

# LEGISLATIVE HANDBOOK SERIES

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## VOLUME VIII

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### MARYLAND'S CRIMINAL AND JUVENILE JUSTICE PROCESS



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

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Volume VIII  
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## Foreword

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

The information within this handbook is based on the policies and procedures in effect at the end of the 2018 session of the General Assembly. The Judiciary, various departments of the Executive Branch of State government, and many individuals who work in the criminal justice system provided materials and reviewed the manuscript. Their assistance is greatly appreciated. In several instances, existing resources and documentation were substantially adapted or incorporated in the text.

This is the eighth of nine volumes of the 2018 Legislative Handbook Series prepared by the Office of Policy Analysis of the Department of Legislative Services prior to the start of the General Assembly term. Michelle Davis, John Joyce, Jameson Lancaster, Heather Marchione, Conor McCarthy, Karen Morgan, April Morton, Lauren Nestor, Claire Rossmark, Rebecca Ruff, Ken Weaver, Benjamin Wilhelm, and Jennifer Young researched, wrote, and revised the material for this volume. Jennifer Botts, Amy Devadas, Douglas Nestor, and Shirleen Pilgrim provided additional writing and review. Michelle Purcell and Kelly Seely provided administrative assistance.

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

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# **Chapter 1. Introduction**

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## **Handbook Overview**

### **In General**

This handbook is intended to provide policymakers with an overview of the criminal justice process in Maryland. The topics of discussion include the charging process, pretrial procedures, trial, sentencing, and punishment under some form of supervision or incarceration, as well as the rights of victims during the criminal justice process. Although the primary focus is on the adult offender, juvenile justice is also addressed. For each component of the criminal justice system, statistics are provided to illuminate the process and outcomes of criminal justice in this State.

### **Items Not Included**

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

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

### **Organization**

The handbook is divided into 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 reported to the Maryland State Police. The chapter also discusses adult and juvenile arrest trends. The chapter concludes with information on automated technologies, such as the Criminal Justice Information System and the Criminal Justice Dashboard.
- Chapter 3. This chapter reviews the judicial procedures and criminal penalties, such as convictions, fines, and incarceration, for motor vehicle offenses, and the administrative component, which includes the assessment of points and revocation or suspension of driving privileges. There is also a discussion of distracted driving and drunk and drugged driving, including the involvement of young drivers and the impact on highway fatalities. Finally, the chapter discusses applicable sanctions and treatment programs such as the Drinking Driver Monitor Program and the Ignition Interlock System Program for persons convicted of driving while under the influence of or impaired by alcohol or drugs.
- Chapter 4. This chapter discusses the commencement of the criminal justice process, which begins when a person commits a crime that is observed by or reported to a law enforcement officer. The topics discussed include the arrest process and charging documents.
- Chapter 5. This chapter explains what occurs before trial of the case in court. The chapter describes police procedures and the defendant's initial appearance before a District Court commissioner, as well as the facts and circumstances that a commissioner or judge must consider in determining whether a defendant should be released on personal recognizance or bail, or whether the defendant should be confined in a local detention center pending trial. A defendant's right to counsel at these proceedings is also addressed. This chapter further discusses preliminary hearings to determine whether there is probable cause to support a felony charge, the discovery process, and plea bargaining.
- Chapter 6. This chapter discusses the jurisdiction and recent caseload trends of the two trial courts in the State – the circuit courts and the District Court. There is also a discussion of alternative court programs for criminal cases.
- Chapter 7. This chapter discusses various components of the trial process, including the burden of proof, direct and cross-examinations, and closing arguments. Procedures specific to jury trials are also addressed, including *voir dire* (the juror

selection process), jury deliberation, and the process by which cases originally brought in the District Court may be transferred to the circuit courts for a jury trial.

- Chapter 8. This chapter discusses the juvenile justice system, a separate system created to protect public safety while restoring order to the life of a young offender without a determination of guilt or the imposition of a fixed sentence. The specific procedures involved with juvenile court, from intake to final disposition, are discussed. The chapter also discusses the role of the State's Department of Juvenile Services.
- Chapter 9. According to law, some defendants with a mental disorder or mental retardation may not be prosecuted or punished. There are two circumstances under which these conditions are considered in a criminal proceeding. The first is whether a defendant is competent (*i.e.*, mentally able) to participate in a trial. The second is whether the defendant was criminally responsible for the crime (*i.e.*, had the necessary mental capacity at the time of the crime). The processes by which the courts determine competency to stand trial and criminal responsibility are outlined in this chapter.
- Chapter 10. This chapter reviews criminal sentencing with an emphasis on sentencing restrictions in Maryland law, as well as on sentencing guidelines, which are designed to promote consistent and equitable sentencing. The chapter specifically discusses the State Commission on Criminal Sentencing Policy, which evaluates and monitors the State's sentencing and correctional laws and policies, as well as a variety of related issues such as the role of all forms of probation, the Interstate Compact for Adult Offender Supervision, and the registration and supervision of sexual offenders.
- Chapter 11. This chapter focuses on the alternatives available to defendants seeking judicial review of a conviction or sentence imposed by a trial court, including reviews at the trial court level, appeals, and postconviction petitions.
- Chapter 12. This chapter explains a number of rights and services for victims of crime or their representatives if the victim is deceased, disabled, or a minor, before, during, and after a criminal trial or juvenile hearing.
- Chapter 13. Local detention centers house defendants who are arrested but not released before trial, and inmates whose sentences are 18 months or less. The detention center populations, as well as the local capital and operating programs, are discussed in this chapter.

- Chapter 14. This chapter discusses the State prison system and the services the facilities provide to the different classifications of inmates. Statistical trends and characteristics of the inmate population are described. The use of alternatives to incarceration, inmate grievance procedures, and facility closures and improvements are among the items that are also discussed.
- Chapter 15. The Patuxent Institution is examined in this chapter. It is the only State correctional institution that has its own conditional release and supervision authority. The history of the Patuxent Institution and its programs and services are discussed.
- Chapter 16. This chapter examines the five ways in which an inmate in a State correctional facility may be released from imprisonment before the completion of the term of confinement: (1) parole; (2) probation; (3) mandatory release; (4) administrative release; and (5) gubernatorial clemency.
- Glossary. A glossary of many of the legal and technical terms used in this handbook is provided to enhance the reader's understanding of the criminal justice process.

## Overview of the Law

The law pertaining to Maryland's criminal justice process is derived from several sources: (1) constitutional law; (2) statutory law; (3) the common law; (4) court rules (Maryland Rules); and (5) court decisions.

### Constitutional Law

The U.S. Constitution, the Maryland Constitution, and the Maryland Declaration of Rights all contain law dealing with the areas discussed in this handbook. The Declaration of Rights contains Maryland's constitutional provisions that are similar to the U.S. Constitution's Bill of Rights. These provisions primarily regulate matters concerning criminal procedure. Examples include prohibitions on unreasonable searches and seizures, the right to a jury trial, the right to remain silent after arrest and at trial, and the right to due process. The constitutional prohibition on an *ex post facto* law (*i.e.*, a law criminalizing an act or increasing a penalty for an act after it was done) is relevant to criminal laws, including issues relating to parole and diminution credits; the provision also prohibits retroactive criminal legislation. These constitutional provisions and court cases interpreting them may not be overturned by statute and may only be altered by constitutional amendment (or subsequent reversal of a court decision by a court).

In addition to the constitutional rights provided to defendants, Maryland has adopted Article 47 of the Maryland Declaration of Rights, which establishes constitutional rights for crime victims. See Chapter 12 of this handbook for a discussion of victims' rights.

## **Statutory Law**

Maryland's statutory criminal law is primarily found in six articles of the Annotated Code. Prohibitions and penalties are in the Criminal Law Article and the Transportation Article. Provisions dealing with criminal procedure are found in both the Criminal Procedure Article and the Courts and Judicial Proceedings Article. The Correctional Services Article contains laws dealing with incarceration and punishment. The Public Safety Article contains laws concerning law enforcement, the militia, regulation of firearms, emergency services, and the Maryland State Police.

## **Common Law**

The common law of Maryland is law based on prior court decisions drawn from the common law of England, as it existed on July 4, 1776, which the State adopted in Article 5 of the Maryland Declaration of Rights. The common law is subject to change through the ordinary legislative process.

Unlike most states, Maryland still retains many common law crimes. Murder, for instance, is a common law crime. By statute, however, Maryland divides murder into first and second degree murder for punishment purposes. The statutory penalty for first degree murder is life imprisonment with or without the possibility of parole. The maximum penalty for second degree murder is 40 years. Manslaughter is a common law crime that has a statutory maximum penalty of 10 years. For common law crimes that do not have a statutory penalty, the maximum penalty that may be imposed is life imprisonment, with the limitation that the actual penalty may not violate the constitutional prohibition on cruel and unusual punishment.

In addition, "inchoate crimes" (incomplete crimes) are generally common law crimes. An attempt to commit a crime is an inchoate crime. Such crimes reflect steps taken toward the commission of another crime (the substantive crime) that are serious enough that they are considered criminal behavior worthy of punishment. For example, a person who attempts but fails to burn down a building is guilty of the crime of attempted arson. The statutory law prohibits arson, not attempted arson, but the common law prohibits the attempt as well. Attempted murder, rape, sexual offense, and robbery have been made statutory felonies. The maximum penalty for these inchoate crimes is the same as the maximum penalty for the completed crime. Other examples of inchoate common

law crimes include conspiracy (two or more persons planning to commit a crime) and solicitation (one person requesting another to commit a crime).

## **Court Decisions**

Court decisions are an important source of the law in general and criminal law in particular. The published decisions of the Court of Appeals and the Court of Special Appeals are particularly important in this regard, although decisions of the U.S. Supreme Court and other federal courts must also be considered.

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

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

## **Court Rules**

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

Both the General Assembly and the Court of Appeals have authority to establish court procedures. If there is a conflict between a statute and a rule, whichever provision was adopted last in time applies.

## **Felonies and Misdemeanors**

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

Unless specified in a statute or unless an offense was a felony at common law, a crime is considered a misdemeanor. Most statutes specify whether a crime is a misdemeanor or a felony. Common law crimes retain their common law grades as either felonies or misdemeanors unless changed through the legislative process. The General Assembly may choose to label a statutory crime a felony or misdemeanor independent of the amount of punishment the statute provides. The General Assembly may also choose to change the status of a crime from a misdemeanor to a felony or from a felony to a misdemeanor.

The following are the practical differences between a felony and a misdemeanor. First, unless a statute specifically provides otherwise, a felony is tried in a circuit court, where a defendant has a right to a jury trial, and may not be tried in the District Court, which is a court of limited jurisdiction. A misdemeanor may be tried before a judge in the District Court. However, because the District Court shares jurisdiction with the circuit court in most cases for which the maximum penalty is either a length of imprisonment of three years or more or a fine of \$2,500 or more, a misdemeanor may also be tried in the circuit court. Further, a misdemeanor that, generally speaking, has a maximum term of imprisonment of more than 90 days permits a defendant to request a jury trial, thereby removing the case from the District Court to a circuit court (where all jury trials occur). See Chapter 7 of this handbook for a discussion of the right to a jury trial.

Second, there is no statute of limitations for a felony. A person may be charged at any time with a felony, regardless of when the offense occurred. Unless a statute provides otherwise, a misdemeanor must be charged within one year after the offense was committed. For example, certain misdemeanors are designated as “punishable by imprisonment in the penitentiary” and are not subject to a statute of limitations. Like felonies, these misdemeanors may be prosecuted at any time.

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



## **Motor Vehicle Offenses**

Most motor vehicle offenses are found in the Transportation Article. These offenses, which include drunk or drugged driving offenses, subject an individual to criminal penalties (fines, and in some cases, imprisonment) and administrative penalties (possible license sanctions). Vehicular manslaughter and drunk or drugged driving offenses that result in death or life-threatening injuries are found in the Criminal Law Article. For a discussion of motor vehicle offenses, see Chapter 3 of this handbook.

