 1971. The District Court is divided by statute into 12 geographical districts, each containing one or more counties, with at least one judge and courthouse in each county.

The Governor appoints District Court judges to a term of ten years subject to confirmation by the Senate. If a judge is under the age of 70 years (the mandatory retirement age) at the end of a ten-year term, the Governor is required to reappoint the judge to another ten-year term subject to the consent of the Senate. The Chief Judge of the Court of Appeals appoints the Chief Judge of the District Court. District Court judges are not required to stand for election.

Jurisdiction

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

- violations of the vehicle laws and the State Boat Act unless the violation is a felony or the defendant is under the age of 16;
- all misdemeanor violations, including violations of statutory or common law; a county municipal or other ordinance; or a State, county, or municipal regulation;
- 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 workers' 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 before proceeding to trial in the District Court. If the defendant requests a jury trial, the case is transferred to a circuit court because a jury trial is not available in the District 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 imprisonment of three years or more or a fine of \$2,500 or more. The District Court also has concurrent jurisdiction with the juvenile court in criminal cases arising under the compulsory public school attendance laws.

As a practical matter, nearly all serious felonies are tried in the circuit courts because 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, excluding motor vehicle cases, processed in the District Court increased in the period from fiscal 1993 through 2001. There were 178,043 criminal case dispositions reported during fiscal 1993 compared to 206,408 dispositions during fiscal 2001, a 15.9 percent increase.

Cases that are not prosecuted, *nolle prosequi* cases, account for approximately one-third 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 substantial increase in the number of civil domestic violence protective order cases in the District Court from fiscal 1993 to 2001 and the number of peace order cases for fiscal 2000 and 2001. The increase in the number of domestic violence cases can be attributed to various statutory changes in the early 1990s that expanded the eligibility for relief and types of relief available for victims. The number of domestic violence cases in the District Court leveled off beginning in fiscal 1998 and remained fairly constant through fiscal 2001.

Also, legislation was enacted in 1999 that created a new form of civil relief, called a "peace order," which allows any individual who is not eligible for relief under the domestic violence statute and who shows a legitimate reason to fear harm to apply for an order requiring another individual to stay away. There were 4,560 peace order cases in fiscal 2000, and the number of cases increased to 7,805 in fiscal 2001.

In fiscal 2001, 1,064,864 motor vehicle cases were filed, compared to 1,076,325 in fiscal 1997, a decrease of 1.1 percent. However, there were 1,061,893 dispositions in motor vehicle cases in fiscal 2001, compared to 962,322 in fiscal 1997, an increase of 10.3 percent. Of the fiscal 2001 dispositions, 303,876 cases were tried, 598,035 tickets were paid, and 159,982 were other dispositions (i.e., *nol prossed*, stettered, and jury trial prayers). For further information about motor vehicle offenses, see Chapter 3 of this handbook.

Exhibit 6.3
Criminal Cases by the Number of Defendants Charged
Processed in the District Court
Fiscal 1993 – 2001

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
District 1									
Baltimore City	59,826	62,419	64,537	64,221	70,675	85,532	97,584	85,531	72,476
District 2									
Dorchester	1,655	1,868	1,673	1,608	1,687	1,415	1,399	1,401	1,267
Somerset	1,027	1,003	887	791	761	820	981	1,090	1,044
Wicomico	3,346	3,451	4,252	3,568	3,369	3,073	2,824	3,479	3,573
Worcester	3,815	3,286	3,515	3,042	3,936	4,764	4,961	4,613	4,617
District 3									
Caroline	975	946	1,191	1,172	1,545	1,293	1,363	1,431	1,263
Cecil	2,836	2,484	2,576	2,633	2,990	2,569	2,733	3,010	3,236
Kent	514	495	545	588	703	637	615	632	681
Queen Anne's	934	854	1,034	929	1,015	1,055	1,161	1,260	1,329
Talbot	1,369	1,276	1,555	1,411	1,615	1,445	1,511	1,486	1,566
District 4									
Calvert	2,146	2,239	2,144	2,021	2,073	2,262	2,312	2,505	3,055
Charles	3,384	3,600	3,765	3,280	3,117	3,787	3,964	3,992	4,850
St. Mary's	2,364	2,673	2,334	2,491	2,805	2,749	2,747	2,456	2,671
District 5									
Prince George's	26,160	22,543	25,351	24,999	23,391	26,223	25,801	24,991	25,166
District 6									
Montgomery	13,116	13,305	13,030	12,741	12,823	12,563	14,592	16,424	15,592
District 7									
Anne Arundel	14,134	12,277	11,340	10,322	11,894	14,084	14,941	14,556	14,001
District 8									
Baltimore	18,865	21,185	19,348	20,157	21,992	25,188	24,161	23,682	23,663

	Exhibit 6.3 (continued)								
	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
District 9									
Harford	4,070	3,949	3,870	3,827	4,412	4,373	4,598	4,374	5,078
District 10									
Carroll	2,429	2,313	2,356	2,567	2,759	2,796	2,968	3,570	3,721
Howard	4,227	4,055	4,820	4,914	4,439	4,506	4,293	4,616	4,657
District 11									
Frederick	3,813	3,565	3,610	3,570	3,487	3,987	3,955	3,962	4,286
Washington	3,354	3,067	3,459	3,236	3,815	4,047	3,905	4,117	4,176
District 12									
Allegany	2,782	2,740	3,310	2,954	3,197	3,459	3,429	3,577	3,425
Garrett	<u>902</u>	<u>990</u>	<u>1,028</u>	<u>1,050</u>	<u>1,208</u>	<u>1,239</u>	<u>1,110</u>	<u>975</u>	<u>1,015</u>
State	178,043	176,583	181,530	178,092	189,708	213,866	227,908	217,730	206,408

Source: *Annual Reports of Maryland Judiciary*

Exhibit 6.4
Domestic Violence and Peace Order Cases in the District Court
Fiscal 1993 – 2001

	Domestic Violence Cases							Peace Orders			
	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2000</u>	<u>2001</u>
District 1											
Baltimore City	2,498	3,190	3,393	3,648	3,907	4,150	3,925	3,510	3,474	481	652
District 2											
Dorchester	64	102	106	114	117	105	119	122	126	42	46
Somerset	18	25	33	40	35	25	24	43	40	4	18
Wicomico	185	371	476	536	465	515	542	512	516	85	143
Worcester	42	87	112	123	121	155	164	202	149	57	72

	Exhibit 6.4 (continued) Domestic Violence Cases								Peace Orders		
	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2000*</u>	<u>2001</u>
District 3											
Caroline	25	58	81	88	59	76	106	88	106	17	40
Cecil	165	233	294	312	243	322	310	347	348	86	150
Kent	17	29	23	23	25	23	29	38	28	8	8
Queen Anne's	46	59	64	69	88	92	106	123	124	49	40
Talbot	44	40	41	33	61	76	70	94	74	18	21
District 4											
Calvert	92	111	116	133	156	178	166	182	232	72	114
Charles	134	207	194	204	240	265	232	310	308	153	230
St. Mary's	135	128	183	190	165	192	167	203	166	80	109
District 5											
Prince George's	1,995	2,636	2,882	3,228	3,485	3,607	3,317	3,410	3,606	613	1,057
District 6											
Montgomery	632	889	897	1,008	1,109	1,287	1,271	1,250	1,250	516	842
District 7											
Anne Arundel	652	1,090	1,159	1,332	1,632	1,696	1,676	1,743	1,859	416	626
District 8											
Baltimore	1,302	1,800	2,170	2,475	2,847	3,018	2,807	3,169	3,475	845	1,415
District 9											
Harford	145	226	261	373	400	375	364	446	599	257	304
District 10											
Carroll	79	133	92	152	206	225	306	321	310	89	155
Howard	134	214	277	278	332	337	355	416	446	202	280
District 11											
Frederick	219	311	364	387	447	475	479	498	480	172	343
Washington	256	304	362	403	504	510	586	665	728	199	297
District 12											
Allegany	162	199	240	245	277	280	262	277	287	74	94
Garrett	<u>73</u>	<u>80</u>	<u>105</u>	<u>98</u>	<u>99</u>	<u>93</u>	<u>106</u>	<u>109</u>	<u>98</u>	<u>25</u>	<u>29</u>
STATE	9,114	12,522	13,925	15,492	17,020	18,077	17,489	18,078	18,829	4,560	7,085

*Legislation authorizing peace orders took effect in fiscal 2000.

Source: *Annual Reports of Maryland Judiciary*

Alternative Court Programs

In an effort to relieve overcrowded dockets and expedite cases, two different court programs have been established for specific types of cases: a drug treatment court program, known as “drug court,” and the early resolution program, which is patterned in some respects on its precursor, the “early disposition court.”

Drug Court Program

Several jurisdictions have drug courts in their circuit courts and the District Court for juvenile and adult offenders. These courts are used for offenders who are charged with less serious drug crimes and who do not have a history of violence. The drug treatment court program provides judges with a sentencing option other than incarceration. Eligible defendants are assigned to one of two tracks: probation or diversion from prosecution in exchange for a plea of guilty. Terms of probation require intensive supervision and drug counseling and treatment.

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. According to the Department of Public Safety and Correctional Services, several studies indicate encouraging results in rates of recidivism among the participants.

Early Resolution Program

During the 2000 session of the General Assembly, an early disposition court was created for the Baltimore City criminal justice system. The early disposition court was designed for defendants charged with certain nonviolent crimes who were offered pleas within 48 hours of arrest. These plea offers were intended to be the most favorable a defendant would receive during the course of the case. The fiscal 2001 through 2003 budgets included additional funding to support the early disposition court.

However, because many of the participants in the Baltimore City criminal justice system were dissatisfied with the outcome of the cases in the early disposition court, the program was redesigned in the spring of 2002. The revised program, called the early resolution program, consists of several separate programs including: (1) an early resolution docket at the Central Booking and Intake Facility in which pleas are offered and cases scheduled within seven days of arrest; (2) a citation docket in which defendants who have received citations are offered community service in exchange for a dismissal of their cases; (3) a diversion program in which defendants charged with nonviolent, drug-related crimes are provided social services as part of their sentences. In addition,

the General Assembly included language in the fiscal 2003 budget that withheld \$1.9 million contingent on a report by November 1, 2002, from the participants in the Baltimore City criminal justice system to the General Assembly on the early resolution program.

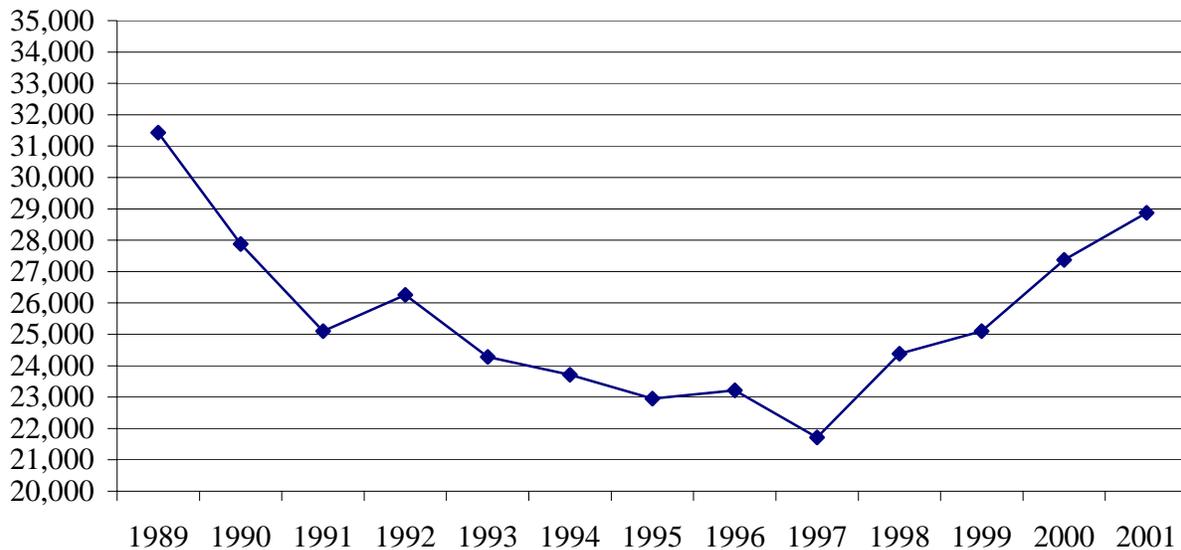
Jury Trial Request in District Court

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

In an effort to eliminate 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 initially reduced the number of jury trial requests in these jurisdictions since the program was implemented in 1990. From fiscal 1989 to 1997, the number of jury trial requests in the District Court decreased from 31,426 to 21,711. However, in fiscal 1998 through 2001 a steady increase in the number of jury trial requests occurred with 28,870 jury trials requested in fiscal 2001. From fiscal 1997 through 2001, there was approximately a 33 percent increase in jury trial requests from the District Court. Exhibit 6.5 sets forth the numbers of criminal jury trial prayers in the District Court from fiscal 1989 to 2001.

Exhibit 6.5
District Court Jury Requests
Fiscal 1989 – 2001



Source: *Annual Reports of the Maryland Judiciary*

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 a determination of guilt or the imposition of fixed sentences.

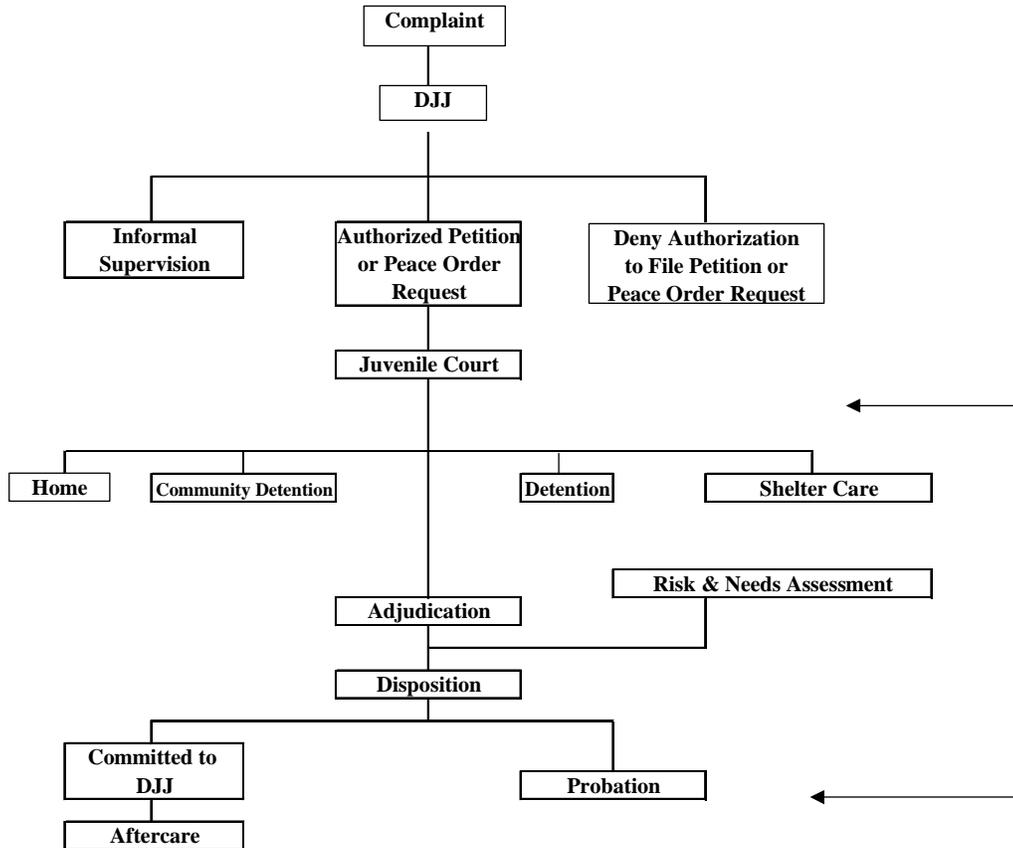
Historically, one of the principal purposes of the juvenile justice system was to remove from children committing delinquent acts the “taint of criminality” and the consequences of criminal behavior. In 1997, the Maryland General Assembly passed legislation adopting a new philosophy of juvenile justice 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 commit “delinquent acts,” which are acts that would be crimes if committed by an adult. Juveniles are “adjudicated delinquent” instead of convicted, and the juvenile court makes “dispositions” for juveniles instead of imposing sentences. Additionally, while adult offenders are known as criminal defendants, juvenile offenders are referred to in the law as “respondents.”

The Department of Juvenile 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.

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 94 percent of the total number of intake cases in fiscal 2001.

Mental Health and Substance Abuse Screening

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

Jurisdictional Inquiry

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

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

Denial of Authorization to File a Petition or Peace Order Request

Lack of Jurisdiction

The intake officer may deny authorization to file a petition alleging delinquency or a peace order request in the juvenile court if the matter is not within the jurisdiction of the juvenile court or otherwise lacks legal sufficiency. In fiscal 2001, intake officers denied authorization to file a petition for lack of jurisdiction in 1,599 cases (3 percent of total cases).

Resolution of Case at Intake

If the intake officer determines that the juvenile court does have jurisdiction over the matter, but that further action by the Department of Juvenile 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, a referral to another agency for services, or a combination of these or other short-term interventions. In fiscal 2001, 11,366 cases (21.7 percent of total cases) were resolved at intake.

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

Proposal of Informal Supervision

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

If, at any time before the completion of the agreed-upon informal supervision, the intake officer believes that the informal supervision cannot be completed successfully, the intake officer may authorize the filing of a petition alleging delinquency or a peace order request in the juvenile court. In fiscal 2001, informal supervision was conducted in 16,385 cases (31.2 percent of total cases).