## **Juvenile Law**

The prohibitions of the criminal law apply to all persons, regardless of age. The penalties and procedures, however, do not apply to juveniles (individuals younger than age 18) unless they are subject to the jurisdiction of the adult court. Most provisions of law dealing with juveniles are found in the Courts and Judicial Proceedings Article. For a discussion of juvenile law, see Chapter 8 of this handbook.

## **Justice Reinvestment Act**

Although numerous laws are enacted every year that impact the criminal justice system, Chapter 515 of 2016 merits special mention. This law, entitled the Justice Reinvestment Act, made major changes to statutory provisions regarding sentencing, corrections, parole, and the supervision of offenders. Among its key provisions, the Act (1) altered the penalties for various drug and some violent offenses; (2) expanded expungement eligibility for specified misdemeanors; (3) authorized court-ordered treatment as an alternative to incarceration for defendants in need of treatment; (4) created an administrative release process for eligible inmates who have met established specifications; (5) altered standards for geriatric parole and medical parole; and (6) required the use of additional assessments and screening tools.

Most of the provisions of the Act became effective October 1, 2017, thus, the substance of this handbook incorporates the statutory changes. However, the Act is anticipated to continue having a major impact on the State's criminal justice system. For example, various provisions are expected to significantly reduce the incarcerated population, thereby allowing funding previously used for that purpose to instead be redirected for other initiatives (such as recidivism reduction programming and drug treatment). Accordingly, the full impact of the Act on the State's criminal justice system has not yet been realized.

## Chapter 2. Crime Rates and Arrest Trends

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### 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 and education. 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, technological advances that facilitate access to personal information and financial accounts, and substance abuse.

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

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

### Crime Rates

In 1975, Maryland enacted by law a program that requires all local law enforcement agencies to submit standardized crime reports based on the federal reporting system to ensure consistency. Data for the reports is gathered from each agency's record of complaints, investigations, and arrests. The Maryland State Police compile the information by calendar year, which is published as *Crime in Maryland, Uniform Crime Report*. The methodology for these reports follows guidelines and definitions of crimes as provided by the National Uniform Crime Reporting Program, which is administered by the Federal Bureau of Investigation. Although all the crimes reported by the program are crimes in Maryland, Maryland law may use different terms.

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

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

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

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

There is a 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; thus, inaccurate or incomplete recording of the

event or action may result. Procedures for handling juveniles vary more than the handling of adult offenders.

Based upon reported offenses, a crime rate is calculated for the number of offenses per 100,000 inhabitants. In 2016, Maryland's crime rate was 2,801 victims for every 100,000 population, a 2% decrease from the 2015 rate of 2,867. The 2016 rate for violent crime was 482 victims per 100,000 of population, a less than 1% increase from the 2015 rate of 471. Maryland property crime in 2016 occurred at a rate of 2,319 victims, while the rate in 2015 was 2,395 victims – a 3% decrease.

By comparison, in 2012, Maryland's overall crime rate was 3,226 victims for every 100,000 persons. The 2012 violent crime rate was 477 victims per 100,000 population. Property crime in 2012 had a rate of 2,749 victims per 100,000 population.

## Tracking National Crime Rates

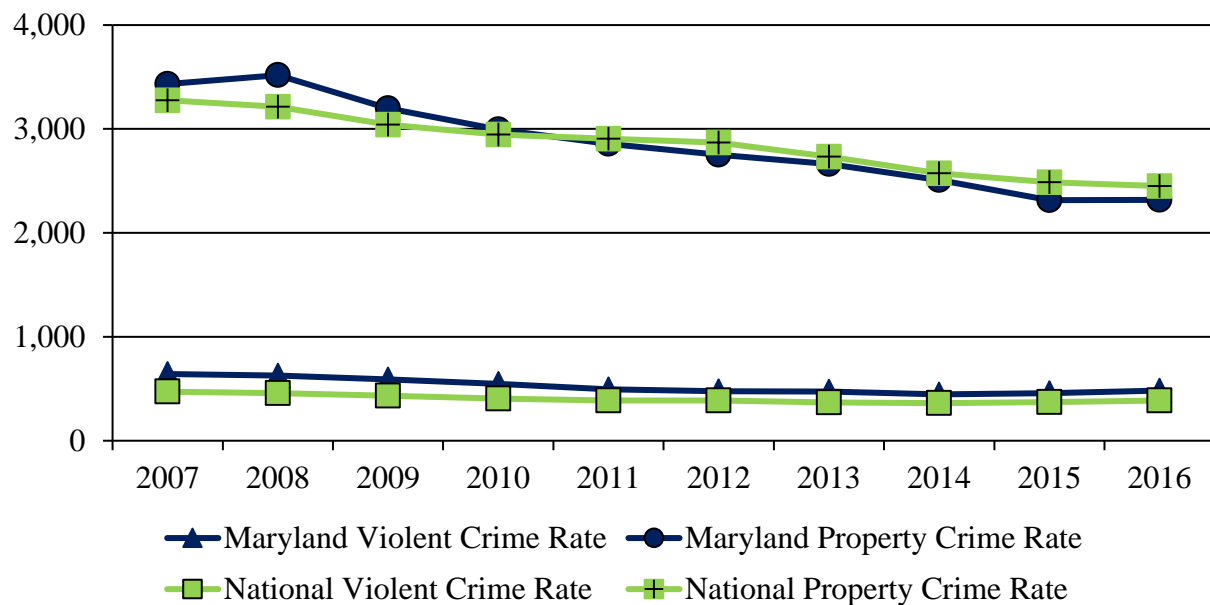
In June 2004, the national Criminal Justice Information System Advisory Policy Board approved discontinuing the use of a national Crime Index in the Uniform Crime Reporting program and its publications. The Crime Index, first published in *Crime in the United States* in 1960, was the title used for a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

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

Violent and property crime rates have generally trended downward over the past decade at both the state and national level. On average, Maryland's violent crime rate has exceeded the national crime rate by 25%; however, with the exception of murder, the gap has closed in recent years. Since 2011, Maryland's rate of reported property crimes has declined below the national rate and has fallen at a faster pace.

Exhibit 2.1 shows violent crime rates and property crime rates for Maryland and nationally from 2007 through 2016. Violent crimes include murder, rape, robbery, and aggravated assault. Property crimes include burglary, larceny-theft, and motor vehicle theft.

**Exhibit 2.1**  
**Maryland and National Crime Rate Trends**  
**Offenses Per 100,000 of Population**  
**Calendar 2007-2016**



Source: 2016 Uniform Crime Report, Maryland State Police; Crime in the United States, Federal Bureau of Investigation

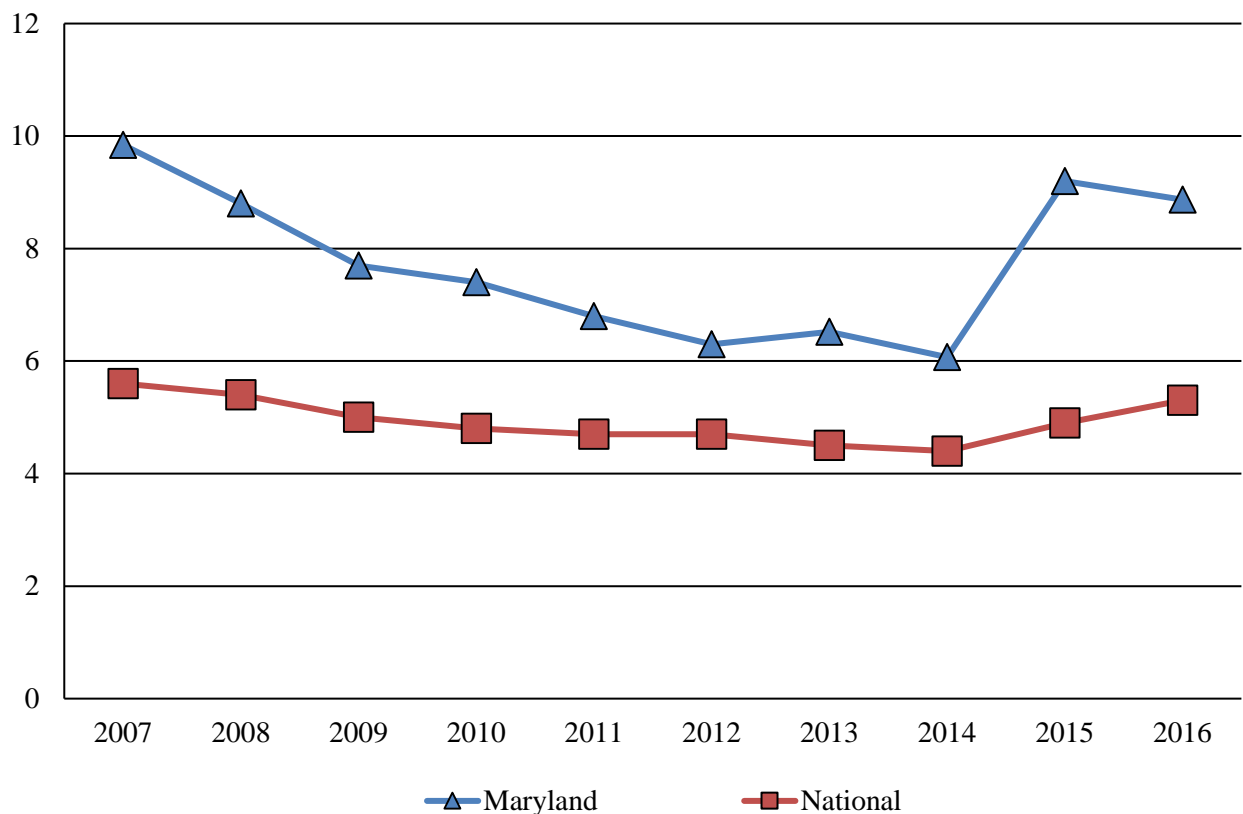
## Offense Trends

Calendar year trends in each of the eight reported offense areas are discussed in further detail below, showing offense trends in Maryland over a 10-year period (2007 through 2016). In some instances, arrest totals are included in the text to provide an indication of the magnitude of arrests relative to the number of offenses within each category.

## Murder

In 2016, 534 murders were reported to law enforcement agencies in Maryland. As shown in Exhibit 2.2, Maryland's crime rate for murder significantly increased in 2015 to 9.2 offenses for every 100,000 of population. The murder rate remained near this historically elevated level in 2016, with a rate of 8.9 murders per 100,000 people. The State's murder rate has consistently exceeded the national rate, which has averaged 4.8 murders per 100,000 people over the past decade.

**Exhibit 2.2**  
**Maryland and National Murder Trends**  
**Per 100,000 of Population**  
**Calendar 2007-2016**



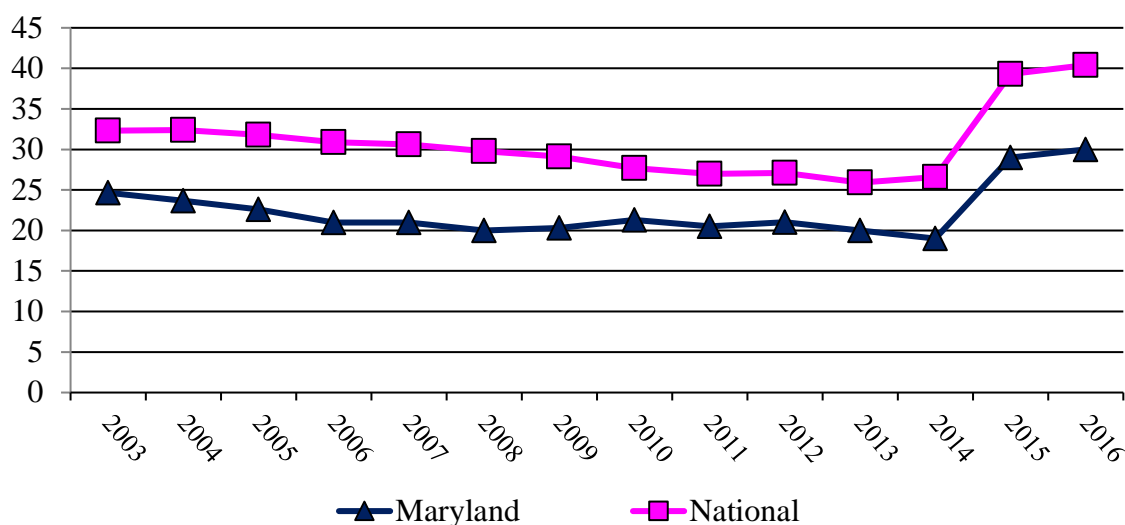
Source: 2016 Uniform Crime Report, Maryland State Police; Crime in the United States, Federal Bureau of Investigation

In 2016, drug-related murders were 1% of the total, which represented a small decrease compared to a 3% ratio for these types of murders in 2012. Family-related murders accounted for 11% of the total, which was a 1% decrease compared to 2012. In 2016, handguns were used in 69% of the reported murders, and most murders occurred in either Baltimore City (318 or 59.6%) or Prince George's County (88 or 16.5%).

## Rape

The number of reported rape offenses (including attempted rapes) in Maryland totaled 1,815 in 2016. As shown in Exhibit 2.3, between 2007 and 2014, the number of rape offenses had remained relatively constant at 20 or 21 offenses per 100,000 persons. It should be noted that in 2015, the Federal Bureau of Investigation crime reporting program initiated a change in the definition of rape. Among other changes, the term “forcible” was removed and the definition was made gender-neutral. The change in definition resulted in an increase in the total number of reported rapes and explains the significant increase between 2014 and 2015 at both the state and national level. Even with a declining national rate for rape, Maryland's rate has consistently remained below the national rate for nearly two decades.

**Exhibit 2.3**  
**Maryland and National Rape Trends**  
**Per 100,000 of Population**  
**Calendar 2007-2016**

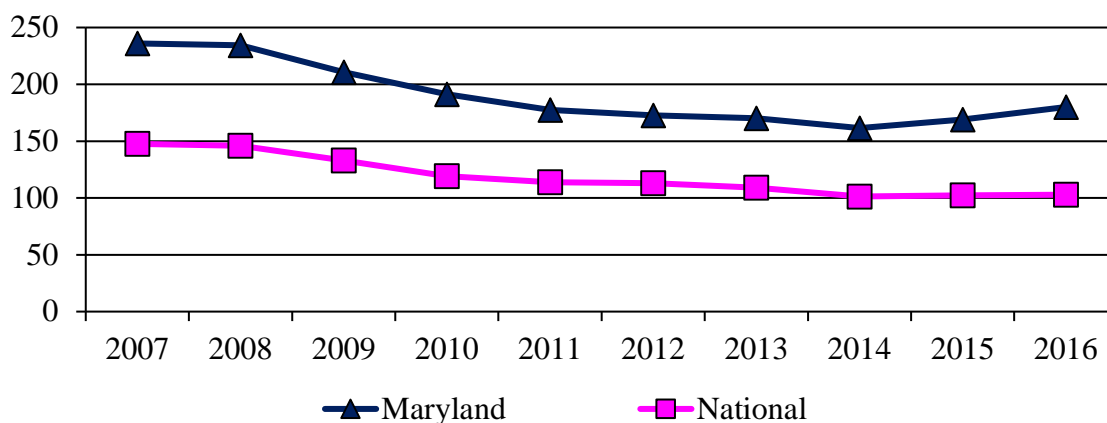


Source: 2016 Uniform Crime Report, Maryland State Police; Crime in the United States, Federal Bureau of Investigation

## Robbery

Robbery is the taking, or attempted taking, of anything of value from the care, custody, or control of a person by force or threat of force. Since 2007, the number of robberies has decreased from 13,258 incidents to 10,814, a decline of about 18%. During 2016, 55% of the robberies in the State were committed “on the street,” while only 1% were bank robberies. Of the total, 44% involved the use of firearms. In 2016, 3,513 persons were arrested for robbery. Maryland’s 2016 crime rate for robbery of 180 offenses for every 100,000 of the population exceeded the national rate of about 102.8 (see Exhibit 2.4). On average, the State’s annual robbery rate has exceeded the national rate by nearly 72 robberies per 100,000 persons for the past decade.

**Exhibit 2.4**  
**Maryland and National Robbery Trends**  
**Per 100,000 of Population**  
**Calendar 2007-2016**



Source: 2016 Uniform Crime Report, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

## Aggravated Assault

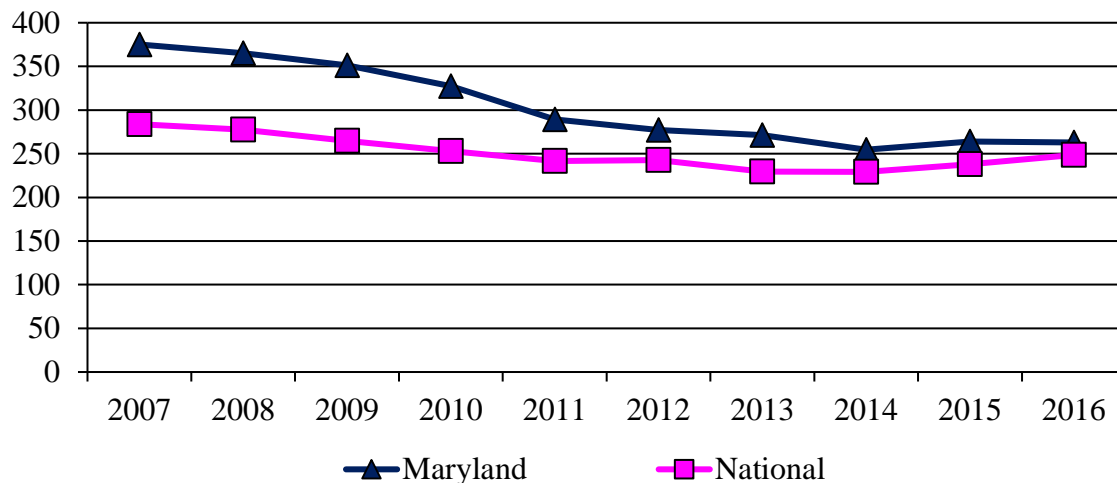
Aggravated assault is the unlawful attack by one person upon another for the purpose of inflicting severe bodily injury. During 2016, there were 15,830 aggravated assaults reported in Maryland. Although this reflects a significant decrease from prior years, aggravated assaults accounted for 55% of total violent crime in the State in 2016. In 2016, 2,918 (18%) of the aggravated assaults were committed with the use of a firearm,



and 3,749 (24%) were committed with a knife or other cutting instrument. Arrests for aggravated assault totaled 6,409 in 2016. In 2016, Maryland's crime rate for aggravated assault was 263.0 offenses per 100,000 persons, while the national rate for this offense was about 248.5 (see Exhibit 2.5).

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**Exhibit 2.5**  
**Maryland and National Aggravated Assault Trends**  
**Per 100,000 of Population**  
**Calendar 2007-2016**



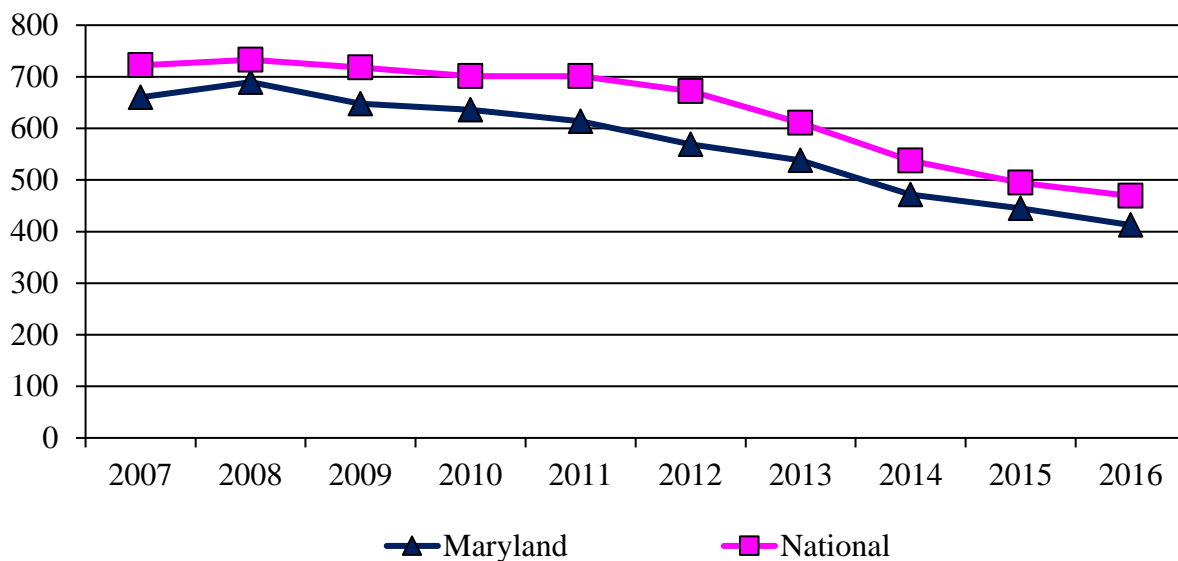
Source: 2016 Uniform Crime Report, Maryland State Police; Crime in the United States, Federal Bureau of Investigation

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## Burglary

The crime of burglary (also referred to as breaking and entering), is the unlawful entry of a property to commit a felony or theft. The overall incidence of burglary has declined by more than 25% in recent years, from 33,472 offenses in 2012 to 24,822 in 2016. Approximately 65% of burglaries in 2016 involved forced entry, and 72% of the offenses were committed in a residence. The 2016 total dollar value loss reported was \$46.4 million. In 2016, 5,060 individuals were arrested for burglary. Maryland's crime rate for burglary of 412.6 offenses per 100,000 persons was less than the national rate (468.9) for this offense in 2016 (see Exhibit 2.6).

**Exhibit 2.6**  
**Maryland and National Burglary Trends**  
**Per 100,000 of Population**  
**Calendar 2007-2016**

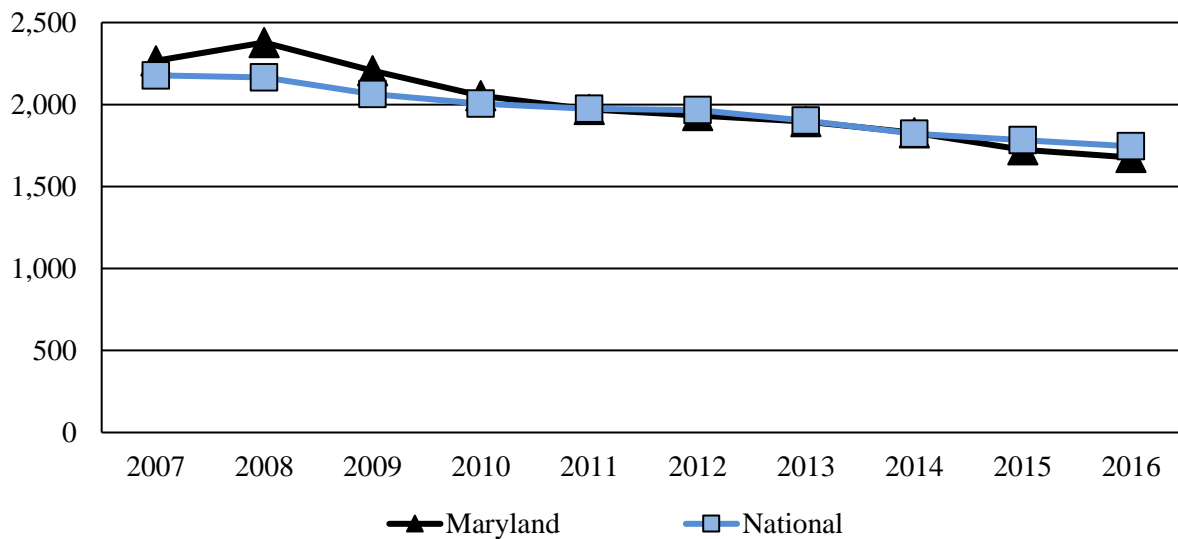


Source: 2016 Uniform Crime Report, Maryland State Police; Crime in the United States, Federal Bureau of Investigation

## Larceny-theft

Larceny-theft is defined as the unlawful taking of property from the possession of another. The number of reported larceny-theft offenses has declined by approximately 11.3% in recent years (from 113,772 incidents in 2012 to 100,876 incidents in 2016). In 2016, the State's crime rate for theft offenses was 1,677 offenses per 100,000 persons, and 20,765 persons were arrested for larceny-theft. Law enforcement agencies in the State reported a total value of approximately \$75.8 million of stolen property, with the highest percentage (30%) having been theft from autos. In 2016, the national rate for larceny-theft (1,745 offenses per 100,000 persons) was slightly higher than the Maryland rate (see Exhibit 2.7).