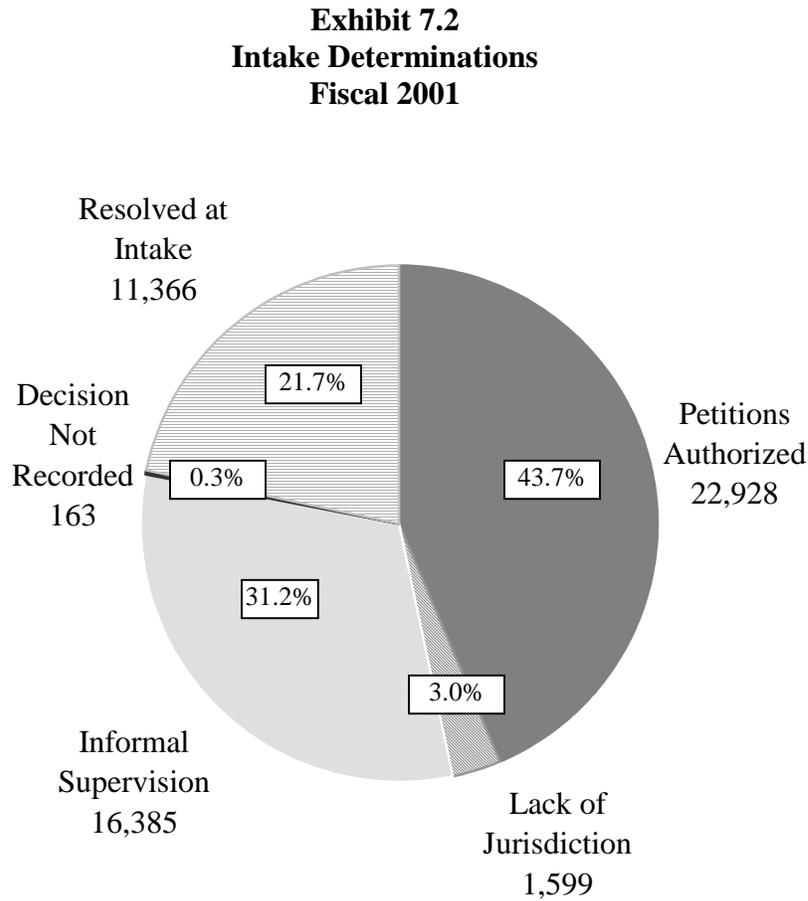
Authorization to File a Petition or Peace Order Request

If the intake officer determines that the juvenile court has jurisdiction over the matter and that judicial action is in the best interest of the public or the child, the intake

officer may authorize the filing of a petition alleging delinquency or requesting a peace order or both in the juvenile court.

In fiscal 2001, intake officers authorized 22,928 petitions alleging delinquency (43.7 percent of total cases) for formal processing in juvenile court.

Exhibit 7.2 shows the distribution of intake determinations for fiscal 2001.



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. In certain cases, the child may be assigned to community detention, which is 24-hour supervision of the child in the community through the use of daily in-person and telephone contacts with a Department of Juvenile Justice worker. As part of community detention, the child may be required to wear an electronic monitoring device at all times to verify the child's whereabouts.

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

Juvenile Court – Delinquency Proceedings

Petition

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

Jurisdiction

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

Waiver

The juvenile court may waive its jurisdiction with respect to a petition alleging delinquency if the petition concerns a child who is at least 15 years old or a child who is

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

Adjudication

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

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

Disposition

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

Classification Process

Prior to the disposition hearing, each child goes through a classification process administered by the Department of Juvenile 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.

Disposition Hearing

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

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

- place the child on probation or under supervision in the child's own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate, including community detention;
- commit the child to the custody or guardianship of the Department of Juvenile 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 or the 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 beverage violations or certain violations relating to destructive devices, a disposition may include ordering the Motor Vehicle Administration to initiate an action to suspend the driving privileges of the child. If the child is found to have violated the State vehicle laws, including a violation involving an unlawful taking or unauthorized use of a motor vehicle, that violation must be reported to the administration, which must assess points against the child. Finally, the administration is required to suspend or revoke the driver's license of a child who is found to have committed certain drunk or drugged driving offenses.

Restitution

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

Commitment to the Department of Juvenile 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 18 months. In fiscal 2001, there were 5,341 admissions into residential care.¹

Residential programs are either State-owned and operated, State-owned and privately operated, or privately-owned and operated. Exhibit 7.3 lists all State-owned juvenile facilities.

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

Exhibit 7.3
Department of Juvenile Justice
State-owned Facilities
June 2001

<u>Facility Name</u>	<u>Location</u>	<u>Type of Facility</u>	<u>Operated by State/Private</u>	<u>Rated Capacity</u>
Allegheny County Girls Home	Allegheny	Group Home	Private	9
Western MD Structured Shelter	Allegheny	Shelter Care	Private	8
Green Ridge	Allegheny	Youth Center	State	40
Thomas J.S. Waxter	Anne Arundel	Detention	State	24
Catonsville Structured Shelter	Baltimore	Shelter Care	Private	10
Ferndale Respite	Baltimore City	Group Home	Private	6
Mount Clare House *	Baltimore City	Special Residential	Private	4
Charles H. Hickey, Jr.	Baltimore County	Detention	Private	45
		Secure Committed	Private	60
		Impact	Private	90
		Sex Offender	Private	26
		CPO Unit	Private	27
		Intermediate	Private	27
William Donald Schaefer House	Baltimore County	Special Residential	State	19
MD Youth Residence Center	Baltimore County	Shelter Care	State	24
		Residential/ Living Classrooms	State	12
Hurlock	Caroline	Group Home	Private	10
Sykesville Structured Shelter	Carroll	Shelter Care	Private	10
Thomas O'Farrell	Carroll	Youth Center	Private	48
Eastern Shore Structured Shelter	Dorchester	Shelter Care	Private	10
Victor Cullen	Frederick	Residential	Private	48
Backbone Mountain	Garrett	Youth Center	State	40
Meadow Mountain	Garrett	Youth Center	State	40
Savage Mountain	Garrett	Youth Center	State	36
J. DeWeese Carter	Kent	Detention	State	27
Alfred D. Noyes	Montgomery	Committed	State	44
		Detention	State	57
Cheltenham	Prince George's	Detention	State	120
		Shelter Care	State	12
		CPO Unit	State	24
		Shelter	State	24

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

Source: Department of Juvenile Justice

Juvenile Court – Peace Order Proceedings

Peace Order Request

Pursuant to legislation enacted in the 2000 session, in addition to, or instead of, authorizing the filing of a petition alleging delinquency in the juvenile court, an intake officer may file with the court a peace order request that alleges the commission of any of the following acts against a victim by the child, if the act occurred within 30 days before the filing of the complaint: (1) an act that causes serious bodily harm; (2) an act that places the victim in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment; (7) stalking; (8) trespass; or (9) malicious destruction of property.

Peace Order Proceeding

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

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

Chapter 8. Incompetency and Not Criminally Responsible Findings

There are two separate circumstances under which a mental disorder or mental retardation¹ is considered in criminal proceedings. The first is whether a defendant is competent to stand trial (*i.e.*, whether the defendant is mentally able to participate in the proceedings). The second is whether a defendant is criminally responsible for the crime (*i.e.*, whether the defendant is mentally culpable for the crime). This chapter will discuss these two issues.

Initial Screening of Defendants

The following procedures apply whenever competency to stand trial or criminal responsibility is at issue and the court has referred the defendant to the Department of Health and Mental Hygiene for evaluation. In the first step of this process, a psychiatrist or psychologist performs an initial screening. The initial screening is usually performed on an outpatient basis, either in the jail or in the community. In fiscal 2001 there were 1,199 court-ordered initial screenings for purposes of determining competency to stand trial or criminal responsibility.² If the initial screener finds that it is possible that the defendant is not criminally responsible or is incompetent to stand trial, the screener refers the defendant to a facility under the department's jurisdiction for further (post-screening) evaluation. In fiscal 2001, 641 defendants were referred for a post-screening evaluation.

Post-screening Evaluation of Defendants

The post-screening evaluation may take place at one of the seven regional hospitals under the department's jurisdiction or at Clifton T. Perkins Hospital in Jessup, Maryland. It may be conducted either on an inpatient or outpatient basis. Defendants who are admitted for evaluation may be offered treatment. However, except in an emergency, a defendant may not be forced to take medication. The substantial majority accept treatment if it is offered; as a result, many defendants whose competency to stand trial was questionable on admission clearly are competent to stand trial by the time the evaluation is completed. See Exhibit 8.1 for a chart on Pretrial Evaluation.

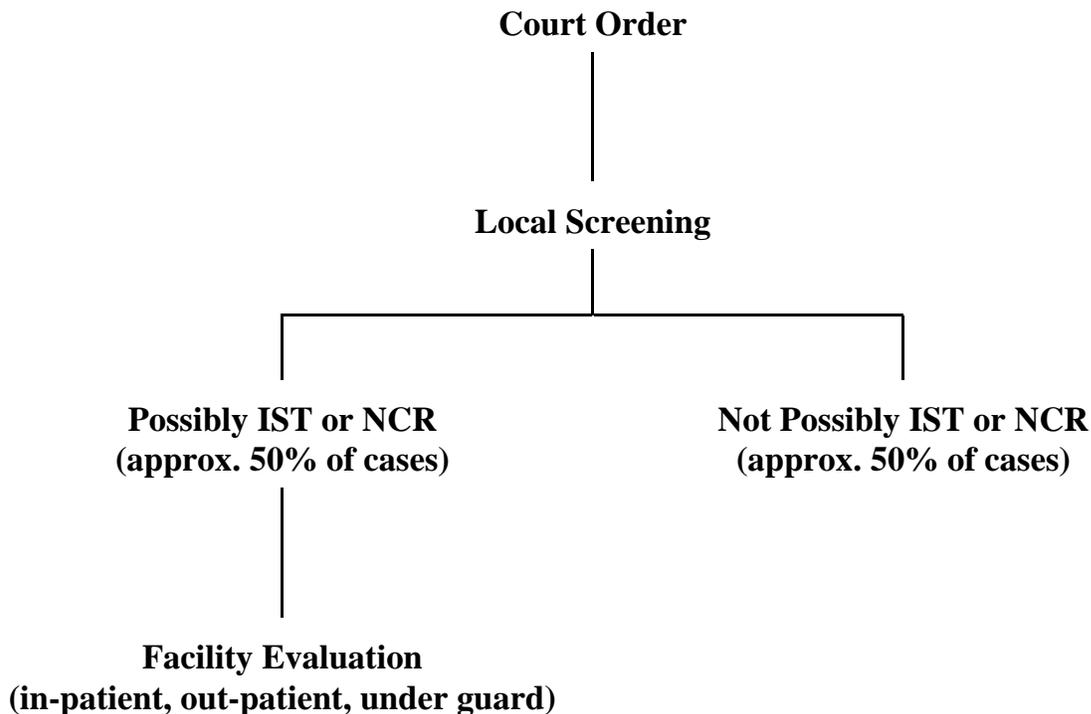
¹Since the term "mental retardation" is used in the law, it is also the term used in this handbook.

²All of these screenings evaluated the defendant's competency to stand trial; some of these screenings additionally evaluated criminal responsibility of the defendant.

Defendants charged with murder, rape, armed robbery, and arson ordinarily receive post-screening evaluation at Perkins Hospital. This hospital is the only maximum-security hospital in the State. In addition to performing evaluations for competency and criminal responsibility, the hospital houses individuals who are found incompetent to stand trial or not criminally responsible, as well as a small number of inmates who are hospitalized under civil commitment proceedings.

At each facility, either a forensic review board or the individual's clinical treatment team makes treatment decisions and recommendations concerning readiness for release. Only Perkins Hospital and three regional facilities (the Crownsville, Springfield, and Eastern Shore Hospital Centers) have forensic review boards; there are plans to have forensic review boards at every regional facility.

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 the 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 proceedings.

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

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

If the court determines that the defendant is incompetent to stand trial, and the court also finds that the defendant is a danger to self or the person or property of others due to mental illness or mental retardation, then the court may order the defendant committed to a hospital for treatment to restore competency. If the defendant is found incompetent to stand trial but not found to be dangerous, the court may not order commitment. Instead, the court may release the defendant on bail or recognizance³ and may order the defendant to obtain treatment as a condition of release.

If the defendant is committed for treatment to restore competency, the commitment generally lasts until the defendant is competent to stand trial; however, the defendant may only be held so long as there is "a substantial probability that the defendant will attain competency in the foreseeable future."⁴ If improvement is unlikely but commitment is deemed desirable, the civil commitment procedures applicable to any individual with a

³ This option does not apply to death penalty cases.

⁴ *Jackson v. Indiana*, 406 U.S. 715, 737 (1972).

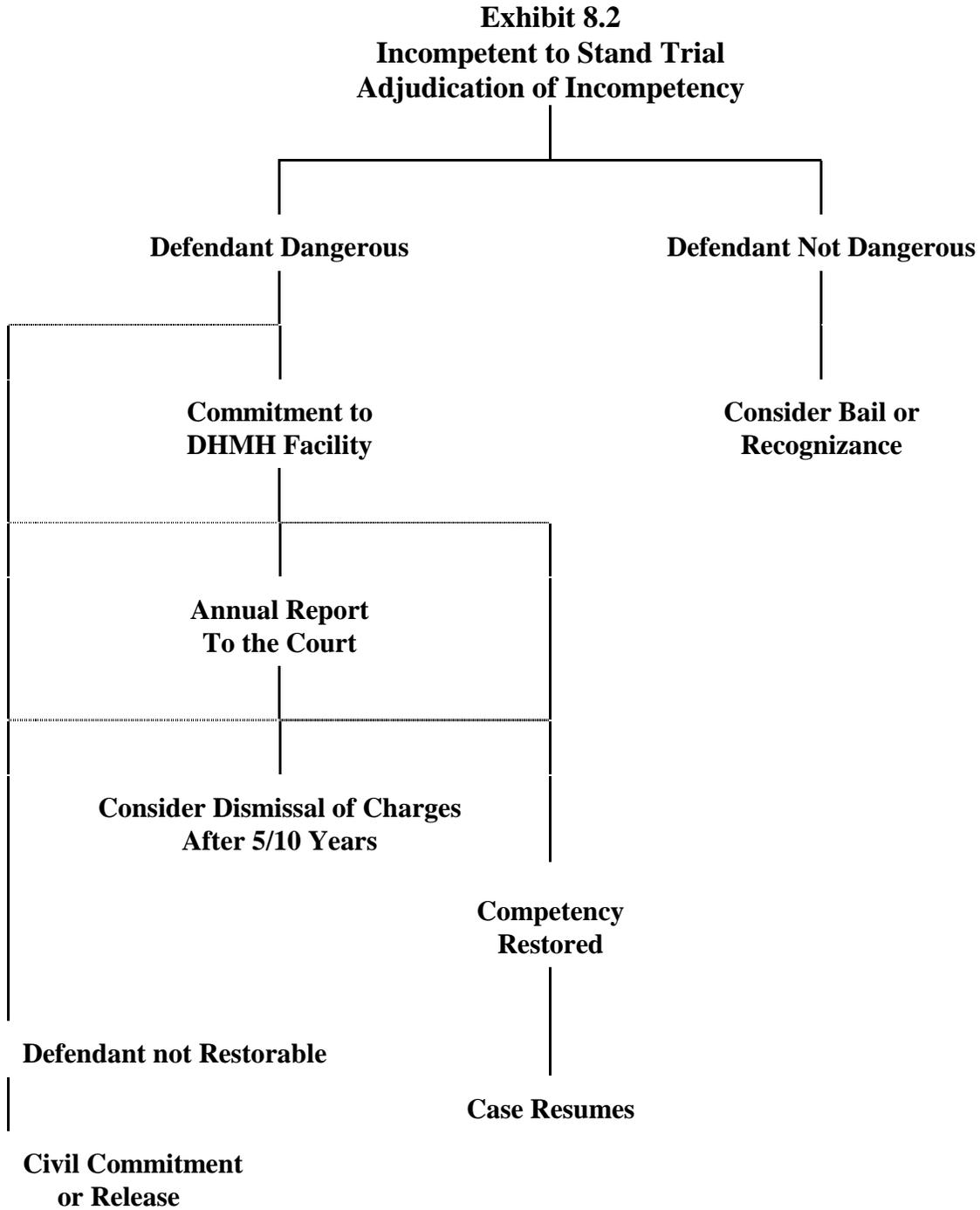
mental illness may be pursued. Otherwise, the defendant must be released from the treatment facility.

A committed 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 a certain affidavit is filed with the petition that the person's condition has improved. The Department of Health and Mental Hygiene must 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.

The court may dismiss the charges after five years (noncapital cases) or ten years (capital cases) if the court determines that resuming the criminal proceedings would be unjust. See Exhibit 8.2 for a chart outlining procedures for incompetency to stand trial.

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

In fiscal 2001, of the 289 defendants who received post-screening evaluations solely to determine competency, 93 (32 percent) were evaluated as incompetent to stand trial and 129 (45 percent) were evaluated as competent only due to treatment received during the evaluation. The court ordered 88 defendants committed for treatment to restore competency after they were found incompetent to stand trial.