**Exhibit 2.7**  
**Maryland and National Larceny-theft Trends**  
**Per 100,000 of Population**  
**Calendar 2007-2016**



Source: 2016 Uniform Crime Report, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

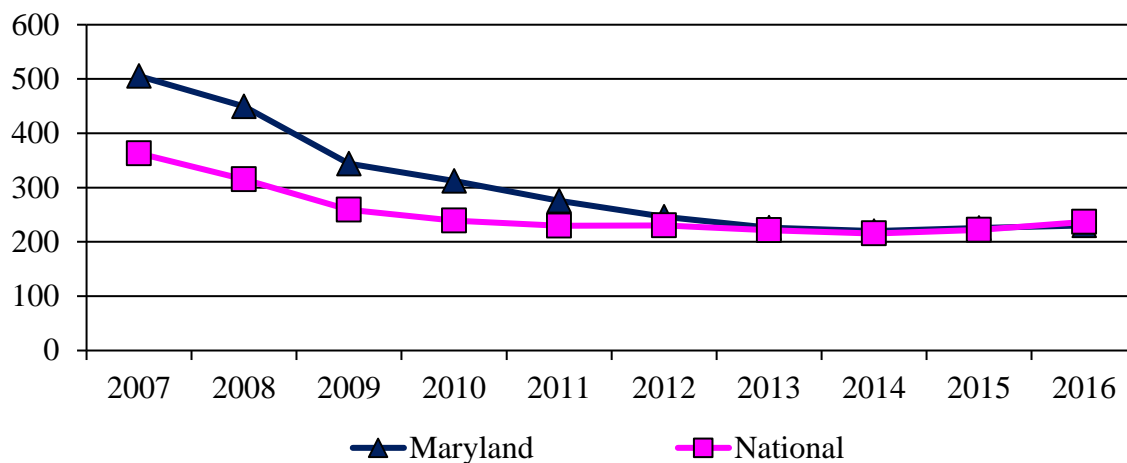
## Motor Vehicle Theft

In 2016, 13,847 motor vehicle thefts were reported. While this is a significant decrease (nearly 52%) from the 28,393 motor vehicle thefts reported in 2007, it is an increase from the 13,146 thefts in 2014 (the lowest point in more than a decade). In 2016, 1,659 persons were arrested in Maryland for motor vehicle theft.

Between 2007 and 2012, Maryland's motor vehicle theft rate substantially exceeded the national rate. However, beginning in 2013, Maryland has been relatively equivalent to the national rate. In 2016, Maryland's crime rate for motor vehicle theft was 230.2 offenses per 100,000 persons, while the national rate for this offense in 2016 was 236.9 offenses per 100,000 persons (see Exhibit 2.8).

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**Exhibit 2.8**  
**Maryland and National Motor Vehicle Theft Trends**  
**Per 100,000 of Population**  
**Calendar 2007-2016**



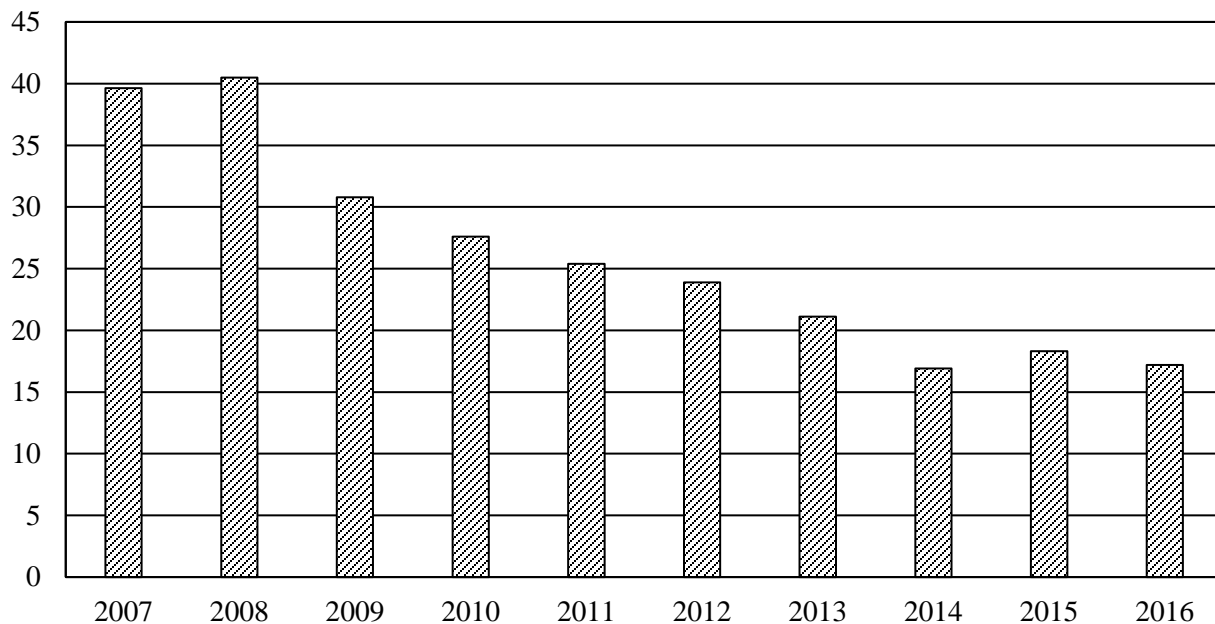
Source: 2016 Uniform Crime Report, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

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## Arson

Arson is defined as the willful or malicious burning of a structure, vehicle, or aircraft of another, or an attempt to commit such an act. Since 2009, the number of reported arsons has been less than 2,000 annually. In 2016, there were 1,028 incidents of arson reported, a 7% decrease from 2015. The value of the resulting property damage in 2016 was estimated at about \$14 million. In 2016, Maryland's crime rate for arson was 17.2 offenses per 100,000 persons and 358 persons were arrested for this crime (see Exhibit 2.9). Although national arson data is included in trend and clearance tables, the Federal Bureau of Investigation reports that sufficient data is not available to estimate national totals for this offense.

**Exhibit 2.9**  
**Maryland Arson Trends**  
**Per 100,000 of Population**  
**Calendar 2007-2016**



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

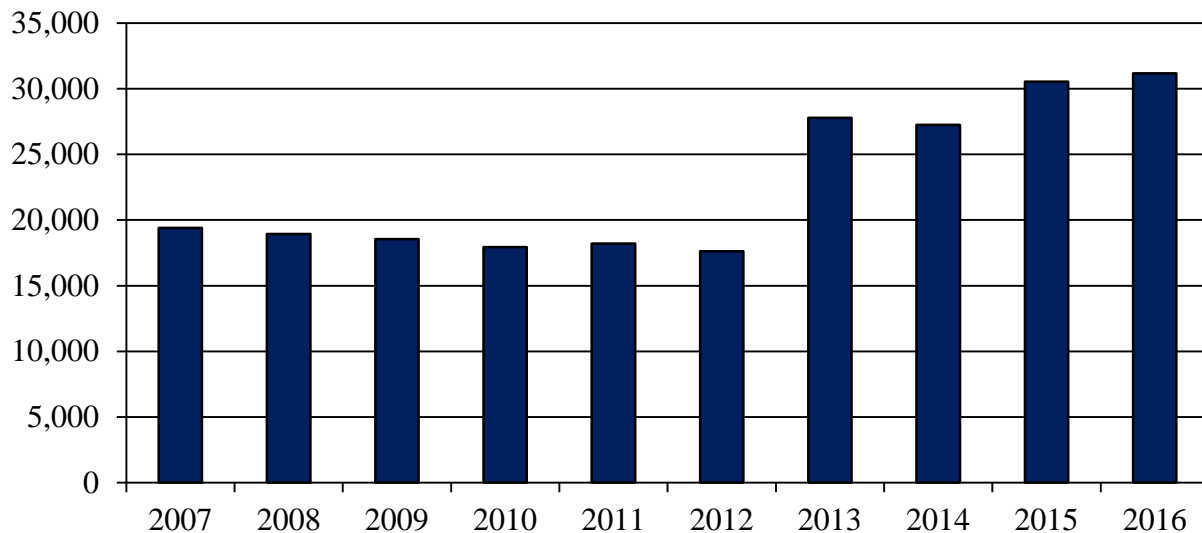
Source: 2016 Uniform Crime Report, Maryland State Police

## Domestic Violence

Since 1994, reports of incidents involving domestic violence are part of the compilations maintained under the annual *Uniform Crime Reports*. Prior to 2013, the only reported relationships between domestic violence victims and offenders were husband, wife, and cohabitant. Although Maryland does not have a distinct statutory crime of domestic violence (offenders are instead charged with the applicable underlying offense regardless of the relationship to the victim), legislation enacted in 2012 established a designation of “domestically related crimes” within specified court records to improve the reporting and tracking of domestic violence offenses. To better align with this law, the State Uniform Crime Reporting Program expanded its definition of domestic violence to include 10 additional relationships. Under the revised reporting definition, incidents are reported for “any crime committed by a suspect (respondent) against a victim who is a person eligible for relief or who had a sexual relationship with the suspect within 12 months before the commission of the crime.” A person eligible for relief can include a current or former spouse; cohabitant; person related by blood, marriage, or adoption; a parent/stepparent or child/stepchild; a vulnerable adult; or an individual who has a child in common with the respondent.

In 2016, 31,175 incidents were reported and characterized as domestically related; 30,534 incidents had been reported in 2015 (see Exhibit 2.10). The vast majority of such reports in any year involve an assault (approximately 84% or 26,179 assaults in 2016). Of these assaults in 2016, 4,822 were reported as aggravated (about 18%). There was an average of about 55 domestically related homicides per year from 2012 through 2016.

**Exhibit 2.10**  
**Domestic Violence – Trends**  
**Calendar 2007-2016**



Note: In 2013, domestic violence data reporting was expanded to include additional relationships, resulting in an increase in the number of reports. In 2015, the National Uniform Crime Reporting Program changed the definition of rape, resulting in an increase in the total number of reported rapes, which impacts reported domestic violence incidences.

Source: 2016 Uniform Crime Report, Maryland State Police

## Arrests

Each State, county, and municipal law enforcement agency is required to submit monthly reports for the number of persons arrested for crimes that have occurred within its jurisdiction. The arrest report shows the age, sex, and race of those arrested and the disposition of juveniles by the arresting agency. Traffic arrests (except for drunk and drugged driving) are not reported. A total of 202,108 arrests for criminal offenses were reported during 2016, which is 10,515 (4.9%) fewer than in 2015, and nearly 59,000 (22.5%) fewer than in 2012. Maryland's arrest rate for 2016 was 3,359.5 per 100,000 of population, a 5% decrease compared to 2015.

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, regardless of the number of crimes or charges involved,

a person is counted only once each time. A juvenile is counted as arrested when the circumstances are such that if the juvenile was an adult, an arrest would have been counted or when police or other official action is taken beyond an interview, warning, or admonishment.