Source: Department of Health and Mental Hygiene

Not Criminally Responsible Findings

Overview

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

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

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

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

In fiscal 2001, 352 defendants received further evaluation for both competency and criminal responsibility. Of these defendants, 37 (11 percent) were evaluated as incompetent to stand trial and 30 (9 percent) were evaluated as competent only due to treatment received during the evaluation. One hundred twelve (32 percent) were found not criminally responsible. A total of 83 defendants were committed based on a not criminally responsible verdict in fiscal 2001.⁵ The remainder of those evaluated as not criminally responsible by the department were either not committed despite the finding, withdrew the plea of not criminally responsible, or (rarely) received a verdict rejecting the not criminally responsible plea. In May 2002 about 300 defendants were committed to a department facility because of a not criminally responsible verdict.

⁵While presumably most of these defendants were committed after having been evaluated as not criminally responsible, the court occasionally finds a defendant not criminally responsible without having the defendant evaluated.

Trial Procedures

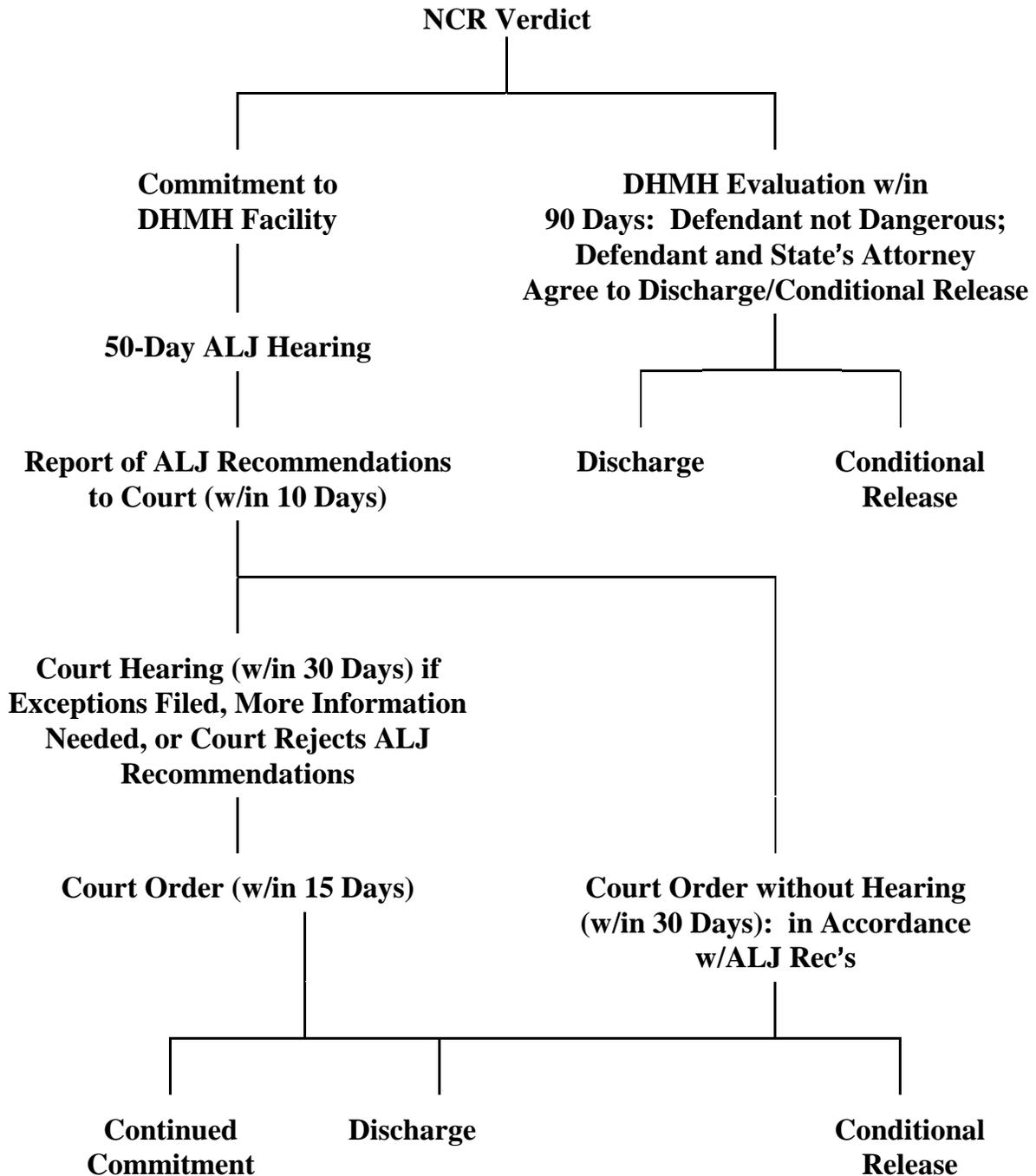
In a trial involving a plea of not criminally responsible, the trier of fact (either a judge or jury) must first find beyond a reasonable doubt that the defendant committed the criminal act. After the trier of fact determines that the defendant committed the act, it must then decide whether the defendant has proven by a preponderance of the evidence⁶ that the defendant is not criminally responsible for committing the act.

Commitment

After a verdict of not criminally responsible, a court ordinarily is required to commit a defendant to the custody of the Department of Health and Mental Hygiene for institutional inpatient care or treatment. However, the court may release a defendant after a not criminally responsible verdict if: (1) the Department of Health and Mental Hygiene issues a report within 90 days prior to the verdict stating that the defendant would not be a danger if released; and (2) the State's Attorney and the defendant agree to the release and any conditions the court chooses to impose. See Exhibit 8.3 for a chart on procedure following not criminally responsible verdict.

⁶This is the usual standard of proof in civil cases. It means that the defendant must show that it was more likely than not that the defendant was not criminally responsible. It is a lesser standard than the reasonable doubt standard that the State must show in order to obtain a conviction.

Exhibit 8.3
Procedure Following Not Criminally Responsible (NCR) Verdict



Note: ALJ – Administrative Law Judge

Source: Department of Health and Mental Hygiene

Release after Commitment

A committed defendant is eligible for release only if the defendant proves by a preponderance of the evidence that the defendant will not be a danger due to mental illness if released. Within 50 days after commitment, 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. 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.

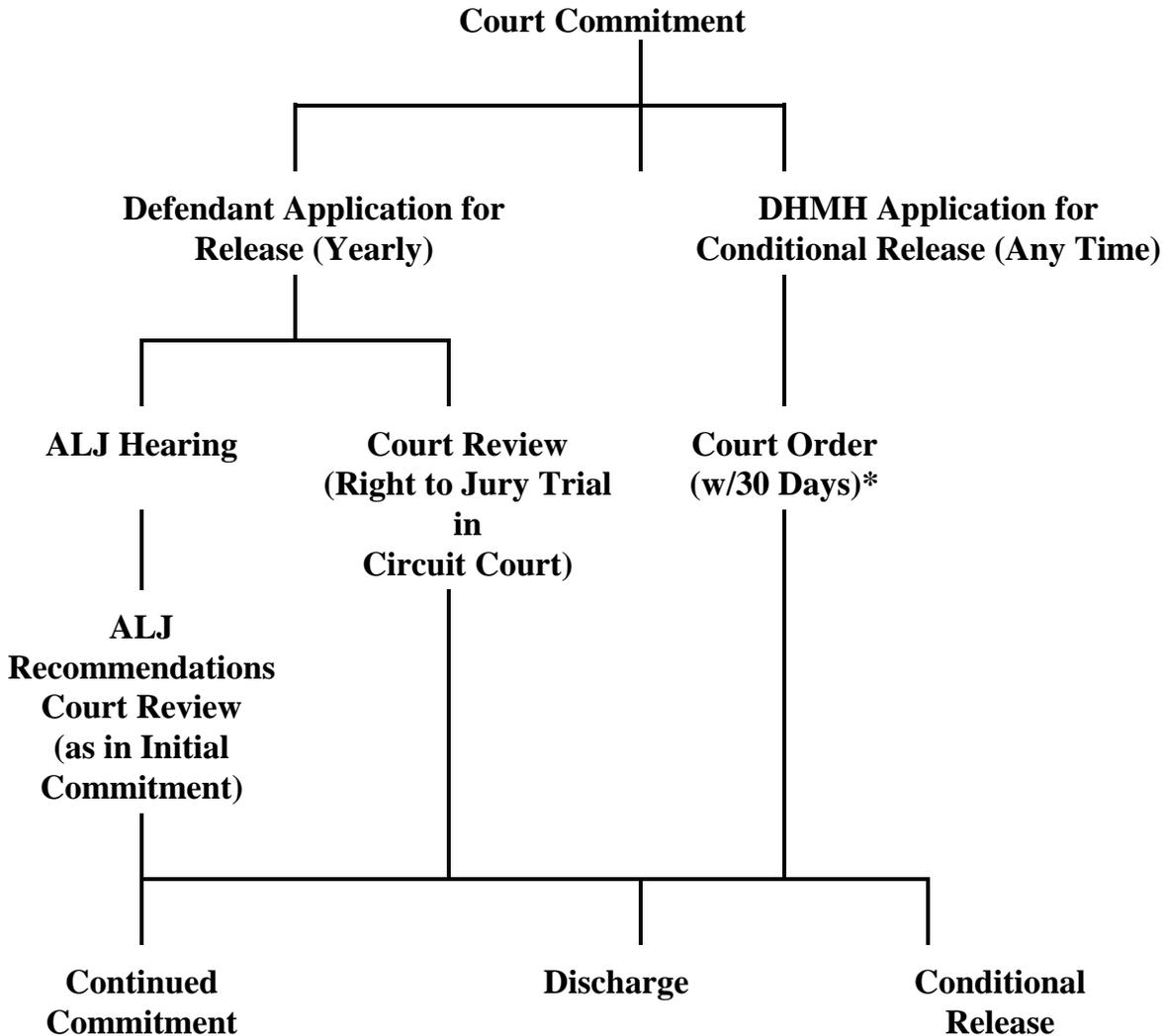
When the court receives the report of the hearing officer, the court may choose to hold a hearing. If the court does not hold a hearing, the court must enter an order in accordance with the administrative law judge's recommendations. If a party files exceptions to the report, or the court on its own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

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

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

The Community Forensic Aftercare Program within the Mental Hygiene Administration's Office of Forensic Services monitors cases of individuals on conditional release. A director, three social workers, and a secretary staff this program. The number of defendants monitored on conditional release is between 450 and 500.

**Exhibit 8.4
Not Criminally Responsible Commitment**



*ALJ Hearing Sometimes Held First

Note: ALJ – Administrative Law Judge

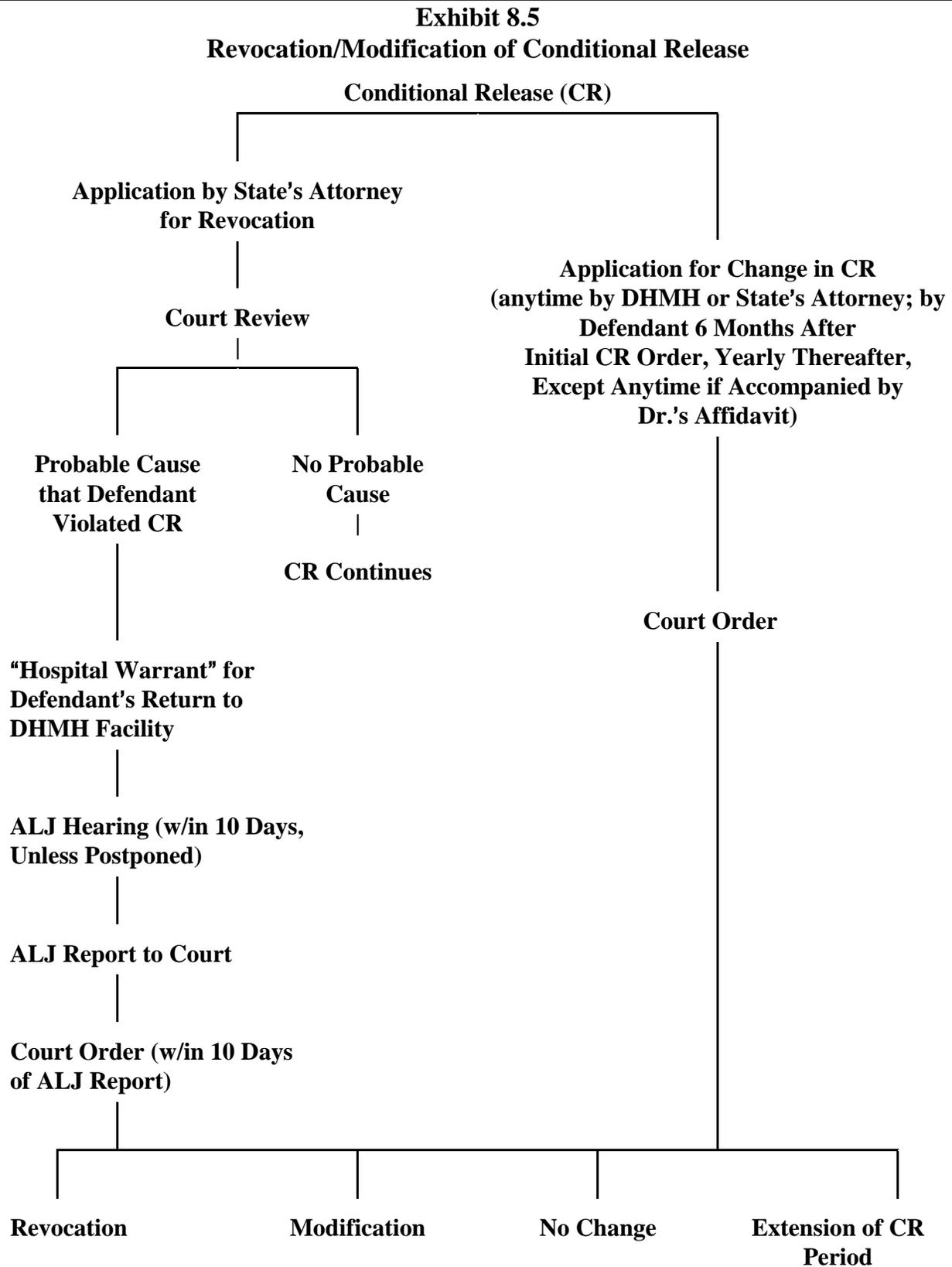
Source: Department of Health and Mental Hygiene

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 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.



Note: ALJ – Administrative Law Judge

Source: Department of Health and Mental Hygiene

Victims' Rights

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

Chapter 9. Sentencing

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

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

The following circumstances require the application of mandatory minimum sentencing which the court may not suspend 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. Certain subsequent drunk driving offenders are also subject to mandatory sentences. See Chapter 3 of this handbook for additional discussion of drunk driving.

Most, but not all, criminal violations are found in statutory law. Some offenses are common law crimes. Common law refers to the body of law developed over time in England and adopted by the American colonies. It is based primarily upon judicial precedent or court decisions. For example, the attempt, conspiracy by two or more persons, or solicitation by one person of another to commit a crime are generally common law 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

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

possible terms to less than life for most common law offenses. See Chapter 1 of this handbook for a full discussion of common law crimes.

Sentencing Guidelines

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

Certain sentencing matters handled by judges in the circuit courts are excluded from the guidelines. These matters include circuit court trials resulting from requests for jury trials from the District Court, appeals from the District Court, 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: person, drug, and property. An offense against a person involves bodily harm or the threat of bodily harm. Drug offenses involve controlled dangerous substances or related paraphernalia. Property offenses are offenses in which property is unlawfully damaged or stolen.

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

The guidelines determine a sentence length range. For each category of offense there is a separate grid or matrix, and there are recommended sentence ranges in each cell of the grid. The sentence recommendation is determined in the grid by the cell that is the intersection of an offender's offense score and offender score. In multiple offense cases,

the overall guideline range is determined after calculating sentence recommendations for the individual offenses. The guideline sentence range represents only nonsuspended time. The actual sentence accounts for credit for time served, suspended time, length of probation, fine, restitution, and community service. If a judge imposes a sentence of probation, the length of the probation is left to the judge's discretion, within statutory limits.

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

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

The rate of compliance with the guidelines in 2001 was 49.2 percent for all offenses. Specifically, sentences imposed for offenses against persons were 53.1 percent within the guidelines; drug offenses were at 42.2 percent; and property offenses were at 73 percent.

State Commission on Criminal Sentencing Policy

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

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

- Sentencing policies should help citizens to understand how long a criminal will be confined;
- Sentencing policies should preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to allow individualized sentences;
- Sentencing guidelines are voluntary;
- The priority for the capacity and use of correctional facilities should be the confinement of violent and career offenders; and
- Sentencing judges in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate offenders.

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

Further, with assistance from the Maryland Administrative Office of the Courts, the commission collects and automates the State sentencing guidelines worksheets. Using the data collected, the commission will monitor circuit court sentencing practice and adopt changes to the guidelines consistent with legislative intent. The data collected will also support the legislatively mandated use of a correctional population simulation model designed to forecast prison bed space and resource requirements. Any forecasts exceeding available State resources shall include alternative guidelines recommendations to bring prison populations into balance with State resources.

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

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

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. A usual condition of probation is that the offender not 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. A judge may also order "custodial confinement," which usually means home detention, inpatient drug or alcohol treatment, or other confinement short of imprisonment.

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 disqualifying the defendant from certain professions or jobs. For motor vehicle offenses, 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 six counties (Allegany, Calvert, Charles, Garrett, Howard, and St. Mary's), a judge may impose a period of incarceration as a condition of probation.

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 of the current offense or for 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 judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of a 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.

The division supervises probationers and parolees who are serving sentences in the community. In 2002 approximately 620 parole and probation agents and 104 drinking driver monitors supervise and monitor nearly 72,000 offenders who are under mandatory supervision, parole, or probation supervision in the communities. In addition, 60 agents function as full time investigators and conduct presentence, preparole and other investigations for the Maryland Parole Commission, the courts, and other criminal justice

agencies. See Chapter 15 of this handbook for a full discussion of parole and mandatory supervision.

An offender on supervised probation is assigned to a parole and probation agent and given a written case plan that specifies the conditions of probation. On average a parole and probation agent has 103 active cases. The agent maintains 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 ensures that any special conditions are being met. For intensive supervision, the agent must also verify employment of the offender.

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

Interstate Compact for Adult Offender Supervision

There are over 4 million offenders on probation and parole in the United States today. Over 250,000 offenders cross state lines each year, and over 3,300 different local parole and probation offices operating within 800 different agencies oversee them. States, like Maryland, are responsible for the movement and actions of offenders who move in and out of their state. This fragmented system makes it very difficult to account for all offenders.

In 2001 Maryland enacted the Interstate Compact for Adult Offender Supervision, replacing the Uniform Act for Out-of-State Parolee Supervision. The uniform act, originally adopted in 1937, was inadequate and outdated. The United States Department of Justice's National Institute of Corrections developed the new compact to provide a uniform means to track and supervise the movement of adult offenders, probationers, and parolees from one state to another.

The interstate compact is a contract between states and, as of August 2002, had been enacted in 38 states. Each state enacting the interstate compact has membership on the interstate commission and its own state council. The compact will facilitate national cooperation and more efficient communication between states and state agencies supervising adult offenders who move from state to state, and ensure that the instructions of the sentencing court or parole commission are enforced wherever the adult offender has relocated.

The Division of Parole and Probation will implement the new compact when it takes effect in November 2002.

Death Penalty

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

Recent Interpretation of Death Penalty Statutes

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

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

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

In Maryland, a person tried for murder is tried in a circuit court by either a jury or a judge. If the State has given notice that it seeks the death penalty and the defendant is convicted of first degree murder, a separate sentencing proceeding is held before the original jury or a new jury if the defendant pled guilty or was convicted by a judge. The

defendant may choose to waive the right to a jury and have the judge decide. The trier must consider whether beyond a reasonable doubt any of 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 nonexclusive factors. The trier must then find by a preponderance of the evidence that the aggravating factors outweigh the mitigating factors in order to impose the death penalty. The Maryland Court of Appeals upheld the constitutionality of this standard for weighing aggravating and mitigating factors in *Borchardt v. State* (2001).

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

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

In recent years Maryland has exempted certain categories of individuals from imposition of the death penalty. By 1989 the law exempted minors and mentally retarded individuals found guilty of murder in the first degree from capital punishment. (In 2002, the Supreme Court barred the execution of mentally retarded persons in the case of *Atkins v. Virginia*.)

The appeal process can be very lengthy. Since 1978 when the death penalty was reinstated in the State, there have been three executions, two African Americans and one white person. As of August 1, 2002, there were 13 people sentenced to death in Maryland, eight of whom are African American.

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

In May 2002 the Governor, expressing concern as to possible racial discrimination or geographical disparity in the capital punishment process, declared a moratorium on executions until a two-year study of the death penalty being conducted by the Department of Criminology of the University of Maryland, College Park, was completed and released in the fall of 2002 (as of this writing the release of the report has been delayed until December 31, 2002). The main focus of this study is whether there are racial disparities in the implementation of the death penalty. The report is expected to include recommendations on whether, and if so, how the State's death penalty statute should be changed.

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

Sexual Offenses

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

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

Four categories of individuals are required to register with a supervising authority on release from incarceration or at the court if not incarcerated: (1) offenders 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. Offenders convicted in other states of crimes that would require registration if committed in Maryland are required to register if they move to Maryland, are employed in Maryland, or attend school in the State. Annual registration is required for either life or ten years, depending on the offense. Sexual predators are required to verify their addresses every 90 days and register for life.

The Department of Public Safety and Correctional Services posts on the Internet a current listing of each person who is registered as a sexual offender, child sexual offender, sexually violent offender, or sexually violent predator. A listing contains a registrant's name, the offense, and other identifying information including the registrant's most current address. The department is also charged with giving notice of the location of particular registrants to schools and people who request such information about certain offenders.

Home Detention

In the past 15 years alternative-to-incarceration programs have been implemented by the Department of Public Safety and Correctional Services and by many local jurisdictions. Use of these programs has expanded in recent years. On a daily average, 400 State prisoners are in a home detention program for a variety of offenses. In addition, a number of offenders are monitored through county programs. For example, in the summer of 2002 Prince George's County monitored 136 offenders on home detention and Montgomery County monitored 38 offenders.

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 a waterproof, weatherproof, pager-sized device attached to an offender, either on the wrist or ankle, is designed to ensure that the person is at home when not working. Monitoring is also undertaken in person or over the telephone.

The Commissioner of Correction or the commissioner's designee may approve an inmate committed to the custody of the commissioner for participation in the State home detention program. In addition, the Department of Public Safety and Correctional Services is authorized to license and regulate private home detention companies. However, the vast majority of home detention carried out in the local jurisdictions does not involve the use of private home detention companies. The department may also request national and State criminal history record checks on the operators and employees of such companies. A more comprehensive discussion of alternatives to incarceration can be found in Chapter 13 of this handbook.

Chapter 10. Judicial Review

A person convicted of a crime has a number of alternatives for seeking review of a conviction and/or sentence imposed by the trial court (District Court or circuit court). The options include review at the trial court level, appeal to a circuit court for a trial *de novo* (if the trial was in the District Court), review of a sentence by a three judge panel, *in banc* review, appellate review by the Court of Special Appeals, appellate review by the Court of Appeals, post-conviction *habeas corpus* (both State and federal) and *coram nobis*, and post-conviction review in federal court. In general, a defendant is not limited to any particular option for judicial review. A defendant may 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 granting a defendant's motion to exclude evidence in certain felony drug cases and in crimes of violence. The appeal must be made before jeopardy attaches to the defendant and also must be taken within 15 days of the date that the decision was rendered.

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. However, if an agreed statement of the evidence or a statement of the evidence certified by the trial judge is filed, a motion for a new trial may be filed within ten days after the statement is filed. 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 officers in charge;

- bias and disqualification of jurors;
- an error that had a substantial likelihood of causing an unjust verdict; 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 may be granted on the ground of newly discovered evidence that 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. Moreover, a motion for a new trial may be granted at any time if based on DNA identification testing or other generally accepted scientific techniques, the results of which, if proven, would show the defendant is innocent of the crime.

Sentencing – Revisory Power of Court

The law allows sentences to be revised subject to certain conditions and time limits. First, a court may correct an illegal sentence at any time. Second, a court may revise a sentence at any time in cases of fraud, mistake, or irregularity.

For sentences that do not fall into either of those categories, 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. However, a court does not have revisory power over a sentence if a binding plea agreement had been entered and accepted by the court. Also, it may not increase a sentence, unless 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.

When a motion for revision of sentence has been filed, the State's Attorney is required to give notice to each victim or victim's representative who has filed a Crime Victim Notification Request Form or who has submitted a written request to the State's Attorney.

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 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 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

With the exception of sentences of death, which are reviewed automatically by the Court of Appeals, every person convicted of a crime by a circuit court and sentenced to serve a total of more than two years' imprisonment, including cases in which 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. Upon request of a majority of the review panel, the sentencing judge may sit with the review panel, but only in an advisory capacity. 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, modify, or reduce the sentence. With or without a hearing, the panel may decide that the sentence should remain unchanged. After a hearing, the panel may order that a different sentence be imposed or served. A review panel may not increase a sentence to a sentence of death. If the panel holds a hearing, the defendant, the State's Attorney or an 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 filing date of the motion to render a decision.

In general, there is no right to appeal a decision by the review panel. If the panel increases a sentence, however, a defendant may appeal on the limited grounds of whether the sentence is within statutory and constitutional limits, 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*. In any trial conducted by less than the whole number of the circuit court judges of that judicial circuit, the defendant may 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 necessitating great expenditures of time and money for traveling to Annapolis where the appellate court sat. It has been called the “poor person’s appeal.” As with appeals, the review panel decides questions of law properly preserved at trial but more expeditiously and without the expense and formality of an appeal. 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.

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; however, a defendant who seeks *in banc* review is 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 relief (discussed later in this chapter under “Uniform Post-Conviction Procedure Act”). For this reason, *in banc* review is rarely sought by a defendant.

State Appellate Court Review

In General

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

A defendant ordinarily has the absolute right to appeal to the Court of Special Appeals from a final judgment entered in a criminal case by a circuit court. A defendant

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

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

- Did the trial judge make any errors in pretrial procedures, such as rulings on the suppression of evidence?
- Did the trial judge make any errors in conducting the trial, such as admitting evidence that should not have been admitted, incorrectly interpreting a statute, or giving improper jury instructions?
- Was the alleged error preserved for appellate review – was a timely objection made at the time of trial?
- If the error was preserved for appeal, was the error harmless?
- Was the evidence legally sufficient to convict the defendant?
- Was the defendant's sentence legally permissible?

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 may not 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. Under that standard, a reviewing court, upon its own independent review of the record, must be able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict.

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 the Court of Special Appeals, 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 the filing of the opinion of the court or before issuance of the mandate by the appellate court, whichever is earlier. 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 may only review information from the record, which means that only those issues addressed in the trial will be considered. The types of cases heard by the Court of Special Appeals include:

- *First appeal of right* – All persons convicted of a crime first tried in a circuit court are entitled to a direct appeal to the Court of Special Appeals for a review of their trials. This first direct appeal is an appeal of right because the Court of Special Appeals must hear the case. The first appeal must be taken within 30 days after final judgment of a circuit court or 30 days after a motion for a new trial is denied or withdrawn.
- *Application for leave to appeal to the Court of Special Appeals* – Certain defendants do not have 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 applications for leave to appeal because the granting of review by the Court of Special Appeals is discretionary, not mandatory. An application for leave to appeal would be made if the defendant: (1) had pleaded guilty in a circuit court; (2) had filed an appeal from an order denying relief under the Uniform Post-conviction Procedure Act; or (3) is appealing a circuit court's order revoking probation. A victim of a violent crime may also file an application for leave to appeal from an interlocutory or final order that denies or fails to consider a right secured to the victim under certain statutes.

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. 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 after the Court of Special Appeals issues its 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 U.S. Constitution or the constitution or laws of the State.

Unless extraordinary cause is shown, a petition for post-conviction relief must be filed within ten years of the sentence for all cases in which there is not a sentence of death. In a case in which there is a sentence of death, a petition for post-conviction relief must be filed within 210 days following action by the U.S. Supreme Court or, if no review is sought, the time for seeking review by the Supreme Court. 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 a court-appointed lawyer.

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, unless special circumstances are proven by the defendant, collateral attack is precluded under the Uniform Post-Conviction Procedure Act if the defendant either already litigated the issue at trial or intelligently and knowingly 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): did the judge make a mistake at the trial? The third is the trial of the attorney (the post-conviction proceeding): did the attorney make a mistake at the trial?

Habeas Corpus Review in State Courts

An individual who is confined, detained, or on parole or probation may also petition for a writ of *habeas corpus* to challenge the legality of a conviction or pretrial detention. The petition may be filed with a circuit court judge, with a judge of the Court of Special Appeals, or with a judge of the Court of Appeals. If the judge determines that the individual is detained without legal warrant or authority, the judge must order that the individual be released.

Coram Nobis

After a sentence has expired, a person may file a petition for a writ of *coram nobis* collaterally challenging the legality of a conviction. It is available only to people who have no other mechanism for attacking their conviction but are faced with significant collateral consequence of the conviction. Thus, a person may not proceed with a writ of *coram nobis* if he or she is entitled to relief based upon another statutory or common law remedy, such as a post-conviction or *habeas corpus* petition, or a motion to reopen a post-conviction proceeding. Examples of significant collateral consequences include when a criminal conviction may result in deportation of a noncitizen or when a subsequent conviction carries a harsher sentence as a result of a prior conviction. *Coram nobis* relief is an “extraordinary remedy,” which is available only for compelling circumstances and the challenge to the conviction must be based on errors of fact or law on constitutional, jurisdictional, or fundamental grounds. A petitioner may appeal from a circuit court’s denial of *coram nobis* relief.

Federal Court Review of State Convictions

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

- After exhausting all appellate review in State courts, a defendant may petition the U.S. Supreme Court to consider the case. This usually takes place by the filing of a *writ of certiorari* to the U.S. Supreme Court on constitutional grounds.
- A defendant may start the case from the beginning by filing a writ of *habeas corpus* in a federal district court. A federal court will not grant federal *habeas corpus* relief until a defendant has sought review of all his claims in all the available State court options. Denial of the petition may be appealed to the applicable federal circuit court of appeals, and then to the U.S. Supreme Court.

Issues raised in the federal courts must be presented as federal constitutional issues. Only those claims that were litigated fully and fairly in State court will be considered for review by the U.S. Supreme Court. This means that if the issue was not brought up as a constitutional issue in State court it may not 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 may always seek to have the Governor issue a pardon or commutation. For a fuller discussion of 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 that 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 victim’s interests as soon as practicable, and any motions for new trial and postconviction proceedings. The notification request form must also accompany an offender’s commitment order or probation 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

The rights that a victim of a crime or delinquent act (or a representative in the event of the victim’s death or disability) is entitled to in a criminal case include the right:

- to request that a District Court commissioner or a juvenile intake officer include reasonable protections for the victim’s safety as a condition of pretrial or prehearing release;

- 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);
- if practicable, to address the judge (or jury in a death penalty case) before the imposition of a sentence or other disposition;
- to advance notification 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 or an adjudicatory hearing, to speak at sentencing or a disposition hearing, or to have a victim impact statement considered at sentencing, a disposition hearing, or a juvenile waiver hearing;
- 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 Act funds, and any other social services available;
- to be informed in appropriate cases by the State's Attorney of the right to request restitution and, on request, be provided assistance in the preparation of the request and advice as to the collection of the payment of any restitution awarded; and
- not to be deprived of employment because of job time lost attending a proceeding that the victim or victim's representative has the right to attend.

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 presentence investigation. The report must include the victim impact statement if the crime is a felony that caused physical, psychological, or economic injury to the victim or a misdemeanor that caused serious physical injury or death to the victim.

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 available before and after the filing of a charging document other than an indictment or information in the circuit court, and after the filing of an indictment or information in circuit court. The board administers the State 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 State Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund as described below.

State Victims of Crime Fund

The State Victims of Crime Fund is a special continuing, nonlapsing fund that receives funding primarily from court costs. The State Board of Victims 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 State Victims of Crime Fund. From the \$3 costs assessed in cases where a defendant is convicted of a nonincarcerable motor vehicle offense, the Comptroller deposits one-half of the first \$500,000 in fees collected annually into the State Victims of Crime Fund and one-half into the Criminal Injuries Compensation Fund (any fees in excess of \$500,000 in a fiscal year are deposited into the Criminal Injuries Compensation Fund). Any grant by the State Board of Victim Services or costs for the administration of the fund are paid from the State 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. Also, \$2.50 from the Criminal Injuries Compensation costs assessed are dedicated to this fund. This fund goes to the Victim and Witness Protection and Relocation Program administered by the State's Attorneys' Coordinator. The program is designed to protect victims and witnesses and their families, and to relocate these persons for purposes of protection or to facilitate their participation in court proceedings.

Criminal Injuries Compensation

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. Under certain circumstances a crime victim or a dependent of a crime victim may be compensated for medical expenses, funeral expenses, property damage, disability or dependency claims,

other necessary services, and lost wages. 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 money is from court costs and Criminal Injuries Compensation costs imposed in criminal cases in the District Court. From the \$20 court cost imposed in District Court criminal cases, including motor vehicle cases, \$500,000 is dedicated to the Criminal Injuries Compensation Fund.

Further, if a person is convicted of any criminal offense (excluding nonincarcerable motor vehicle cases) in the District Court or a circuit court, from the Criminal Injuries Compensation cost assessed (\$45 in a circuit court, \$35 in the District Court), \$20 is allocated to the Criminal Injuries Compensation Fund. The remainder of this cost is divided between the Victims of Crime Fund and the Victim and Witness Relocation Fund as described above.

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 State Victims of Crime Fund (see above). After the first \$500,000, all such fee amounts are deposited to the Criminal Injuries Compensation Fund.

In fiscal 2002, the Criminal Injuries Compensation Board received 1,355 applications for monetary awards. From those applications, there were 1,278 investigations and 832 awards actually paid. The total amount of money paid in awards for fiscal 2002 was \$5,420,942. Money received by the fund was primarily from State courts and from federal matching funds which are derived from federal court costs. A small portion of the money received is from restitution paid by a defendant to the fund for reimbursement of money already paid by the fund to a victim. In fiscal 2002, the fund received \$3,867,372 from the State court costs and \$1,495,000 from federal funds.

Restitution

In General

A victim may seek restitution if, as a direct result of a crime or delinquent act, the victim incurred personal injury resulting in out-of-pocket expenses, incurred property damage, or received other benefits 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 or the State if the court has evidence that the losses to the victim actually exist. The court may deny a request for restitution if the court finds that the defendant or child respondent does not have the ability to pay or other extenuating circumstances exist to show that restitution is inappropriate. The court must state on the record why restitution was not ordered if it was requested.

If a judgment of restitution is entered, the court may order the restitution to be made to 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 not exceeding 2 percent of the amount of the judgment on the defendant, juvenile, or juvenile's parent to pay for the administrative costs of collecting payments. The 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.

The Division of Parole and Probation and the Department of Juvenile Justice are required to notify the court if the defendant, juvenile, or liable parent does not make restitution. If after a hearing the court determines that the defendant, juvenile, or liable parent intentionally became impoverished to avoid payment of the restitution, the court may find them in contempt of court or in violation of probation.