Arrest figures do not indicate the number of unique 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.

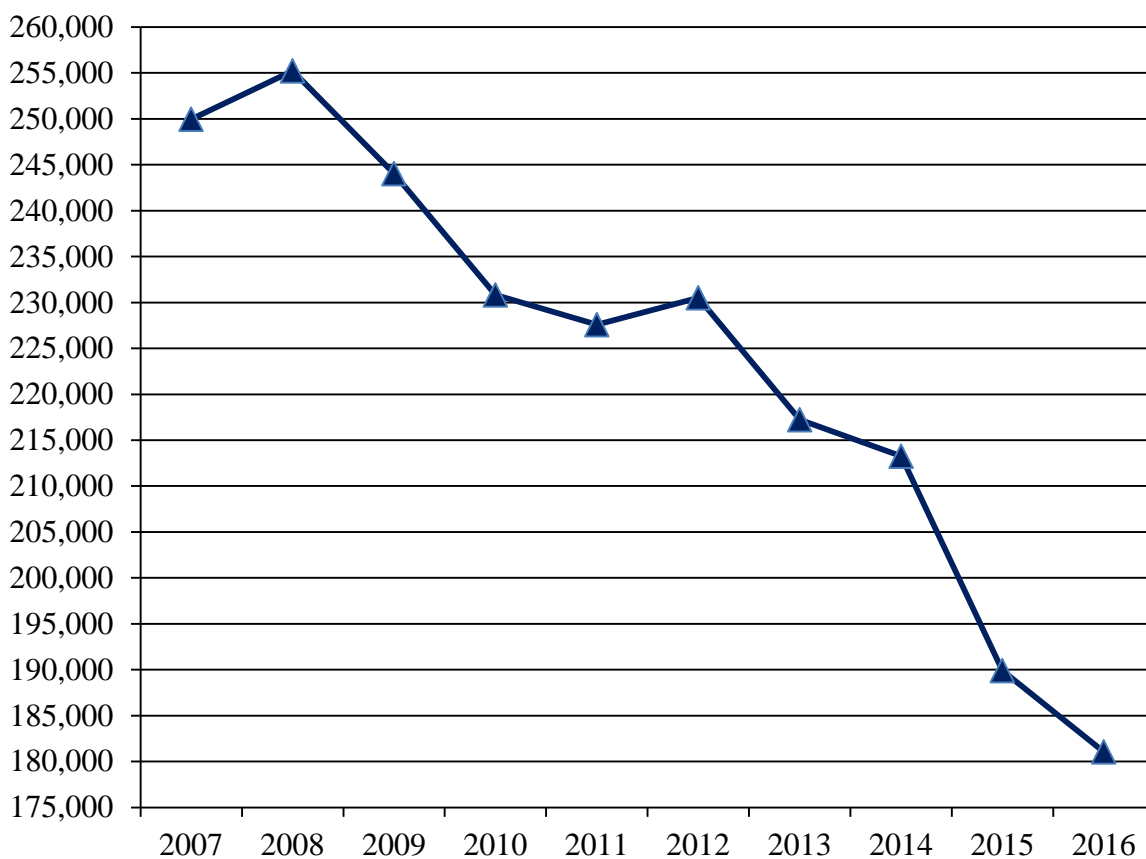
During 2015 and 2016, 19% of all reported arrests were for Crime Index offenses. The majority of arrests were for larceny-theft, which accounted for 54% of the total. Almost half of all Part II offenses were made up of arrests in the categories of drug abuse, driving under the influence of alcohol, violations of liquor laws, and assaults.



## Aggregate Arrest Trends

Generally speaking, the number of adults arrested annually has declined significantly for the past decade, falling by more than 27% during the ten-year period. The overall number of adult arrests in 2016 (181,060) was 8,858 fewer than in 2015 (189,918), and 32,211 fewer than in 2014 (see Exhibit 2.11).

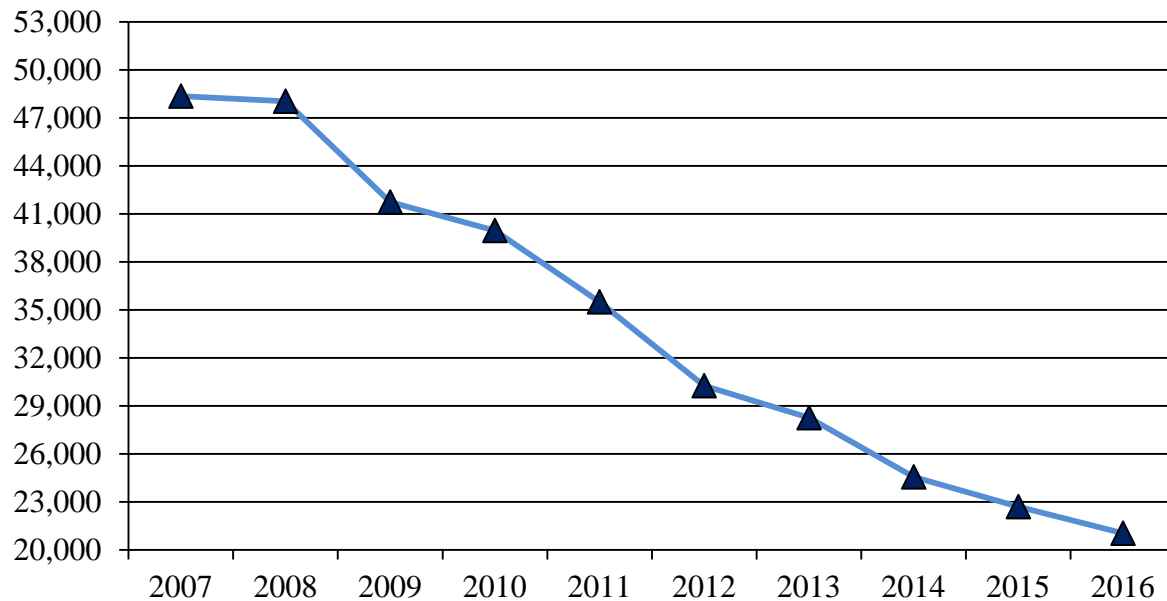
**Exhibit 2.11**  
**Adult Arrest Trends**  
**Calendar 2007-2016**



Source: 2016 Uniform Crime Report, Maryland State Police

Juvenile arrests have also trended sharply downward since 2007, falling by over 56% compared to a decade ago, and decreasing at a more rapid rate than adult arrests. Most recently, juvenile arrests in 2016 totaled 21,048 (see Exhibit 2.12).

**Exhibit 2.12**  
**Juvenile Arrest Trends**  
**Calendar 2007-2016**



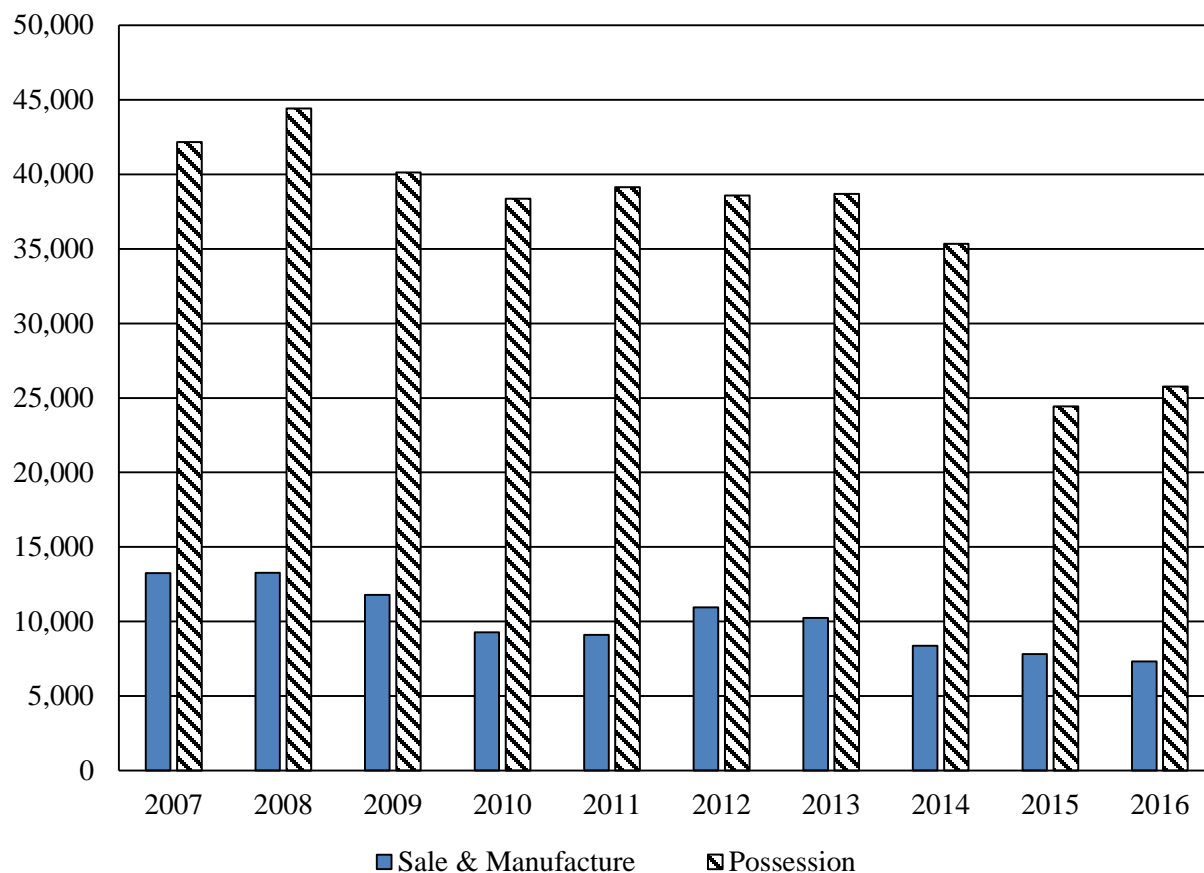
Source: 2016 Uniform Crime Report, Maryland State Police

## Drug Arrests

Although the *Uniform Crime Report* does not provide information concerning drug offenses, it does provide information concerning arrests. Similar to the aggregate arrest trends, drug arrests have declined over the past decade, with a notable drop-off beginning in 2014. This decrease is largely attributable to changes in Maryland statute decriminalizing the use or possession of less than 10 grams of marijuana. Chapter 158 of 2014 reclassified this as a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. If a person commits a third or subsequent violation, or is younger than age 21, the court must summon the person for trial on issuance of a citation. Additionally, the court must order the individual to attend a drug education program and refer the person to an assessment for a substance abuse disorder.

Arrests for the sale and manufacture of drugs have decreased from 10,953 in 2012 to 7,320 in 2016, an overall reduction of 33.2% during the five-year period. Arrests for possession decreased from 38,582 in 2012 to 25,773 in 2016, a reduction of 33.2% for the five-year period (see Exhibit 2.13).

**Exhibit 2.13**  
**Drug Arrest Trends**  
**Calendar 2007-2016**



Source: 2016 Uniform Crime Report, Maryland State Police

## Information Management and Technology

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

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

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

### **Maryland Criminal Justice Dashboard**

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

Electronic records are displayed on the dashboard from a contributing agency’s records systems based upon the technical capabilities of the agency. The division provides the support and guidance as necessary to extract the information that will minimize the impact to each participating agency without compromising security or production concerns. The information displayed is read-only, and cannot be altered, deleted, or changed. In 2017, over 8.6 million queries were made of the Criminal Justice Dashboard statewide.

### **Data Collection and Sharing**

Information technology initiatives have facilitated the sharing of criminal justice information across law enforcement agencies. Mobile computers enable patrol officers and investigators to obtain real time access to criminal justice and homeland security information. Citations are issued electronically by the Department of State Police and in

many local jurisdictions by local law enforcement agencies, thereby reducing the amount of time required to prepare and retrieve traffic stop reports. Since January 1, 2015, the Automated Crash Reporting System, maintained by the Department of State Police and developed in partnership with the Maryland Department of Transportation, has been the *de facto* standard for traffic incident reporting.

## **Crime Mapping and Analysis**

Crime mapping and analysis makes it possible to see the spatial distribution of crime and associated offender populations in order to identify areas of concentration for limited public safety resources. Since 2007, primarily through the provision of grant funding from the Governor's Office of Crime Control and Prevention, the University of Maryland and Washington College have developed crime mapping and analysis programs to assist Maryland law enforcement agencies with crime activity and analysis, criminal apprehension, crime and disorder reduction, and crime prevention.

In 2017, the Maryland Crime Mapping and Analysis Program team produced over 1,500 mapping and analysis products requested by local law enforcement agencies and several state organizations. An example of the program's work product includes maps and analysis of the supervised offender population in proximity to homicides and nonfatal shootings to better promote coordination between the Division of Parole and Probation and local law enforcement agencies. Additional analyses are being used to increase community outreach, identify drug treatment facilities, manage offender caseloads, coordinate support for victims of domestic violence, and target impaired drivers.

## Chapter 3. Motor Vehicle Offenses and the Court System

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Sanctions for motor vehicle law offenses may consist of criminal fines and incarceration or civil penalties, as well as administrative revocation or suspension of driving privileges. This chapter discusses the judicial and administrative processes that apply these sanctions to a wide range of motor vehicle offenses.

### Interaction of Judicial and Administrative Processes

#### Judicial Process

Generally, a violation of the Maryland Vehicle Law (as the collection of vehicle-related statutes contained in the *Volume II – Transportation Article* and *Volume III – Transportation Article* are known) is a misdemeanor, unless the offense is specifically classified to be a felony or is punishable only by a civil penalty. (Additionally, a motor vehicle offense under the Criminal Law Article that involves a homicide or life-threatening injury may be classified as a felony or a misdemeanor, depending on the severity of the offense.) Most violations of the Maryland Vehicle Law are punishable only by a fine, but certain offenses are punishable by a term of imprisonment as well as a fine.

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

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

In general, if an offense is not punishable by incarceration, the person charged may respond to the citation by paying a preset fine in an amount that the police officer indicates in the citation. The amounts of the preset fines for nonjailable offenses are set by the Chief Judge of the District Court and include court costs. Payment of the preset fine amount allows a person to admit guilt without appearing for trial. However, there are some offenses that are not punishable by incarceration for which the defendant may not pay a fine but must instead appear for trial.

Each citation that is issued for a nonjailable offense contains a notice that the person charged may respond to the citation by requesting a trial or by requesting a hearing regarding disposition and sentencing for the offense instead of a trial. A request for such a hearing, commonly referred to as a “guilty with an explanation” hearing, may be requested if the person does not dispute the facts as alleged in the citation and does not intend to compel the appearance of the police officer who issued the citation.

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

A police officer may make a warrantless arrest if a person commits certain serious violations, such as hazardous material or vehicle weight offenses, in the presence of the officer, or if the officer has probable cause to believe that a person has committed certain other serious offenses, such as drunk or drugged driving or an offense that causes or contributes to an accident resulting in bodily injury or death. A police officer may also make a warrantless arrest for any offense if the person does not have satisfactory evidence of identity or the officer reasonably believes the person will disregard a citation.

The hearing or trial generally will be held in the District Court. (However, motor vehicle offenses under the Criminal Law Article involving a homicide or life-threatening injury may be tried in the circuit courts or the District Court.) If a person fails to comply with a notice to appear, the court may either issue an arrest warrant for the person or notify the Motor Vehicle Administration of the person’s noncompliance. If the person fails to appear, pay the fine, or post bond for a new trial or hearing date after notification from the administration, the administration may suspend the person’s driving privileges.

Exhibit 3.1 shows the number of motor vehicle offense citations filed in the District Court for fiscal 2012 through 2017, as well as the number of cases that were tried, the number of nontrial dispositions (*i.e.*, *nolle prosequi* dispositions, stet dispositions, or transfers to circuit courts as the result of jury trial requests by defendants), and the number of preset fines paid. (Please note that the exhibit does not reflect the number of drivers charged because multiple citations may be issued to the same driver in certain situations.) During this time period, the percentage of citations for which preset fines were paid in lieu of a court appearance decreased from 46.0% in fiscal 2012 to 36.2% in fiscal 2017.

**Exhibit 3.1**  
**Disposition of Motor Vehicle Citations – District Court**  
**Fiscal 2012-2017**

	<b><u>Citations Filed</u></b>	<b><u>Cases Tried</u></b>	<b><u>Nontrial Dispositions</u></b>	<b><u>Preset Fines Paid</u></b>
2012	1,167,620	251,724	344,011	536,637
2013	1,189,059	244,191	398,746	502,939
2014	1,223,403	247,466	438,205	502,179
2015	1,213,634	246,212	457,571	489,873
2016	1,146,598	240,901	483,388	435,518
2017	1,075,725	214,689	438,117	389,123

Source: District Court of Maryland

The Maryland District Court and the Judicial Information Systems of the Administrative Office of the Courts have developed a computerized system, known as the Maryland Automated Traffic System, for processing the more than one million motor vehicle citations that are issued annually. Information concerning convictions for motor vehicle citations, whether occurring as a result of a trial or the defendant's election to waive trial and pay the preset fine, is forwarded directly from the Judicial Information Systems computer to the computer at the Motor Vehicle Administration. This system facilitates the inclusion of conviction data in driver records and other administrative actions.

### **Administrative Process**

In addition to the judicial process applicable to a traffic offense, there is also an administrative process that may be initiated through the Motor Vehicle Administration that could affect the driving privileges or vehicle of the offender.

The administration has the authority to suspend, revoke, or refuse to issue or renew the license of any person under certain circumstances, such as for multiple moving violations that indicate an intent to disregard the traffic laws and safety of others; for unfit, unsafe, or habitually reckless or negligent driving; and for other specific offenses, including alcohol- or drug-related driving offenses. For certain alcohol- or drug-related driving violations, the administration is required to suspend the driver's license.

In addition, a point system is in place that may result in suspension or revocation of drivers' licenses. For most minor moving violations, 1 point is assessed against the driver's



license. For more serious moving violations, a greater number of points are assessed. For example, speeding in excess of the posted speed limit by 10 miles per hour or more is a 2-point offense, while speeding by 30 miles per hour or more is a 5-point offense. Driving while impaired by alcohol is an 8-point offense, while driving under the influence of alcohol or while impaired by a controlled dangerous substance are 12-point offenses. Points assessed against a person's license remain on the record for two years from the date of the violation.

The accumulation of a certain number of points within a two-year period results in various administrative actions. For example, a warning letter is sent from the administration to each person who accumulates 3 to 4 points within a two-year period, and the Driver Improvement Program (a driving review course) is required for a person who accumulates 5 to 7 points. The administration must issue a notice of license suspension to any person who accumulates 8 to 11 points and must issue a notice of license revocation to any person who accumulates 12 or more points. An individual may request a hearing before the Office of Administrative Hearings concerning a proposed suspension or revocation. An administrative law judge generally has the discretion not to order the suspension or revocation or to issue a restricted license. A restricted license issued under these circumstances generally limits an individual's driving to specified locations, such as work, school, or those involving health care or alcohol or drug treatment.

### **Automated Traffic Enforcement**

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

The State and local governments have the authority to install automated traffic enforcement systems (red light cameras) that record drivers who continue into an intersection governed by a steady red traffic signal. Most counties with large populations have installed red light cameras, including Anne Arundel, Baltimore, Howard, Montgomery, and Prince George's counties and Baltimore City. Except for the monitoring cameras located at toll facilities, the State has not installed red light cameras. The maximum civil penalty for a red light violation recorded by a red light camera is \$100.

In 2006, Montgomery County received authorization from the General Assembly to enforce speeding laws through the use of automated systems (speed monitoring systems) in residential districts with a maximum posted speed limit of 35 miles per hour and in school zones. In 2009, the use of speed monitoring systems was expanded statewide and authorization for those systems previously established in Montgomery County was

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

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

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

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

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

Legislation intended to reform the speed camera system was enacted in 2014. The laws require local jurisdictions that operate speed monitoring systems to ensure that citations are sworn to by duly authorized law enforcement officers, designate an employee or official to review citations and address questions or concerns, and designate a program administrator to oversee and administer the speed monitoring system program. The laws also (1) prohibit payments on a per-ticket basis to a contractor that administers or operates certain elements of the program and (2) require contracts to provide for the payment of liquidated damages by contractors if more than 5% of violations issued are erroneous.

A local law enforcement agency, in consultation with a county board of education, may place school bus monitoring cameras on county school buses if authorized by the governing body of the local jurisdiction. Local law enforcement agencies may issue warnings or citations to vehicle owners or drivers for failing to stop for a school vehicle that has stopped with its alternately flashing red lights. In 2017, the General Assembly passed legislation raising the maximum civil penalty for a violation from \$250 to \$500. However, the legislation is subject to abrogation on June 30, 2019. After June 30, 2019, the maximum civil penalty for a violation reverts to \$250. A driver who receives a citation based on a recording by an automated system has the right to a hearing in the District Court to contest the citation.

Traffic violations recorded by automated systems are different from traditional violations observed and cited by police officers in important ways. In contrast to traditional violations, a violation recorded through an automated system is not considered a moving violation, does not result in the assessment of points against the driver's record, may not be disclosed to the driver's insurance company, and is a civil, not criminal, offense. However, if a civil penalty owed by a driver is not paid, the administration may refuse to register or re-register the vehicle or may suspend the registration of the vehicle.

### **Distracted Driving**

According to the Motor Vehicle Administration, there were a total of 56,309 motor vehicle crashes in 2017 that involved a distracted driver. Of this number, 207 crashes resulted in at least one fatality and 18,643 crashes resulted in injury. While there are many forms of distracted driving, the sending of text messages while driving has been singled out as a particularly dangerous form because it involves three categories of distraction – visual, manual, and cognitive.

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

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

## Drunk and Drugged Driving

### In General

The Maryland Vehicle Law prohibits a person from driving or attempting to drive any vehicle while under the influence of alcohol; while under the influence of alcohol *per se*; or while impaired by alcohol, drugs, or controlled dangerous substances. The specific offense and the severity of the sanction are often determined through breath or blood testing, which measures the amount of alcohol or determines the presence and type of drugs.

An individual is deemed to be under the influence of alcohol *per se* if an alcohol test result indicates blood alcohol concentration of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Since driving with a 0.08 blood alcohol concentration as measured by a test is a *per se* offense, the focus of a prosecution is limited to whether or not a person had an alcohol concentration of 0.08 at the time of testing rather than whether or not the actions of the person demonstrated that the person was under the influence of alcohol.

If an alcohol test for an individual indicates a blood alcohol concentration of at least 0.07, but less than 0.08, the test is *prima facie* evidence that the individual was driving while impaired by alcohol. If an individual has a blood alcohol concentration above 0.05, but less than 0.07, there is no presumption, but the blood alcohol concentration may be considered with other competent evidence in determining if one of the offenses has occurred. If an individual has a blood alcohol concentration of 0.05 or less, there is a presumption that the individual was neither under the influence of nor impaired by alcohol. However, a blood alcohol concentration of 0.02 or more is *prima facie* evidence that the person was driving with alcohol in the person's blood. This rule is used mainly to prove a violation of an alcohol restriction on a driver's license (such as, for drivers younger than age 21, all of whom are prohibited from consuming any alcohol).

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

Additionally, an individual is prohibited from driving or attempting to drive any vehicle while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the individual cannot drive a vehicle safely. Finally,

an individual is also prohibited from driving or attempting to drive any vehicle while impaired by any controlled dangerous substance.

Exhibit 3.2 shows for the State the number of total highway deaths and the number and percentage of highway deaths in which driver involvement with alcohol or drugs was a contributing factor from calendar 2012 through 2017.