Juvenile Restitution

If the offender is a juvenile, the juvenile 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.

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 of this handbook.

HIV Testing of Offenders

The law also allows a victim of a sexual offense or another criminal offense that may have resulted in a victim being exposed to an offender's bodily fluids to request a court to order the offender to be tested for HIV (the acronym for the virus that causes AIDS – acquired immunity deficiency syndrome). On conviction for a crime involving a prohibited exposure, a granting of probation before judgment, or a finding of delinquency for a child respondent, a court is required to order an offender to submit to a test for 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.

Notoriety of Crimes Contract Statute

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

Chapter 12. Adult Incarceration in Local Correctional Facilities

State Payments for Local Correctional Facilities

Except in Baltimore City, 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 between one year and 18 months, judges have the discretion to send them to either a local correctional facility or the State prison system. Any inmate sentenced to 12 months or less is incarcerated in a local correctional facility. The 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 daily cost of housing an inmate for the ninety-first through the three-hundred sixty-fifth day of confinement; or
- 85 percent of the daily cost of housing an inmate for every day that the actual number of prisoner days¹ exceeds the average number of prisoner days that occurred during fiscal 1984 through 1986.

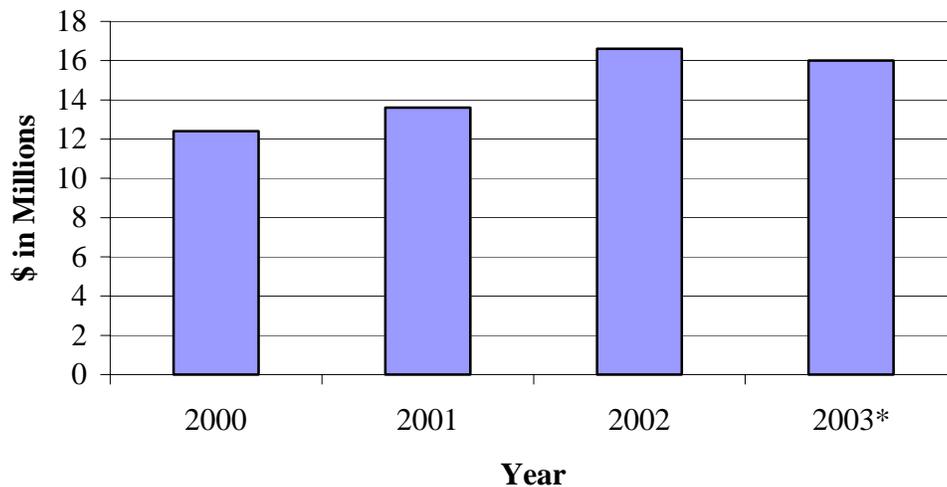
Exhibit 12.1 shows the amount of State payments for local correctional facilities from fiscal 2000 to 2003.

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

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

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

Exhibit 12.1
State Payments for Local Correctional Facilities
Fiscal 2000 – 2003



* Legislative Appropriation

Source: Department of Public Safety and Correctional Services

Community Adult Rehabilitation Centers

Local jurisdictions are also authorized to administer Community Adult Rehabilitation Centers. First built in the 1970s with State construction and operating funds, Community Adult Rehabilitation Centers place eligible offenders in community-based facilities, allowing offenders to go to work or perform community services. This arrangement maintains an offender's community ties while serving his or her sentence. An offender is eligible to participate in this program if the offender has less than six months remaining on the sentence prior to a predetermined parole date or if the total sentence is 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 expanded to a total of 122 beds. The Cecil County facility was initially constructed in 1981 and has subsequently been enlarged to accommodate 70 offenders. The majority of the inmates housed in these units are county-sentenced offenders, rather than State inmates. As of July 2002, the Division of Correction housed 40 inmates in the Cecil County facility and 6 in the Montgomery County 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 correctional facilities and work release and other correctional facilities.

Subdivisions apply to the Department of Public Safety and Correctional Services for inclusion in the construction program, which provides either 100 percent or 50 percent funding for construction or expansion of local correctional facilities. A funding grant of 100 percent is provided for bed space and support facilities to house the increase in inmates serving a sentence of between 181 and 365 days. 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 1997, the State has appropriated over \$77 million in local correctional facilities construction grants. As Exhibit 12.2 shows, capital appropriations for local correctional facilities have declined between fiscal 1997 and 2003, primarily as a result of the completion of a number of major projects and a lack of need for increased bed space.

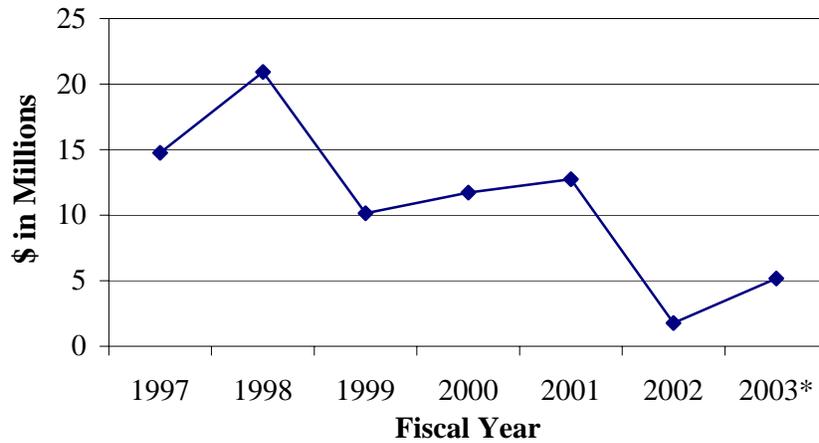
Local Correctional Facility Population

The average daily population of local correctional facilities decreased from 11,687 in fiscal 1999 to 11,356 in fiscal 2001, and then rose again to 11,729 in fiscal 2002, as seen in Exhibit 12.3.

As shown in Exhibit 12.4, between fiscal 1999 and 2002, approximately 53 to 66 percent of the average daily population was awaiting trial.

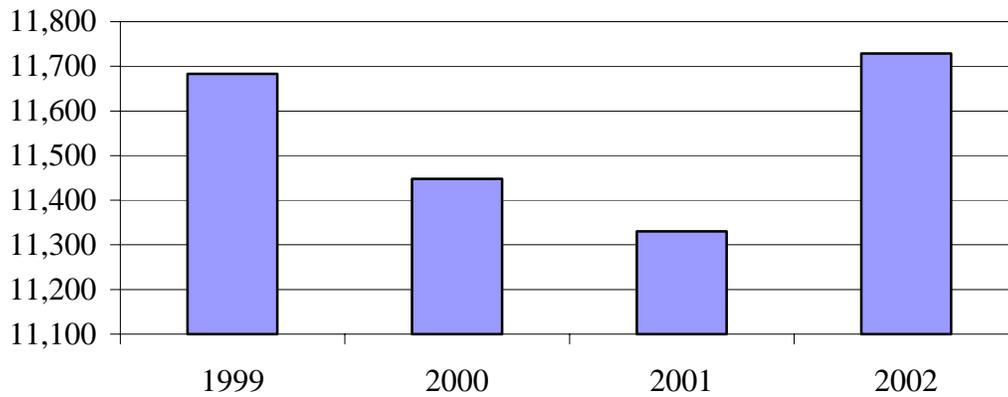
Exhibit 12.5 shows the number of inmates in local correctional facilities by the length of sentence.

Exhibit 12.2
Local Correctional Facility
Capital Appropriations
Fiscal 1997 - 2003



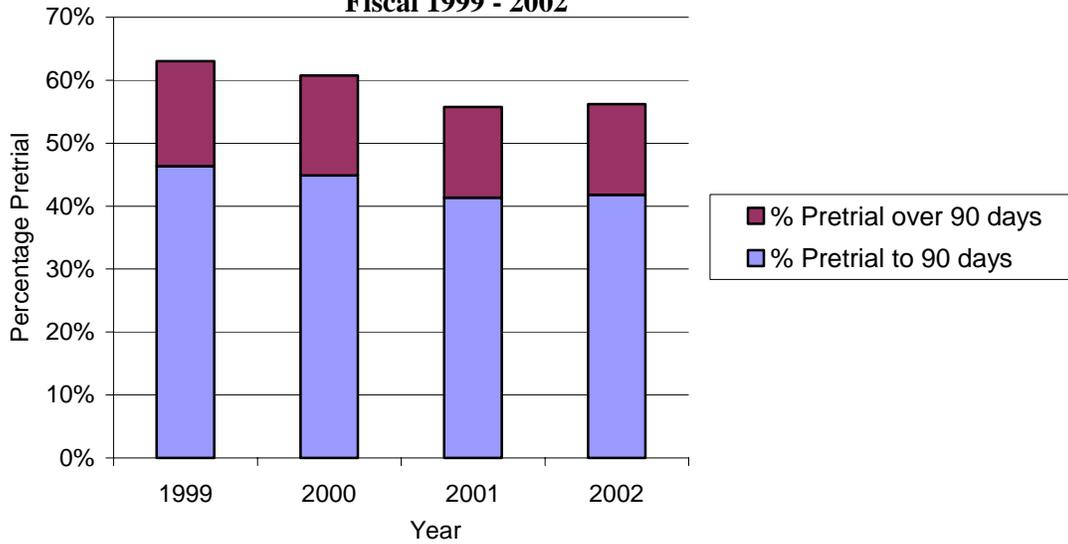
*Legislative Appropriation
 Source: Department of Legislative Services database

Exhibit 12.3
Local Correctional Facilities
Average Daily Population
Fiscal 1999 - 2002



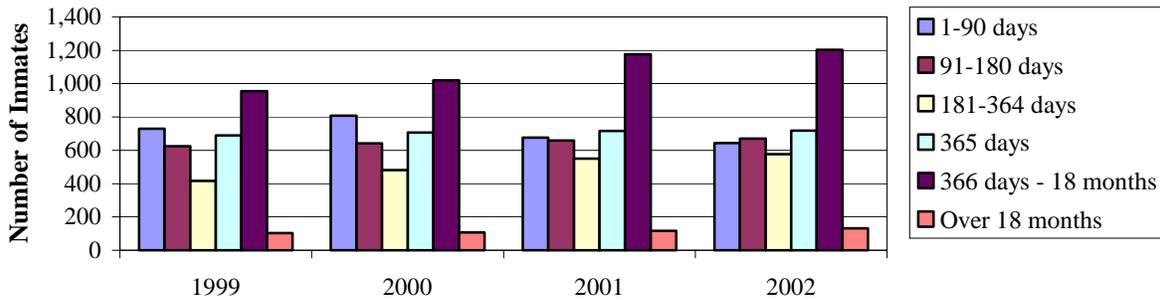
Source: Department of Public Safety and Correctional Services

Exhibit 12.4
Local Correctional Facilities
Percentage Pretrial Inmates
Fiscal 1999 - 2002



Source: Department of Public Safety and Correctional Services

Exhibit 12.5
Locally Sentenced Inmates
Last Day Population - June



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 2002, an average of 325 individuals were under home detention supervision by the counties and the Baltimore City Detention Center each day. For more information on alternatives to incarceration, see Chapter 13.

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 26 State correctional facilities whose combined average daily population is nearly 24,000 inmates. More than 7,000 State correctional employees maintain order in these institutions and ensure inmates' health, safety, welfare, and secure confinement. In a separate agency, the Department of Public Safety and Correctional Services also operates the Patuxent Institution for adult inmates. See Chapter 14 of this handbook for a discussion of Patuxent Institution.

Inmate Classification

Reception

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

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

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. The case manager, the case manager's supervisor, and the warden or

designee review the risk score recommendation. The reviewers may agree with the instrument's recommendation or may recommend an override to a higher or lower security level. A written explanation of the reasons to deviate from the scored security level must accompany a decision to override. However, if the commissioner or designee of the division determines that emergency housing conditions exist, an inmate may be housed in an institution with a security level different from that of the inmate.

Reclassification

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

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

Security Classifications

The Division of Correction uses six security levels in classifying inmates, institutions, and housing units. The security level, 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.

Exhibit 13.1 reflects the various inmate custody factors based on the level of security. Additionally, inmate custody factors based on special confinement areas within the maximum and medium security institutions are detailed under the Special Housing Classifications subheading in this chapter.

Exhibit 13.1
Maryland Division of Correction
Inmate Custody Factors

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

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

Source: Department of Public Safety and Correctional Services

Level II Maximum Security

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

Level I Maximum Security

Level I maximum security provides secure housing to control the behavior of inmates who pose a high risk of violence, are significant escape risks, have a history of serious institutional disciplinary problems, or are likely to have serious disciplinary problems. The level I maximum security facilities are the Maryland House of Correction and the Maryland House of Correction - Annex, both located in Jessup in Anne Arundel County.

Level II Medium Security

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

Level I Medium Security

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

The level I medium security facilities are:

- Eastern Correctional Institution, Westover (Somerset County)

- Maryland Correctional Training Center, Hagerstown (Washington County)
- Maryland Correctional Institution, Hagerstown (Washington County)
- Maryland Correctional Institution, Jessup (Anne Arundel County)

Minimum Security

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

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

Pre-release Security

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

- Baltimore Pre-Release Unit (Baltimore City)
- Baltimore Pre-Release Unit for Women – Annex (Baltimore City)
- Eastern Pre-Release Unit, Church Hill (Queen Anne's County)

- Southern Maryland Pre-Release Unit, Charlotte Hall (St. Mary's County)
- Poplar Hill Pre-Release Unit, Quantico (Wicomico County)
- Maryland Correctional Training Center/Harold E. Donald Building, Hagerstown (Washington County)

Special Housing Classifications

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

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

Division of Correction prison populations by region and facility are reflected in Exhibit 13.2. Each facility is identified by security classification and the estimated cost per inmate.

Exhibit 13.2
Division of Correction Prison Population by Region
Fiscal 2001

Jessup Region

	Security Classification	Average Population	Cost per Inmate FY 2001
MD Correctional Institution for Women	Multi-Level	858	\$20,451
MD House of Correction	Maximum Level I	1,250	28,286
MD House of Correction – Annex	Maximum Level I	1,200	25,850
MD Correctional Institution-Jessup	Medium Level I	1,140	21,218
Maryland Correctional Pre-Release System:			21,616
Baltimore City Correctional Center	Minimum	504	
Baltimore Pre-Release Unit	Pre-Release	221	
Brockridge Correctional Facility	Minimum	635	
Jessup Pre-Release Unit	Minimum	560	
Toulson Correctional Boot Camp	Minimum	400	
Central Laundry Facility	Minimum	490	
Eastern Pre-Release Unit	Pre-Release	177	
Southern Maryland Pre-Release Unit	Pre-Release	177	
Total		7,612	

Baltimore Region

	Security Classification	Average Population	Cost per Inmate FY 2001
MD Correctional Adjustment Center	Maximum Level II	325	\$48,653
Metropolitan Transition Center	Multi-Level	1,762	23,529
MD Reception, Diagnostic and Classification Center	Multi-Level	742	36,630
Baltimore Pre-Release Unit for Women:	Minimum	175 ¹	20,937 ¹
Baltimore Pre-Release Unit for Women – Annex	Pre-Release		
Total		3,004	

¹ Figure includes Baltimore Pre-Release Unit for Women - Annex.

Hagerstown Region

	Security Classification	Average Population	Cost per Inmate FY 2001
MD Correctional Institution-Hagerstown	Medium Level I	2,083	\$20,485
MD Correctional Training Center	Medium Level I	2,913	14,910
Roxbury Correctional Institution	Medium Level II	1,904	16,593
Total		6,900	

Eastern Shore Region

	Security Classification	Average Population	Cost per Inmate FY 2001
Eastern Correctional Institution:	Medium Level I	3,069 ²	\$19,247 ²
Eastern Correctional Institution - Annex	Minimum		
Poplar Hill Pre-Release Unit	Pre-Release	165	17,532
Total		3,234	

Western Region

	Security Classification	Average Population	Cost per Inmate FY 2001
Western Correctional Institution	Medium Level II	1,701	\$20,464
Total		1,701	

² Figure includes Eastern Correctional Institution - Annex.

Division of Correction Population in Nondivision Housing

	Security Classification	Average Population	Cost per Inmate FY 2001
Central Home Detention Unit	Pre-Release	273	\$16,988
Local Jail Backup	Multi-Level	161	variable ¹
Contractual Pre-Release Units	Pre-Release	118	19,694
Patuxent Institution-Annex ²	Maximum	201	40,193
Patuxent Central Mental Health Unit ²	Maximum	177	40,193
Total		930	

¹ Counties having local jail backup facilities charge the Division of Correction variable daily rates to house inmates waiting to be transferred to an appropriate reception facility.

² Patuxent Institution is not part of the Division of Correction, but is an independent unit of the Department of Public Safety and Correctional Services. The Patuxent Institution - Annex houses the Division of Correction's programmed inmates as well as the Division's Central Mental Health Unit.

Source: Department of Public Safety and Correctional Services

Alternatives to Incarceration and Intermediate Sanctions

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

Home Detention and Electronic Monitoring

The 1990 General Assembly passed legislation instituting the Central Home Detention Unit, 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 19,000 of the 24,000 offenders placed in home detention successfully completed the program. Approximately 5,000 were returned to incarceration – the majority for violating a program rule and a small percentage for committing a new

crime. In fiscal 2002, 1,600 inmates participated in home detention and more than 1,650 are projected for fiscal 2003.

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

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

Herman L. Toulson Correctional Boot Camp

The Herman L. Toulson Correctional Boot Camp, located in the Jessup area of Anne Arundel County, was formally dedicated in August 1990. The boot camp program is the first program of its kind in the State and has three primary goals. The first goal is to assist in the overcrowding crisis by providing the means for inmates serving sentences of five years or less to be released after completion of a six-month program. An inmate serving a second major adult incarceration of ten years or less may participate in the boot camp program but will not be considered for release until after serving a minimum of one-fourth of the sentence.