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**Exhibit 3.2**  
**Maryland Highway Fatalities and**  
**Driver Alcohol or Drug Involvement**  
**Calendar 2012-2017**

	<b><u>Traffic</u></b> <b><u>Fatalities</u></b>	<b><u>Fatalities in Which</u></b> <b><u>Alcohol/Drugs Was a</u></b> <b><u>Contributing Factor</u></b>	<b><u>% in Which</u></b> <b><u>Alcohol/Drugs Was</u></b> <b><u>a Contributing Factor</u></b>
2012	511	171	33.5%
2013	466	150	32.2%
2014	443	132	29.8%
2015	521	180	34.5%
2016	522	148	28.4%
2017	557	188	33.8%

Source: Motor Vehicle Administration

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### **Young Drivers and Impaired Driving**

Young drivers from ages 15 through 20 are authorized to operate motor vehicles in Maryland, by virtue of a driver's license, a provisional license, or a learner's permit. According to the Motor Vehicle Administration, as of June 2018, out of 4,407,973 licensed drivers, 190,238 drivers, or about 4.3% of the Maryland driving population, were younger than the age of 21.

Statistics reveal the relatively high propensity for drivers younger than age 21 to be involved in traffic accidents, including those where alcohol and/or drugs are contributing factors. According to national statistics maintained by the National Highway Traffic Safety Administration, for calendar 2016, 4,514 drivers between the ages of 15 and 20 were

involved in fatal crashes. Of those drivers, 15% had blood alcohol concentrations of at least 0.08.

To reduce or prevent incidences of alcohol driving violations, young drivers are subject to mandatory license suspensions and revocations that may not apply to drivers age 21 or older. For a drunk or drugged driving offense, the Motor Vehicle Administration is required to suspend the license of a young driver for one year. For a second or subsequent offense, the license suspension must be for two years.

Exhibit 3.3 shows the number of traffic accidents in Maryland from calendar 2012 to 2016 involving drivers from ages 16 to 20 where alcohol and/or drugs were contributing factors. The exhibit shows that for the most recent five-year period, an average of 8 drivers from ages 16 through 20 that were impaired by alcohol and/or drugs were killed and 264 were injured in traffic accidents.

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**Exhibit 3.3**  
**Maryland Drivers Age 16 to 20 with Alcohol and/or Drug Impairment**  
**Crash Summary**  
**Calendar 2012-2016**

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>5-yr.</u> <u>Avg.</u>	<u>5-yr. %</u> <u>16-20</u> <u>Impaired</u> <u>Crashes</u>
Fatal Crashes	12	5	3	11	7	8	1.7
Injury Crashes	224	178	132	133	170	167	37.2
Property Damage Only	353	277	245	203	296	275	61.1
Total Crashes	589	460	380	347	473	450	100.0
Total Fatalities	15	5	3	14	9	9	
Total Number Injured	362	253	207	227	273	264	

Source: Motor Vehicle Administration

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## Criminal Penalties

A first offense of driving while under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a controlled dangerous substance is punishable by up to a \$1,000 fine and/or imprisonment for up to a year. Subsequent offenses may subject the offender to a fine of up to \$3,000 and/or imprisonment for up to three years.

If a subsequent offense is committed within five years of the first offense, the offender is subject to a mandatory minimum penalty of five days imprisonment, while a third or subsequent offense within five years is subject to a mandatory minimum penalty of 10 days imprisonment. Subsequent offenders are also required to undergo a comprehensive alcohol or drug abuse assessment and, if recommended, participate in an alcohol or drug treatment program.

A person who is convicted of driving while under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a controlled dangerous substance while transporting a minor is subject to more stringent penalties. A first offense is punishable by a maximum fine of \$2,000 and/or imprisonment for two years. A second offense is punishable by a maximum fine of \$3,000 and/or imprisonment for three years. A third or subsequent offense is punishable by a maximum fine of \$4,000 and/or imprisonment for four years.

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

A person who is convicted of either of the above offenses while transporting a minor is subject to a maximum penalty of 6 months imprisonment and/or a \$1,000 fine for a first offense, 1 year imprisonment and/or a \$2,000 fine for a second offense, and 4 years imprisonment and/or a \$4,000 fine for a third or subsequent offense.

An additional criminal penalty may be imposed on a driver convicted of an alcohol- and/or drug-related driving offense if the trier of fact finds, beyond a reasonable doubt, that the driver knowingly refused to take a breath or blood test that was requested at the time of the violation. In addition to any penalties that may be imposed for the drunk or drugged driving violation, the driver may be subject to a maximum \$500 fine and/or two months imprisonment for the test refusal.

Other criminal charges may apply to drunk and drugged driving resulting in a death or life-threatening injury. Manslaughter by vehicle or vessel – gross negligence is causing the death of another as the result of the driving, operation, or control of a vehicle in a grossly negligent manner. This is a felony punishable by a maximum of 10 years imprisonment and/or a \$5,000 fine. A person who is guilty of this offense, after having been previously convicted of this offense or another specified alcohol- and/or drug-related, manslaughter, homicide, or life-threatening injury offense, is subject to a maximum penalty of 15 years imprisonment and/or a \$10,000 fine. Manslaughter by vehicle or vessel – criminal negligence is causing the death of another by operating, driving, or controlling a vehicle in a manner when the driver should be aware, but fails to perceive, that his or her conduct creates a substantial and unjustifiable risk that death will occur; and that failure to perceive is a gross deviation from the standard of care that would be exercised by a reasonable person. This offense is a misdemeanor punishable by a maximum of 3 years imprisonment and/or a \$5,000 fine. However, a person with a prior conviction for this offense or another specified alcohol- and/or drug-related, manslaughter, homicide, or life-threatening injury offense, is guilty of a felony and subject to a maximum of 5 years imprisonment and/or a \$10,000 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, under the influence of alcohol *per se*, or while impaired by a controlled dangerous substance, the individual is guilty of a felony and subject to a maximum of 5 years imprisonment and/or a \$5,000 fine. A person who is convicted of any of these offenses, after having been previously convicted of another specified alcohol and/or drug-related, manslaughter, homicide, or life-threatening injury offense, is subject to a maximum penalty of 10 years imprisonment and/or a \$10,000 fine. Homicide by vehicle while impaired by alcohol or while impaired by drugs or a combination of drugs and alcohol, are also felonies and are punishable by a maximum of 3 years imprisonment and/or a \$5,000 fine. A person who is convicted of either of these offenses after having been previously convicted of another specified alcohol- and/or drug-related, manslaughter, homicide, or life-threatening injury offense, is subject to a maximum penalty of 5 years imprisonment and/or a \$10,000 fine.

If an individual causes a life-threatening injury to another as the result of the negligent driving, operation, or control of a motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*, the individual is guilty of a misdemeanor and subject to three years imprisonment and/or a \$5,000 fine. Similarly, if an individual causes a life-threatening injury to another as a result of the person's negligent driving, operation, or control of a motor vehicle or vessel while the person is impaired by a controlled dangerous substance, the individual is guilty of a misdemeanor and subject to three years imprisonment and/or a \$5,000 fine. Causing a life-threatening injury by motor vehicle while impaired by alcohol or while impaired by drugs or a combination of drugs



and alcohol, are also misdemeanors and are punishable by a maximum of two years imprisonment and a \$3,000 fine. A person who is convicted of any of the above offenses after having been previously convicted of another specified alcohol- and/or drug-related, manslaughter, homicide, or life-threatening injury offense, is guilty of a misdemeanor and is subject to a maximum penalty of five years imprisonment and/or a \$10,000 fine.

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

### **Administrative *Per Se* Sanctions**

Independent from the outcome of a criminal proceeding, if a licensed driver takes a breath or blood test that indicates an alcohol concentration of 0.08 or more, the Motor Vehicle Administration is required to suspend the person's driver's license for 180 days for an administrative *per se* offense. If a person refuses to take a test for alcohol or drugs, the administration must suspend the driver's license for 270 days for a first administrative *per se* offense and two years for subsequent offenses. These longer suspension periods provide a disincentive to refuse to take a test. These sanctions are usually imposed prior to the criminal trial and apply even if the defendant is not convicted of the criminal offense.

If a driver takes a blood or breath test that indicates a blood alcohol concentration of 0.15 or greater, the administration is required to suspend the license of the driver for 180 days for a first offense and 270 days for a second or subsequent offense. The administration is prohibited from modifying an administrative suspension and issuing a restrictive license to a driver who had a test result of 0.15 or more or refuses a test unless the driver participates in the Ignition Interlock System Program for one year.

Also, a driver who takes a test with a result of at least 0.08 but less than 0.15 blood alcohol concentration may participate in the Ignition Interlock System Program for 180 days instead of requesting a hearing on the administrative penalties. Similarly, a driver who either refuses to take a test or who takes a test with a result of 0.15 blood alcohol concentration or greater may participate in the Ignition Interlock System Program for one year instead of requesting a hearing on the administrative penalties. In either case, a driver may only participate in the program if the following conditions are met:

- the driver's license is not currently suspended, refused, canceled, or revoked; and

- within the time limits for requesting an administrative hearing, the driver surrenders a valid Maryland driver's license or certifies that he/she does not possess a license and elects in writing to participate in the Ignition Interlock System Program for one year.

### **Postconviction Administrative Sanctions**

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

Subsequent offenders are also subject to license revocations by the administration. Participation in the administration's Ignition Interlock System Program may be required by the administration as a condition of issuance of a restrictive license.

In 2016, the General Assembly passed the Drunk Driving Reduction Act of 2016 (also known as Noah's Law). The Act required a driver to participate in the Ignition Interlock System Program in any of the following situations:

- the driver is convicted for the first time of driving or attempting to drive while under the influence of alcohol or under the influence of alcohol *per se*;
- the driver is required to participate by court order due to a conviction for driving while impaired by alcohol or while impaired by a drug, any combination of drugs, or a combination of one or more drugs and alcohol, and the trier of fact finds beyond a reasonable doubt that the driver refused a requested test;
- the driver has had his or her license revoked due to a conviction of homicide by motor vehicle or vessel while under the influence of alcohol, under the influence of alcohol *per se*, impaired by alcohol, or impaired by a combination of one or more drugs and alcohol; or

- the driver has had his or her license revoked due to a conviction for causing a life-threatening injury by motor vehicle or vessel while under the influence of alcohol, under the influence of alcohol *per se*, impaired by alcohol, or impaired by a drug or a combination of one or more drugs and alcohol.

## **Sanction and Treatment Programs**

The State, along with many counties, has established alternative sanction programs that include drug and alcohol assessment and treatment, weekend confinement as a condition of probation, and probation with home detention and electronic monitoring and ignition interlock restrictions for drinking drivers. These programs give judges more sentencing options for repeat or serious offenders. Two programs that treat drinking drivers are the Ignition Interlock System Program and the Drinking Driver Monitor Program.

### **Ignition Interlock System Program**

An ignition interlock system is a device that connects a motor vehicle ignition system to a breath analyzer to measure a driver's blood alcohol level and prevent the ignition from starting if the level exceeds the device's calibrated setting. The device also periodically requires retesting of a driver after the motor vehicle is started. The law prohibits tampering with or attempting to circumvent the use of an ignition interlock system, for example, by having another person attempt to start the ignition. A court may order a person to participate in the Ignition Interlock System Program after conviction for a drunk driving offense (as discussed above, participation is required after convictions in certain circumstances). According to the Motor Vehicle Administration, there were a total of 16,289 participants in the program during fiscal 2017. The Administration may also require participation in conjunction with the issuance of a restrictive license. Additionally, any of the following drivers face an indefinite mandatory license suspension if he or she fails to participate:

- a driver convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*;
- a driver convicted of driving while impaired by alcohol and transporting a minor younger than age 16;
- a driver whose license is suspended or revoked for a conviction of driving while under the influence of alcohol or under the influence of alcohol *per se* or for accumulating 12 points on the driver's license subject to a conviction for this offense;

- a driver whose license is revoked for homicide by motor vehicle under the influence of a alcohol or under the influence of alcohol *per se*, while impaired by alcohol, or while impaired by a combination of one or more drugs or drugs and alcohol;
- a driver whose license is revoked for life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*, while impaired by alcohol, or while impaired by one or more drugs or one or more drugs and alcohol; or
- a driver who is ordered to participate by a court due to a conviction for driving while impaired by alcohol or driving while impaired by a drug, a combination of drugs or a combination of drugs and alcohol and the trier of fact finds beyond a reasonable doubt that the driver refused a test.