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

Correctional officer drill instructors provide and teach military drill and physical training as well as maintain the security of the facility. The case management staff and a social worker at the boot camp provide "network" sessions for boot camp inmates; addictions counselors provide addiction education and treatment; and academic education

is provided by the school principal, seven education instructors, and one education aide provided by the Maryland Department of Education.

From the boot camp's inception in August 1990 until the July 18, 2002, graduation, 5,766 inmates participated; not including an additional 171 currently in training. Of the 5,766 inmate participants, 152 were female (3 percent). A total of 4,142 inmates completed the program (72 percent), including 105 women (70 percent of the women). Additionally, 576 inmates earned a GED, 3,821 inmates completed Pre-Employment Readiness Training, 581 completed the Building Construction Skill Training Program, 192 completed the Cable and Copper Wire Program at Anne Arundel Community College, and 973 inmates completed a four-month intervention addiction treatment and were referred for additional institutional and community-based treatment.

Between July 1, 1994, when improved statistical reporting began, and July 1, 2002, a total of 1,882 Part II inmates (inmates serving a sentence of ten years or less) participated in the program with 1,572 (84 percent) completing it. (For further detail on eligibility criteria for Part I and II inmates, see the division's directive *Toulson Boot Camp: Eligibility Criteria*, issued October 1, 1994.)

Correctional Options Program

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

Case Management Services

There are many programs and services that are offered to inmates ranging from substance abuse education to parenting. However, limited resources hinder many institutions from providing a full range of programs and restrict inmates from participating in those programs. Currently, 34 percent of the population receives no services. However, the division has an obligation to ensure that programs and services are delivered systematically to inmates at the most beneficial time. Therefore, as inmates approach their final years of incarceration, case managers may use one of two protocols to reevaluate inmates' needs and reserve slots for programs and services to meet those needs: Case Management Programming and Mutual Agreement Programming.

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. A case manager monitors an inmate's compliance with his or her plan to ensure that programming is provided and the inmate is participating.

Mutual Agreement Programming

The second protocol available to case managers is Mutual Agreement Programming. A Mutual Agreement Plan signed by the inmate and representatives of the division and the Maryland Parole Commission guarantees a parole release date and requires the inmate to meet strictly-enforced behavioral standards, complete specific programming, and develop a stable home plan and full-time job in consideration of the guaranteed release date. Starting July 1, 2002, Mutual Agreement Programming will only be used for inmates in the correctional boot camp program.

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 credits may be for good conduct; performance of industrial, agricultural, or administrative tasks; participation in vocational, educational, or other training courses; and involvement in special projects. 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.

Academic, Vocational, and Library Programs

A variety of programs are provided by the Maryland State Department of Education to assist inmates in improving their academic and vocational skills. Research in Maryland and a number of other states indicates that participation in academic and vocational programs is correlated with a significant reduction in reoffending by inmates.

Nearly 4,000 inmates participate on a daily basis in educational training programs with 1,625 adult literacy completions, 966 GED graduates, 897 vocational completions, and 89 post-secondary completions in fiscal 2001. Additionally, correctional libraries play a critical role in the preparation of offenders for release by providing extensive up-to-date information on community resources in the areas of housing, addictions, counseling, and training. Every inmate has the opportunity to visit a correctional library on a weekly basis.

Social Work Reentry Programs

Social workers provide services to the general release population through reentry seminars serving 2,500 inmates in fiscal 2001, as well as specialized pre-release counseling and planning for special needs (sick, elderly, homeless, and mentally ill) offenders. Special programs are provided for HIV infected inmates through At the Door Project as well as pharmacy assistance for offenders with medical conditions such as HIV, heart, high blood pressure, and diabetes.

Transition Programs

The Division of Correction releases approximately 15,000 inmates per year with over half of the releases returning to Baltimore. In cooperation with community partners, the Division of Correction is implementing a comprehensive set of reentry services including: Reentry Program; Partnerships for Reentry Programming; Project YES Network; Reentry seminars; Aftercare Transition; and Residential Substance Abuse Treatment.

The largest program, Partnership for Reentry Programming, is designed to prepare offenders for successful transition. There are four Partnership for Reentry Programming components: (1) Thinking for a Change, a National Institute of Corrections' sponsored cognitive skills program; (2) Prison to Work, an employability skills program; (3) Victim Impact Training; and (4) Community Information Services, which utilize such resources as First Call for Help to assist offenders in identifying community resources for things such as housing, training, and addictions. Project YES Network links businesses and professional mentors with soon-to-be released offenders to assist them in their job find and retention activities.

Religious Services

The Division of Correction provides worship and study activities for 25 religions and provides nondenominational activities as well. Operational and budgetary realities of the prison environment limit religious practice to one group worship and one study

session per week and holy day observances. In 2001, 23 full-time and nine part-time chaplains coordinated participation of 11,300 inmates in more than 290 weekly worship and study activities and handled 50,000 inmate requests to meet for spiritual guidance and counseling.

Volunteer Services

About 2,350 volunteers registered with the division and provided at least 45,000 hours of service to inmates and institutions in 2001. Sixty percent of donated time supports chaplain services. Other areas benefiting from volunteer services include inmate self-help groups and organizations; education programs; classification; social work, psychology, and medical services; mailrooms; and fiscal offices. For example, several organizations sponsor Girl Scouts Beyond Bars at the Maryland Correctional Institution for Women, a program designed to help improve the mother-daughter relationship with the goal of ending the generational cycle of crime. Other volunteers offer the Alternatives to Violence Project at six correctional institutions; in 2001, 500 inmates completed the three-day basic course in conflict resolution. The most recent innovation delivered by volunteers is the meditation/relaxation class. It is offered at three institutions.

Victims' Assistance Services

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

Health Care Services

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

Medical Copayment

A medical copayment requirement enacted in 1994 promotes inmate/detainee responsibility for participation in health care. It reduces the misuse of sick call without restricting access to health care. Inmates who are indigent are exempt from medical copayment. The medical copayment is applied only when an inmate requests a sick call. Inmates who are referred to medical services by staff are not charged, nor are there copayment requirements for any other health service. In fiscal 2001, the department collected \$62,030 for 31,015 visits at \$2.00 per visit.

Tuberculosis Program

The Department of Public Safety and Correctional Services provides programs to control tuberculosis that include screening on reception, annual testing, clinical testing, education, and as required, respiratory isolation. In fiscal 2001, 54,595 inmates were tested through reception, 24,442 inmates were tested through annual testing, and 2 inmates tested positive for active tuberculosis.

HIV/AIDS

The Department of Public Safety Infection Control Division works collaboratively with the Social Work Department in providing HIV testing for the division's inmates, both male and female. In fiscal 2001, 7,711 inmates elected to be tested for HIV infection. Of those, 441 were HIV positive. The total number of inmates in the department with HIV infection is 881. Of that number, 261 have full-blown AIDS. The department stages and manages inmates diagnosed with HIV infection through its Managed Care Program.

The department is initiating Orasure testing, swabbing inside the mouth, as an alternative to invasive blood draws to increase the participation of individuals in voluntary testing at reception, for both men and women.

Medical Parole/Compassionate Release

The department participates in a Medical Parole Program that affords early release for inmates with serious irreversible terminal illness who no longer present a risk to public safety. The department recommends inmates with terminal conditions to the Parole Commission for evaluation. The Social Work Department assists individuals who have special needs and require continuity of care in community health care facilities. In fiscal 2001, Social Work developed 66 aftercare plans for candidates for medical parole.

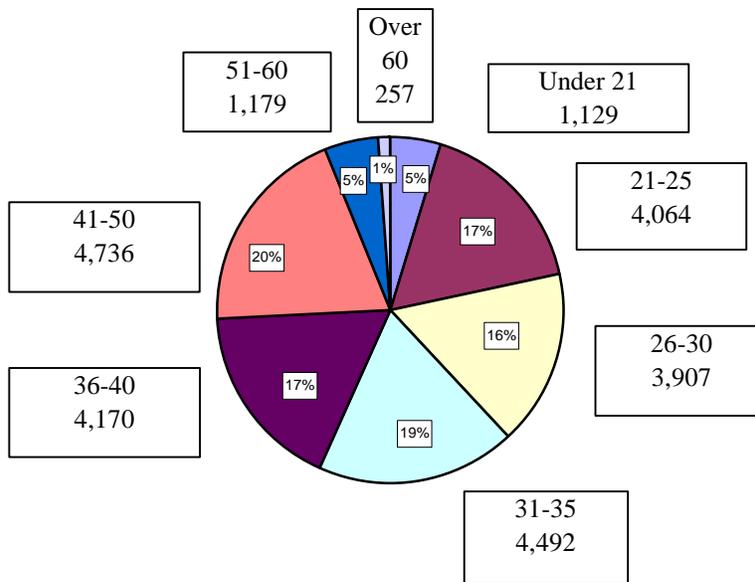
Palliative Care Unit

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

Inmate Characteristics

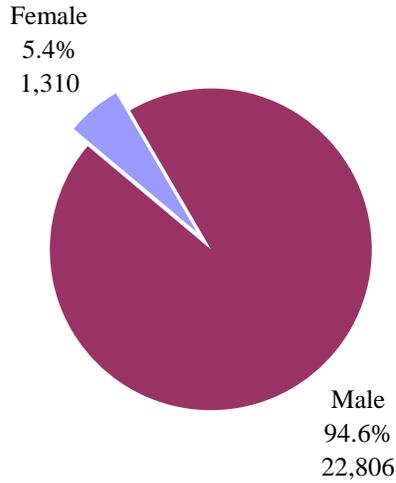
The characteristics of the inmate population have changed over the past four years. As Exhibit 13.3 shows, inmates in their thirties are now the largest group. There has been a gradual decrease in the segment of inmates in their twenties accompanied by an increase in those in their thirties and forties. As the population continues to age, there will continue to be a gradual shift upwards among age groups. While this trend may not have serious implications on housing in the future, ultimately an older prison population will require more health care and other age-related services.

Exhibit 13.3
Division of Correction
Inmate Population by Age



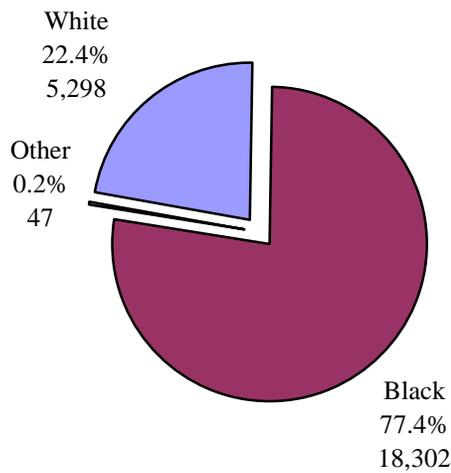
Source: *Inmate Characteristic Report*, Department of Public Safety and Correctional Services, July 2002

Exhibit 13.4a
Sex Data for the Inmate Population



Source: *Inmate Characteristic Report*, Department of Public Safety and Correctional Services, July 2002

Exhibit 13.4b
Race Data for the Inmate Population



Source: *Inmate Characteristic Report*, Department of Public Safety and Correctional Services, July 2002

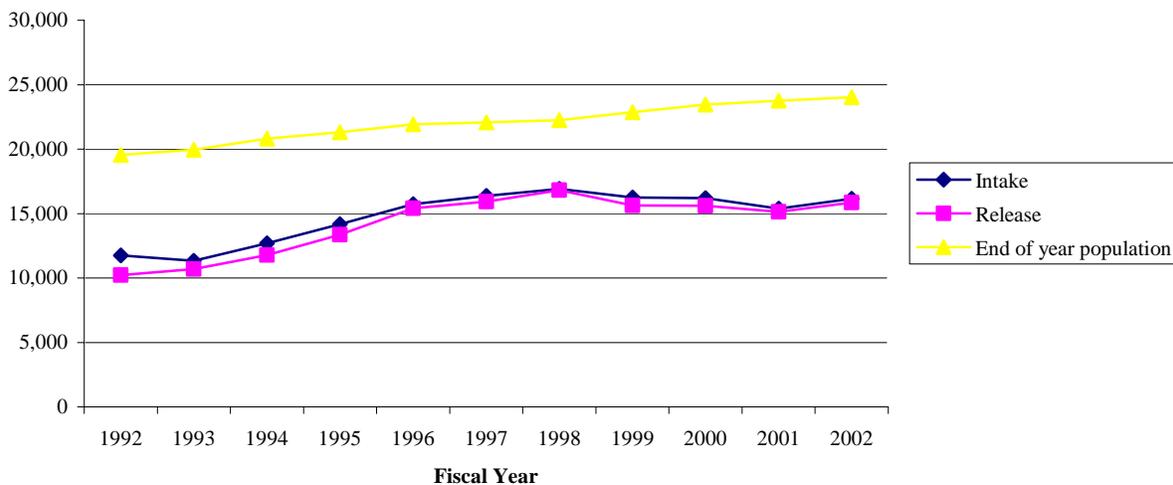
Exhibits 13.4a and 13.4b contain sex and race data for the inmate population. As of July 2002, 94.6 percent of the population is male and 5.4 percent female.

As of July 2002, African Americans composed 77.4 percent of the inmate population, whites composed 22.4 percent of the population, and all other races made up less than 1 percent of the population. As of 1998, about 71 percent of offenders were natives of Maryland, and about 68 percent were convicted in Baltimore City courts.

Population Growth

Because intakes have consistently exceeded releases, the inmate population has expanded from an average of almost 22,000 in 1998 to nearly 24,000 in 2002. 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. The disparity dropped further in 1998 to approximately seven inmates per month. Exhibit 13.5 displays the annual average intakes and releases over the last ten years.

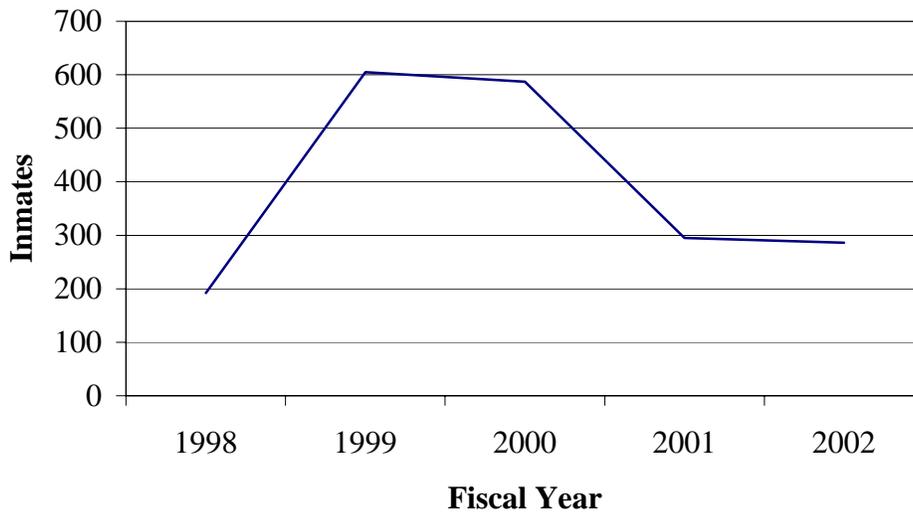
Exhibit 13.5
Division of Correction
Population Trends
Fiscal 1992 - 2002



Source: Department of Public Safety and Correctional Services, July 2002

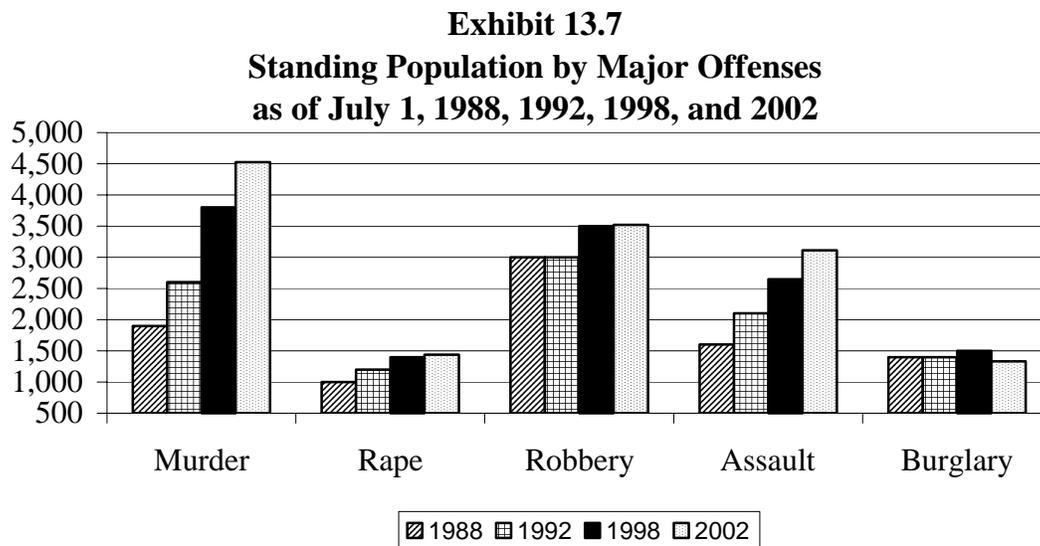
Exhibit 13.6 shows the annual population growth measured by the difference between the end of the year populations. Population growth dropped from an average yearly increase of nearly 1,500 inmates between 1987 and 1992 to about 600 inmates annually for 1992 to 1996. More recently, average growth through 2002 dropped below 300 per year, and the standing population has grown to about 24,000 as of the end of July 2002.

Exhibit 13.6
Annual Population Growth
Fiscal 1998 – 2002



Source: Department of Public Safety and Correctional Services, July 2002

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. The number of offenders committed for murder increased from 1,853 to 4,525 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, 1998, and 2002.



Source: Department of Public Safety and Correctional Services, July 2002

Among the current population, the combined major crime categories of assault, burglary, murder, rape, and robbery increased significantly in number from 8,994 to 13,929, although they decreased as a proportion of the current population (68 percent in 1987 down to 58 percent in 2002).

During the same period, the number of offenders serving a life sentence increased by 97 percent. Offenders serving more than 15 years increased by more than 83 percent.

Prison Construction

As seen in Exhibit 13.8, capital projects from fiscal 1987 through 2002 for prisons added 11,375 prison beds at a cost of more than \$500 million.

The 1997 General Assembly authorized funds for a new maximum security prison to be built next to the Western Correctional Institution near Cumberland. The North Branch Correctional Institution (scheduled to open January 1, 2003) will be a maximum 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
Fiscal 1987 – 2002

State Correctional Facilities	<u>Year</u> <u>Opened</u>	<u>Cost</u> <u>(\$ in Millions)</u>	<u>Operating</u> <u>Capacity</u>
Eastern Correctional Institution, Westover	1987	\$ 99.60	2,754
Maryland Correctional Adjustment Center, Baltimore	1987	20.70	334
Central Laundry Pre-Release Unit, Sykesville	1990	4.20	256
Patuxent Institution, Jessup	1990	2.50	128
Roxbury Correctional Institution, Hagerstown	1990	11.00	384
Maryland House of Correction, Annex	1991-1993	92.70	1,200
Maryland Correctional Institution, Hagerstown	1991	13.00	384
Pre-Release Unit for Women, Baltimore	1992	3.60	144
Jessup Pre-Release Unit	1992	7.40	560
Maryland Correctional Training Center, Hagerstown	1992	13.00	384
Baltimore City Detention Center	1993	1.00	80
Eastern Correctional Institution, Annex, Westover	1993	6.80	444
Metropolitan Transition Center, Baltimore	1994	15.80	700
Western Correction Institution, Cumberland	1996	111.30	1,724
Baltimore City Booking and Intake Center	1996	52.00	811
Maryland Correctional Institution for Women, Jessup	1997	14.00	384
Maryland Correctional Institution for Women, Jessup	2000	14.00	448
North Branch Correctional Institution, Cumberland	2002	20.00	256
Total		\$502.60	11,375

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. Exhibit 13.9 displays inmate assaults and homicides for fiscal 2002.

Exhibit 13.9
Division of Correction
Assaults and Homicides

<u>FY 2002</u>	<u>ECI</u>	<u>MHC</u>	<u>MCIJ</u>	<u>MHCX</u>	<u>MCIW</u>	<u>MCPRS</u>	<u>MTC</u>	<u>MRDCC</u>	<u>MCAC</u>	<u>MCTC</u>	<u>RCI</u>	<u>MCIH</u>	<u>WCI</u>	<u>Totals</u>
Sexual Assaults	0	0	0	2	0	1	0	0	2	0	1	0	0	6
Inmate/Staff Assaults	41	11	7	34	11	18	18	6	47	54	30	21	33	331
Inmate/Inmate Assaults	221	28	23	78	33	90	92	55	13	252	91	101	88	1,165
Homicide	0	0	0	2	0	0	0	0	0	0	0	0	0	2

ECI – Eastern Correctional Institution; MHC – Maryland House of Correction; MCIJ – Maryland Correctional Institution – Jessup; MHCX – Maryland House of Correction - Annex; MCIW – Maryland Correctional Institution – Women; MCPRS – Maryland Correctional Pre-Release System; MTC – Metropolitan Transition Center; MRDCC – Maryland Reception Diagnostic Classification Center; MCAC – Maryland Correctional Adjustment Center; MCTC – Maryland Correctional Training Center; RCI – Roxbury Correctional Institution; MCIH – Maryland Correctional Institution – Hagerstown; WCI – Western Correctional Institution.

Source: Department of Public Safety and Correctional Services, July 2002

Inmate Drug Testing

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

drug testing on a random or spot-check basis. Revised adjustment directives increased sanctions for violators.

Employee Drug Testing

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

Disciplinary Hearings

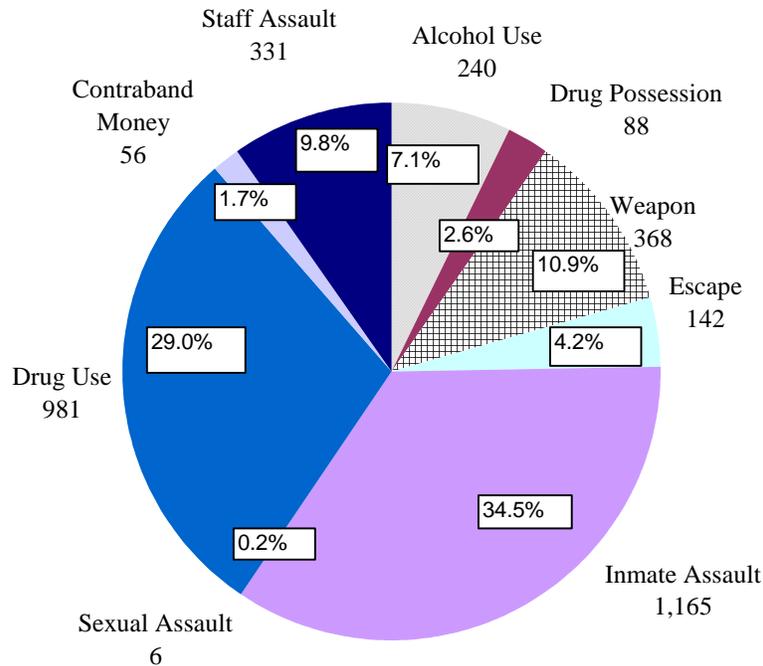
At reception, each inmate receives a handbook that explains all rules, regulations, and inmate rights. Any inmate charged with violating any rule has the right of due process assured through an impartial hearing. When a hearing officer finds an inmate guilty of an infraction, that officer may recommend a penalty such as a reprimand, restriction of privileges, revocation of good conduct time, a term of disciplinary segregation, or reclassification to greater security. The Investigation Unit of the Division of Correction may also pursue criminal charges for serious violations. In 2001 hearing officers adjudicated 13,914 cases and found 9,151 inmates guilty of an infraction. 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.

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 may be appealed to the Commissioner of Correction and ultimately to the Inmate Grievance Office. Appeals that the Inmate Grievance Office deem without merit are dismissed without a hearing. If a hearing is warranted, the case is referred to the Office of Administrative Hearings, which may either find the complaint justified or dismiss the case. Dismissed cases may be appealed to the appropriate circuit court.

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

Exhibit 13.10
Division of Correction
Guilty Verdicts on Select Disciplinary Reports
Fiscal 2001



Source: Department of Public Safety and Correctional Services, July 2002

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 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 1999 the rate of recidivism for Division of Correction prisoners who were released after serving a sentence ranged from 24.3 percent the first year after release to a cumulative percent of 51.8 percent after the third year. (See Exhibit 13.11.)

Exhibit 13.11
Department of Public Safety and Correctional Services
Recidivism Rates for Fiscal 1999 Releases
Cumulative Totals and Percentages

<u>Return Type</u>	<u>Total Released</u>	<u>1st Year</u>		<u>2nd Year</u>		<u>3rd Year</u>	
	14,654						
Return to Probation		1,296	8.8%	2,489	17.0%	3,326	22.7%
Return to DOC		2,260	15.4%	3,566	24.3%	4,269	29.1%
Total Returned		3,556	24.3%	6,055	41.3%	7,595	51.8%

Source: Department of Public Safety and Correctional Services, July 2002

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. It has 522.5 employees and an appropriation of \$34.3 million for fiscal 2003. Patuxent has a 987 bed capacity, including a 48-cell housing unit for women, and an average daily population of 850 for fiscal 2002. The Director of Patuxent is appointed by, and reports directly to, the Secretary 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

Patuxent Institution was established in 1951 and began operating in 1955. It became an independent institution within the Department of Public Safety and Correctional Services in 1960. Its original mandate was to provide evaluation and treatment of a special group of criminal offenders known as “defective delinquents.” These individuals were involuntarily committed to Patuxent under an indeterminate sentence due to their persistent antisocial and criminal behavior. In 1977, public concern over the designation “defective delinquent” and the court-imposed indeterminate sentences led to revisions of the law that abolished the definition “defective delinquent” and the commitment of offenders under an indeterminate sentence. In its place the Eligible Persons Program was created to provide specialized treatment services to offenders accepted into it. The focus of this program was the rehabilitation of habitual criminals. Initially, the program targeted male inmates. In 1987, the program expanded to provide services to female inmates pursuant to a court consent decree.

However, in 1988 incidents involving Patuxent inmates on early release led to the creation of a special legislative committee to evaluate the institution, culminating in legislation to codify a new mission for the facility. Beginning in 1989, the mission of Patuxent Institution changed from one of rehabilitating higher risk, chronic offenders to one that focuses on remediating youthful offenders. Patuxent’s treatment philosophy was revised accordingly 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 focus on youthful offenders was also due to a recognition that crimes were more likely to be committed by younger, rather than older offenders.

The Eligible Persons Program

The following are the significant components of the Eligible Persons Program:

- Patuxent is required to provide remediation services for youthful offenders;
- the eligible persons population is limited to 350 offenders (300 male and 50 female); and
- the Institution's Board of Review has parole and release authority subject to the approval of the Secretary of Public Safety and Correctional Services for parole decisions (and the Governor for life sentences).

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 evaluation for possible admission. Inmates serving multiple life sentences or life sentences for murder with aggravating circumstances are also excluded. All other Division of Correction inmates may apply for admission to the program on their own, or be admitted by recommendation of the sentencing court, the Director of Patuxent Institution, or the State's Attorney. Further, at least three years must remain on an inmate's sentence to be admitted to the Patuxent program. In fiscal 2002, 65 offenders were evaluated for the Eligible Persons Program and 45 were granted eligibility. At the end of fiscal 2001, a total of 264 inmates were in the Eligible Persons 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 six-month evaluation process involves extensive psychiatric and psychological testing and a thorough review of the inmate's social history. To be found eligible for the program the evaluation team must find that 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. Offenders may also decide to withdraw from Patuxent at any time. Upon withdrawal, an offender will be transferred to another Division of Correction facility and that person may not reapply to Patuxent for three years.

Treatment Programs

The Eligible Persons Program consists of two treatment units. There are three remediation management teams in each unit. A remediation management team consists of at least one social worker, one psychologist, one psychiatrist, and a senior corrections officer. Each remediation management team is responsible for 75 offenders.

Patuxent provides specialized treatment modules and programs for offenders. The purpose of the modules is to provide more tailored treatment for each offender. The basic modules are:

- victim impact (required for all inmates);
- substance abuse programs;
- sexual and physical abuse programs (for those offenders who have been subjected to abuse);
- moral problem solving;
- early memories group; and
- social skills group.

Other modules include comprehensive relapse, assertiveness training, gardening to prevent substance abuse, yoga, and quilting.

Patuxent has its own graded tier system consisting of four levels, with the first level being the entry tier. The graded tier system extensively uses communications and learning theory to promote socially acceptable behavior. As each inmate successfully

completes the requirements of the inmate's individualized treatment plan, that inmate may progress to a higher tier and be accorded additional privileges and responsibilities. All inmates in the Eligible Persons Program must progress through the tier system to obtain release. While the Patuxent system assigns a minimum time commitment to each tier, no maximum time is assigned. An inmate may stay at a tier for as long as required for progress and promotion, or until it is clear that the inmate is not receiving benefits at the assigned tier. The inmate may then be demoted to a lower tier or removed from the Patuxent program.

The individualized treatment plan developed for each eligible person is carried out by a remediation management team and 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.

Patuxent Institution Youth Program

In 1994 the Patuxent Institution Youth Program was established to address the increasing number of juvenile offenders that are waived to adult criminal courts. The Youth Program focus is designed to help offenders under the age of 21 who are sentenced to imprisonment for three years or more. The program is staff intensive. Youth offenders who are accepted into the program must remain until parole, completion of the prison term, or transfer to a Division of Correction institution. This program is nonvoluntary and authorizes the courts to order juveniles adjudicated as adults and other young offenders, and meeting certain eligibility criteria, to the institution for evaluation. 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 by the sentencing court to the institution at the time of sentencing. As of the end of fiscal 2002, there were 178 offenders in the Youth Program. In fiscal 2002, Patuxent evaluated 53 youth offenders, and 41 were admitted to the program.

Board of Review

Patuxent Institution is the only State correctional facility with its own conditional release authority, known as the Institutional Board of Review. The board is composed of nine members, including the director, two associate directors, the warden, and five members of the general public (appointed by the Governor), one of whom must be a

member of a victims' rights organization. The board reviews the progress of offenders in the Eligible Persons Program and the Youth Program. The board may grant, deny, or revoke offender eligibility for these programs. The board may also recommend that a sentencing court release an offender from the remainder of a sentence. 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 may be approved for any conditional release status (leaves, school release, work release, or parole). In fiscal 2002, the board heard 386 cases, the vast majority of which were annual reviews.

The law places additional limits on the authority of the Board of Review to grant parole. For nonlife sentences, the Board of Review may approve parole for offenses committed on or before March 20, 1989. While the board may make recommendations concerning parole for nonlife sentences for offenses committed after March 20, 1989, final approval for parole status is required by the Secretary of Public Safety and Correctional Services. With regard to life sentences, the board may approve parole if the offense was committed before July 1, 1982. If the offense was committed after July 1, 1982, and before March 20, 1989, the board may recommend parole, but the Governor's approval is required. The parole of eligible persons serving life sentences for offenses committed after March 20, 1989, must be approved by both the Secretary of Public Safety and Correctional Services and the Governor. In addition, an eligible person serving a life sentence for first degree murder, first degree rape, or a first degree sex offense may not be released on parole until the inmate has served the same minimum time required for Division of Correction inmates (25 years for murder with an aggravating circumstance and 15 years for other life sentences, less diminution of confinement credits). Unlike the Parole Commission, however, the Board of Review may release an inmate with a mandatory minimum sentence before the mandatory minimum has been served, provided the procedures described above are met.

Conditional Release

Offenders who have completed the graded tier system with a minimum of one year on the fourth tier, and who are therapeutically ready may be recommended to the board for Patuxent's Conditional Release Program. The program comprises gradual, hierarchical steps to facilitate a return to community life. The program allows additional evaluation of an offender as the structure of prison life is reduced.

A prestatus clinical conference is held to review the inmate's criminal and institutional record, as well as an assessment of the risk of future criminal behavior. If the remediation management team decides to recommend conditional release, then an

appearance is scheduled before the board. The board secretary also notifies the victim or victim's representative for a response.

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

- accompanied day release;
- work/school release status (offenders work or attend school and reside at Patuxent's reentry facility);
- parole to Patuxent's reentry facility (offenders reside at the reentry facility and prepare for community release); and
- community parole (offender establishes an independent living situation).

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, including approval of itineraries, drug and alcohol testing, and home and job site checks.

For offenses committed after March 20, 1989, 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. In fiscal 2002, the board granted conditional release in 16 cases. The board granted five accompanied day leaves, ten work release leaves, and one offender was paroled to the community. In the same year, the board revoked work release status in one case and one request for conditional release was denied.

Community Reentry Program and Reentry Facility

Patuxent inmates who are denied release by the Board of Review are eligible for release on mandatory supervision or on completion of sentence in the same manner as Division of Correction inmates. (See Chapter 15 of this handbook.) As an integral part of the institution's community reentry program, a reentry 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 reentry facility are required to contribute room and board from their wages. A Reentry Aftercare Center also operates at this facility. Outpatient services are provided to about 150 offenders per

week. The offenders are referred from the Division of Parole and Probation's Correctional Options Program, Central Home Detention, and the Toulson Boot Camp.

Division of Correction Inmates and Mental Health Services

In fiscal 2002, the institution housed an average of 850 inmates, of whom 292 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 receive mental health treatment; (2) to alleviate crowding throughout the State correctional system; or (3) to participate in the Regimented Offender Treatment Center program. While these inmates do not participate in the institution's treatment program as eligible persons or youth, they are provided with educational services. At one time, Patuxent Institution housed inmates that were scheduled for technical parole revocation hearings. Patuxent discontinued this practice in fiscal 2001. The housing that was used for these inmates was converted to housing for inmates in Patuxent programs.

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 provide a systematic plan for the management and treatment of the mentally ill offender from the point of reception within the correctional system, throughout incarceration, to the time of release back to the community. The systematic plan is based on a "least restrictive environment" philosophy and combines general population placement, special needs placement, acute care hospitalization, and a step-down program to treat offenders.

Correctional Mental Health Center – Jessup

The Correctional Mental Health Center, housed at Patuxent, is the inpatient mental health unit for the Division of Correction. The center has a capacity of 192 beds. In fiscal 2002 there were 143 admissions, and 258 patients were released. The center consists of an acute unit, a step-down unit, and a mental health transition unit. The acute unit attempts to stabilize mentally ill inmates so they can be returned to a Division of Correction institution. An inmate with a chronic mental illness could spend his or her entire sentence at the center.

The 64-bed step-down unit was created to address those mentally ill inmates who do not need acute care but are also unable to function in a general prison population. These inmates may have substance abuse problems or other life skill deficiencies. In this unit, offenders are placed in a structured environment to assist with the development of life skills that will enable them to return to a Division of Correction institution.

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

Other Treatment Programs

In 1994, the Regimented Offender Treatment Center was established at Patuxent, in conjunction with the Division of Parole and Probation, as part of the Correctional Options Program. The Regimented Offender Treatment Center is an alternative to incarceration for nonviolent, substance abusing Division of Correction inmates who are about to leave the corrections system or for parolees who have succumbed to substance abuse while on parole. The Regimented Offender Treatment Center has a capacity for 800 men and 300 women. In fiscal 2001, 769 men and 151 women were admitted to the program for stays averaging about six weeks. Offenders receive comprehensive psychosocial evaluations. The Regimented Offender Treatment Center is certified by the Department of Health and Mental Hygiene as an addictions treatment program.

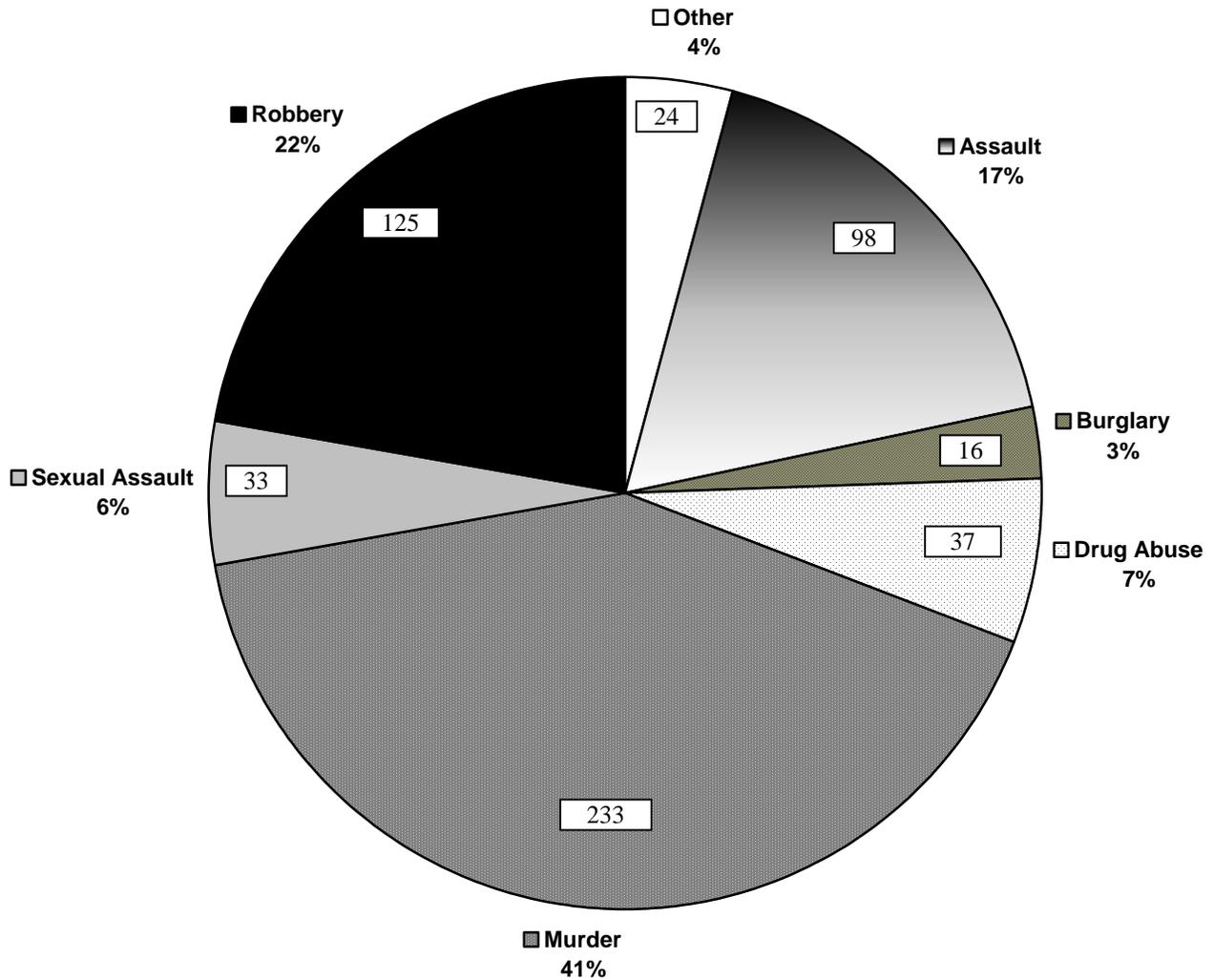
In 2000 Patuxent Institution and the Maryland Correctional Institution for Women developed the Women's Intensive Treatment program. By the end of fiscal 2001, 11 inmates had completed the program, and 57 inmates had entered the program. The maximum capacity is 72 beds. The program provides treatment planning and attempts to eliminate criminality and psychological dysfunction. A dual diagnosis approach is used to address substance abuse problems.

In January 2001, Patuxent took over the clinical aspects of the Residential Substance Abuse Treatment program. Services for male inmates are located at the Central Laundry Facility in Sykesville, and services for women are at the Patuxent Institution for Women. The program provides six months of treatment to inmates who are within 12 to 18 months of release.

Statistics/Fiscal Information

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

Exhibit 14.1
Patuxent Institution
Inmates by Offenses – Fiscal 2002



Note: Numbers within graph represent the number of inmates incarcerated by offense.

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

The average annual cost per inmate at Patuxent was estimated to be \$38,396 in fiscal 2002, as compared to \$31,584 at the Maryland House of Correction-Jessup, 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 higher cost (21.6 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 1989, the institution's role has become more similar to the institutional roles at the Division of Correction. The institution retains its conditional release authority and continues to employ innovative means to treat youthful, drug addicted, and mentally ill offenders. Ultimately it will be up to the General Assembly to decide whether these factors justify maintaining Patuxent's unique status among Maryland's correctional institutions.

Chapter 15. Release from Incarceration

There are three ways that an inmate may be released from imprisonment before completion of the inmate's term of confinement (excluding death and escape): parole, mandatory supervision, and pardon. This chapter will examine each of these methods.

Of these three methods of release, most inmates are released either on parole or on mandatory supervision. The *ex post facto* clauses of the U.S. Constitution and the Maryland Declaration of Rights prohibit criminal or penal laws that operate retrospectively and to the disadvantage of an offender. As applied to parole eligibility and mandatory supervision, these clauses require that an inmate be subject to the laws and regulations in force at the time the offense was committed. Later laws that are more restrictive may only be applied to future inmates, and may not constitutionally be applied to current inmates.

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 issued by the commission.

The Division of Parole and Probation within the Department of Public Safety and Correctional Services supervises both parolees and probationers. 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 sentences, they are entitled to be considered for parole, with several significant exceptions. These exceptions are as 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 violent offenders, 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.
- Inmates serving a term of life imprisonment (including those at Patuxent Institution as eligible persons) may only be paroled with approval of the Governor.
- Offenders who are age 65 or older who have served at least 15 years of a mandatory sentence for a crime of violence may apply for and be granted parole.

Parole Hearings 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 examiners.

A parole hearing is held before a hearing examiner or a parole commissioner acting as a hearing examiner, unless the inmate is convicted of homicide or is serving a sentence of life imprisonment. The parole commission is required to give timely notice to the inmate before a scheduled hearing. Immediately after the hearing, the hearing examiner must verbally inform the inmate of the hearing examiner's decision. The hearing examiner 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. A parole commissioner is required to review the written recommendations after they are submitted. 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 examiner's recommendations. If an exception is not filed within the five-day period, the recommendation of the hearing examiner is approved. If an exception is filed, the parole commission or a panel assigned by the chairperson of the commission may schedule an appeal hearing.

The parole commission hears cases that may not be heard by a hearing examiner (i.e., cases involving life sentences or homicide) or cases that are appealed. A panel of at least two commissioners will hear appeals on the record. The written decision of the parole commission or panel on an appeal is final. 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 chairperson of the parole commission must convene a three-member panel to hear the case. The parole commission also reviews cases and makes recommendations to the Governor concerning parole of an inmate serving a sentence of life imprisonment and reviews cases concerning pardons, commutations, or other clemency at the request of the Governor.

An inmate has a right to see any document in his or her file except diagnostic opinions, information obtained on a promise of confidentiality, 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;
- the progress of the inmate during confinement, including academic progress in mandatory education programs;
- an updated victim impact statement or recommendation;
- any recommendation made by the sentencing judge at the time of sentencing; and
- any information or testimony presented to the commission by the victim or the victim's designated representative (see discussion below on Notification and Participation of Crime Victims).

When making its decision, the parole commission also examines the offender's prior adult and juvenile record, employment plans, past substance abuse problems, family status and stability, and emotional maturity.

The commission may 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 Agreement 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, 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 that the Division of Parole and Probation complete an updated victim impact statement. The division must complete the updated statement and provide it to the commission at least 30 days before the parole hearing. The victim may also make a written recommendation on 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 Agreement Program contract 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 victim's rights, see Chapter 11 of this handbook.

Mandatory Supervision

Mandatory supervision is a conditional release from confinement granted to an inmate because of diminution credits awarded to the inmate while incarcerated. Diminution 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 may be allowed in addition to good conduct credits based on an inmate’s participation in work, educational programs, and special projects. The purpose of these credits is to encourage good inmate behavior and 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.

Prompted by a series of Court of Appeals decisions relating to calculation of diminution credits, Chapters 485 and 486 of 2002 require that if an inmate is sentenced to imprisonment for a violent crime committed while on mandatory supervision, and the mandatory supervision is then revoked, the inmate will automatically lose all diminution credits awarded before the inmate’s release on mandatory supervision. The acts further prohibit the inmate from being awarded any new diminution credits on that term of confinement.

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), 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 the 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 penalties imposed by law for those criminal acts. 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 that requires the grantee to do or refrain from doing something as a condition for granting the pardon. The Governor may also issue a partial pardon. The Governor has the power to pardon an individual after the individual has served any sentence imposed, usually as a reward for exemplary behavior and community service following release.

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 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 an alleged violation of the 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 individual to spend the holidays with his or her family. Exhibit 15.1 shows the number of commutations and pardons from 1999 to 2002.

Exhibit 15.1
Commutation Releases and Pardons
Calendar 1999 – 2002

<u>Year</u>	<u>Commutations Resulting in Release from Incarceration</u>	<u>Pardons</u>
1999	2	20
2000	0	27
2001	2	21
2002*	1	8

*Data as of June 30, 2002.

Source: Maryland Parole Commission

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's risk to the community is evaluated. 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 three levels of supervision: intensive, standard high, or standard low. These are similar to those described in Chapter 9 for supervision of individuals on probation. An offender is required to pay a monthly fee of \$40 to the division unless exempted by law.

As of July 1, 2002, there were 93,586 active cases in the Division of Parole and Probation, which included probation, parole, and mandatory supervision cases. The parole caseload has decreased significantly from 8,079 cases at the beginning of fiscal 1999 to 5,518 cases at the beginning of fiscal 2003. The mandatory supervision caseload increased from fiscal 1999 to 2003, from 6,370 cases at the beginning of fiscal 1999 to 7,348 cases at the beginning of fiscal 2003.

The Division of Parole and Probation has approximately 620 agents responsible for supervising offenders on parole, mandatory supervision, and supervised probation. In addition, the Division of Parole and Probation has 60 agents who function as full-time

investigators and conduct presentence, preparole, and other investigations for the Maryland Parole Commission, the courts, and other criminal justice agencies.

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 parole 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 examiner. The hearing examiner 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.

If the hearing examiner 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* (i.e., the entire commission hears the case). 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 evidence¹ 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 often result from events that trigger a reaction. The violence associated with the crack cocaine epidemic in the 1980s leads to the war on drugs. A bad accident caused by a drunk driver spurs the enactment of additional laws against drunk driving and a greater emphasis by law enforcement on enforcing the laws. A victim who is not allowed to be present at an offender's trial starts a victims' rights movement. The murder of a child by a released sex offender gives rise to "Megan's Law" in this State and throughout the country. This inevitably leads to a piece-meal approach to solving the crime problem.

The State Commission on Criminal Sentencing Policy has as part of its mission the goal of providing policy makers with information on how changes in sentencing and release laws will have an impact on prison population. This type of information should prove useful in predicting population trends and budgetary requirements. It is of more limited value in assessing how a change will affect public safety.

Maryland still experiences overloaded court dockets, overworked law enforcement officers and parole and probation agents, overcrowded correctional facilities despite additional construction, and high rates of recidivism. After decreasing through most of the 1990s, crime rates may now be leveling out. The extent to which current policies related to criminal justice and law enforcement have been effective in deterring crime is unclear.

The future of the death penalty in the State is uncertain. Although polls indicate that a majority of people in the State support the death penalty, this majority is diminishing as concerns about fairness and potential errors in its imposition have been raised in the State and the nation. As of this writing, there is a moratorium on the death penalty in the State, pending the release of a report on whether racial bias plays a role in death penalty decisions.

The purpose of this handbook has been to increase the reader's understanding of the criminal justice process in Maryland. The presentation of caseload statistics and trends highlights the problems of the system. The State has limited resources to address the problem of crime in particular and the needs of the State in general. It is with this understanding that future decisions concerning criminal justice policy must be made.

Glossary

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

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

Administrative per se – the administrative offense of driving or attempting to drive with an alcohol concentration of 0.08 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath, or refusing to submit to a test for alcohol concentration. 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 misdemeanor of second degree assault if it involves severe or aggravated bodily injury. 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 that divert criminal offenders from State or local correctional facilities. Examples are public and private home detention (both pretrial and post-conviction), boot camp, 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 reentry into society.

Certiorari, Writ of – an order by a superior court to a lower court to produce a certified record of a case decided in the 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.

Circuit court – trial court of general jurisdiction. Jury trials are available. Hears appeals from District Court.

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 found in prior court decisions, conventions, and traditions of England as opposed to statutory law. The common law, as well as English statutes in effect on July 4, 1776, was adopted in Maryland through the Maryland Declaration of Rights. Most states have abolished the 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 generally superseded in Maryland by the statutory post conviction process.

Court of Appeals – highest State appellate court, having seven members. Generally hears cases by way of *writ of certiorari*, but automatically hears appeals of all death sentences.

Court of Special Appeals – intermediate State appellate court, having 13 members who generally sit in panels of three. Hears appeals on the record from the circuit court and considers requests for leave to appeal the denial of certain victims’ rights and probation revocations.

Crime rate – the number of offenses per 100,000 population. Crime rates may be computed for particular areas, such as an individual county, or for particular crimes, such as murder.

Criminal Justice Information System (CJIS) – an event-based computerized system maintained by the Department of Public Safety and Correctional Services for the reporting of all criminal activity in Maryland. At the federal level, CJIS also means Criminal Justice Information Services Division of the FBI.

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

Defendant – a person who has been arrested for or charged with a criminal offense.

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

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

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

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

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

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

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

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

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

District Court – trial court of limited jurisdiction. A jury trial is not available in District Court.

District Court Commissioner – a judicial officer, but not a judge, responsible for issuing statements of charges (a form of charging document), initially setting conditions of pretrial release for arrested individuals, and issuing interim domestic violence and peace orders.

Felony – any criminal offense declared a felony under statute, or recognized as a common law felony (murder, manslaughter, robbery, rape, burglary, larceny, arson, sodomy, and mayhem). In general a felony is a more serious crime than a misdemeanor.

Grand jury – a random group of 23 citizens of the State 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. It takes at least 12 members to issue an indictment. Grand juries also investigate and report on conditions at correctional facilities and may also report on other matters of public interest.

Habeas corpus, Writ of – an order to release a person from unlawful imprisonment. Used by courts, especially federal courts, to review the constitutionality of convictions and sentences. In Maryland courts the statutory 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.

Impaired, Driving while – an alcohol-related motor vehicle offense that is less serious than driving while under the influence. It also applies to motor vehicle offenses involving drugs or controlled dangerous substances.

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 or State correctional facility. 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 to imprisonment or returned to imprisonment for violation of parole. Upon intake, inmates are fingerprinted, personal property is inventoried, criminal history is verified, physical and mental examinations are conducted, and educational skills are assessed.

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

Jury, Grand – see grand jury

Jury, (Petit) – a group drawn at random by a jury commissioner to determine issues of fact in a criminal or civil trial. Unless the parties agree otherwise a jury in a criminal

case consists of 12 persons (plus alternates) and a verdict must be unanimous. In death penalty cases, the jury may also determine whether or not the convict shall be executed.

Larceny – at common law the unlawful taking of property from the possession of another person. Under Maryland law, the crime of theft includes larceny and other related crimes. Felony theft occurs when the value of the property or services taken has a value of \$500 or more.

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

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

Maryland Rules – the rules adopted by the Court of Appeals that govern the operation of the judicial branch and court procedures.

Master, Juvenile – a person appointed by 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 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).

Also, a formal writing requesting a court to take some action in a matter (e.g., petition for a *writ of certiorari* or a *writ of habeas corpus*).

Petit Jury – see jury (petit)

Preliminary hearing – hearing requested by a defendant charged with a felony and held before a District Court judge to determine 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 in lieu of or in addition to the sentence provided by law prescribes terms and rules for a defendant while not incarcerated.

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

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

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

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

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

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

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

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

Stet – a disposition by a State's Attorney to indefinitely postpone trial 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.

Under the influence per se – the criminal offense of driving or attempting to drive with an alcohol concentration of 0.08 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath. The penalties for this offense are a fine and imprisonment.

Uniform Crime Reports – reports prepared annually by states that track crime rate and arrest data on a statewide basis. 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.

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