As a result of other enactments, any of the following drivers face a one-year mandatory license suspension if he or she fails to successfully complete participation in the program:

- a driver ordered by a criminal court to participate;
- a subsequent offender who is convicted of driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol and within the preceding five years was convicted of a drunk or drugged driving offense; or
- a driver younger than the age of 21 years who violated the alcohol restriction on the driver's license or committed an alcohol-related driving offense.

The length of required participation ranges from six months to three years based on the number of times the driver was required to participate.

Any driver who is not in one of the above categories also may be a participant, but generally the sanction for nonparticipation is less and the length of participation is less. For example, a driver whose license is suspended or revoked for a violation of driving while impaired by alcohol or impaired by drugs and alcohol, or for an accumulation of points for these offenses, must participate for the following periods:

- up to 6 months for a first conviction;
- up to 9 months for a second conviction at least five years after the first conviction;

- up to 12 months for a second conviction less than five years after first conviction or a third conviction; or
- at least 24 months for a fourth or subsequent conviction.

### **Drinking Driver Monitor Program**

The Drinking Driver Monitor Program is a specialized program within the Department of Public Safety and Correctional Services for persons convicted of drunk or drugged driving offenses. The program emphasizes abstinence from alcohol and other drugs, alcohol education and treatment, and rehabilitation. Offenders may be referred to the program through special conditions established by court-ordered probation, including abstinence, or through assignment by the Motor Vehicle Administration as a condition for reinstating a driver's license after it has been suspended or revoked.

Offenders assigned to the program must report within 72 hours of sentencing. At that time, offenders are notified of the conditions of probation and assigned to a weekly reporting location and a monitor. The monitor (1) verifies lawful conduct of the offender through periodic criminal and motor vehicle record checks; (2) collects fines, costs, and court-ordered restitution; and (3) monitors compliance with the Ignition Interlock System Program if it has been ordered by the Medical Advisory Board of the Motor Vehicle Administration or a court.

If an offender does not report, violates the conditions of probation, or displays unlawful conduct, the monitor will notify the court or administration within 10 days. The monitor will provide testimony and possible recommendations at court hearings on violation of probation charges. According to the Department of Public Safety and Correctional Services, 9,050 people were assigned to the program in fiscal 2017, and 8,198 people successfully completed the program during the same period. As of June 2018, there were 73 monitors and 10,251 people in the program.

## Chapter 4. Commencement of the Criminal Justice Process

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The criminal justice process generally begins when a person is alleged to have committed 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 discusses these procedures.

### Arrest

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

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

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

Although rarely done, an individual who is not a law enforcement officer also has authority under the common law to make a "citizen's arrest" without a warrant if the individual witnesses a felony or a misdemeanor giving rise to a breach of the peace.

### Charging Documents

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

A charging document must contain (1) the identity of the accused; (2) a concise and definite statement of the essential facts establishing the offense; (3) the time and location

of the offense; and (4) the rights of the accused, including the right to counsel. The charging document must also cite the applicable statute or other legal authority for each offense charged.

This section discusses the four types of charging documents. Exhibit 4.1 also summarizes which official or entity files each type of charging document and the court in which each type of charging document is filed.

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**Exhibit 4.1**  
**Summary of Charging Documents**

<b><u>Charging Document</u></b>	<b><u>Filed By</u></b>	<b><u>Where Filed</u></b>
Citation	Law Enforcement Officer	District Court
Statement of Charges	Judge or Court Commissioner	District Court
Information	State's Attorney	District Court or Circuit Court
Grand Jury Indictment	Circuit Court	Circuit Court

Source: Department of Legislative Services

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## **Citation**

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

Citations that are issued for minor offenses, including motor vehicle and some marijuana possession offenses, generally allow a defendant to pay a fine, which constitutes a guilty plea and disposition, in lieu of appearing in court to contest the charge. Instead of admitting guilt and paying a fine, the defendant may request a hearing, with a date and time to be established by the District Court. In any event, the defendant is required to respond to the citation. If the defendant is charged by citation for a motor vehicle offense and does

not respond, the defendant's driver's license is subject to suspension. (See Chapter 3 of this handbook for a discussion of motor vehicle offenses.) If the defendant is charged by citation for another type of offense and does not respond, the defendant is subject to additional fines. A defendant may also be subject to arrest for failure to appear.

### **Statement of Charges**

A judicial officer may file a statement of charges with the District Court based on an application by a law enforcement officer or any other individual. The application contains an affidavit required to demonstrate probable cause that the defendant committed the crime charged. The judicial officer has the authority to determine whether the application establishes probable cause.

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

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

### **Information**

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

- a misdemeanor within the jurisdiction of the circuit court;
- a felony that is within the concurrent jurisdiction of the circuit court and the District Court; and
- any other felony (including any lesser-included offense) if the defendant (1) requested or consented in writing to be charged by information; (2) requested a preliminary hearing for a felony within the sole jurisdiction of the circuit court and the hearing resulted in a finding of probable cause; or (3) waived the right to a preliminary hearing.



## **Grand Jury Indictment**

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

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

A grand jury consists of 23 members and additional alternates, as may be required under the Maryland Rules. An affirmative vote of 12 is required to indict. The frequency of meeting and the term length varies by jurisdiction. Grand jurors usually serve a predetermined amount of time. In Baltimore County, for example, grand juries usually meet two days a week for four months. The time of service may be extended to allow the grand jury to complete an investigation.

The selection process to form a pool of grand jurors is similar to the selection of petit jurors to form a pool for a jury trial. A designated jury commissioner or the clerk of court selects the pool of jurors at random according to written procedures (*e.g.*, using voter registration or driver's license records). Members of the grand jury are interviewed, and circuit court jury commissioners select the foreperson.

Like petit jurors, grand jurors (1) may not be fired by their employers because of missing work time due to service on the jury; (2) may not be discriminated against due to race, color, religion, sex, national origin, or economic status; (3) are compensated for service as provided in State law (the compensation is generally \$15 to \$50 each day, depending on the jurisdiction and the length of service); and (4) may be excused or resummoned.

## **Summons or Arrest Warrant**

Once a charging document is filed, the court must issue a summons or arrest warrant. A criminal summons is a notification that an action has been filed against the defendant, and the defendant's failure to appear in court at the time and place stated in the summons may result in a bench warrant and arrest. A copy of the charging document accompanies the summons or warrant. It may be served on the defendant by mail or in person. A

summons will be issued unless (1) an arrest warrant has been issued; (2) the defendant is in custody; or (3) the charging document is a citation.

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



## **Chapter 5. Pretrial Procedure**

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

### **Police Procedures**

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

### **Initial Appearance**

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

If the defendant was arrested without a warrant, the commissioner must determine whether there was probable cause for the arrest. If it is determined that there was no probable cause for all charges, the defendant is released on personal recognizance with no other conditions of release. If it is determined that there was probable cause for at least one of the charges, the commissioner must also determine whether the defendant is eligible for release from custody prior to trial and, if so, under what conditions. At the initial appearance, the commissioner has access to the Maryland Criminal Justice Dashboard (which includes several criminal justice databases) to review the defendant’s criminal history and to determine whether there are any pending charges, any prior occasions when the defendant failed to appear in court, or any outstanding warrants. The databases include the Criminal Justice Information System, the National Crime Information Center, the

Maryland Interagency Law Enforcement System, the Unified Court System, Motor Vehicle Administration records, the Court Case Management System, and the National Law Enforcement Telecommunications System. The commissioner also relies on information provided in the statement of probable cause or charging document, the defendant's RAP sheet, and information learned from the defendant.

A defendant who is denied pretrial release by a District Court commissioner or who for any reason remains in custody after a District Court commissioner has determined conditions of release under the Maryland Rules must be presented to a District Court judge for a judicial bail review hearing. The hearing must occur immediately if the court is in session, or if the court is not in session, at the next session of the court. The primary purpose of the judicial bail review hearing is to determine whether the conditions of release set by the commissioner should be continued, amended, or revoked.

## Right to Counsel

Criminal defendants are advised of their right to legal representation on arrest and at their initial appearance. If a defendant appears at an initial appearance without an attorney, a judicial officer (a judge or a District Court commissioner) must advise the defendant of the defendant's right to representation at the initial appearance and the importance of having an attorney. A judicial officer must also advise that an indigent defendant is entitled to *pro bono* representation, provided by the Office of the Public Defender at an initial appearance before a judge or by a court-appointed attorney at an initial appearance before a commissioner.<sup>1</sup>

Written notice of the right to counsel is also included with the charging document, which is given to and discussed with the defendant at the initial appearance. The notice is read to those who are unable to read and is typically signed by the defendant to acknowledge its review and receipt. The notice explains how a lawyer can be helpful to the defendant and advises the defendant that the Office of the Public Defender provides legal representation to a defendant who is subject to incarceration on conviction and is unable to afford private counsel.

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<sup>1</sup> The Office of Public Defender is the State government entity charged with providing legal representation statewide to indigent individuals. Legal representation is primarily provided in criminal and juvenile delinquency matters, including initial appearances before judges and judicial bail review hearings. State-funded legal representation for indigent defendants at initial appearances before District Court commissioners commenced as a result of the decision by the Maryland Court of Appeals in *DeWolfe v. Richmond*, 434 Md. 444 (2013). This representation is provided through the District Court of Maryland Appointed Attorneys Program. The fiscal 2019 budget restricts \$8.5 million of the Judiciary's general fund appropriation to be expended only for the purpose of providing this legal representation.

The defendant is also advised not to wait until the day of trial to get a lawyer and that the right to counsel can be waived by a defendant's inaction. The defendant is advised that if he or she appears for trial without a lawyer, the court may determine that the defendant waived counsel and require the defendant to proceed to trial without representation.

If the defendant is served with a criminal summons or citation rather than arrested, the defendant may (1) be required to appear before a judicial officer for a preliminary inquiry or (2) have an initial appearance before a judge on the date of arraignment or trial.

If a defendant who has been charged by a citation or served with a summons and charging document for an offense punishable by incarceration has not been previously advised by a judicial officer of the defendant's rights, the defendant may be brought before a judicial officer for a preliminary inquiry if no attorney has entered an appearance on behalf of the defendant. At the preliminary inquiry, the judicial officer must inform the defendant of (1) each offense charged and the allowable penalties for those offenses; (2) the right to counsel; and (3) the right to a preliminary hearing, if applicable. The preliminary inquiry may be cancelled if an attorney has entered an appearance to represent the defendant.

If the defendant's initial appearance occurs before a judge at arraignment or the trial, the judge will advise the defendant of the nature of the charges and the right to counsel and confirm that the defendant received a copy of the charging document. If an appropriate judicial officer has not previously advised the defendant of the right to counsel before the trial date, the case will be postponed to give the defendant an opportunity to obtain counsel and prepare a defense.

A defendant in a criminal case that carries a penalty of incarceration and who cannot afford an attorney must see a District Court commissioner to apply for representation by the Office of the Public Defender. District Court commissioners determine whether these applicants are eligible for representation by the Office of the Public Defender during initial appearances or walk-in appointments.<sup>2</sup>

## **Charging by Citation**

A police officer must issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less, with the exception of

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<sup>2</sup> All other applicant-defendants must contact the Office of the Public Defender to apply for representation. The office determines eligibility for representation for these applicants.

certain offenses. A police officer may charge by citation for the sale of an alcoholic beverage to an underage drinker or intoxicated person, malicious destruction of property with damage valued at less than \$500, or specified misdemeanor theft offenses. An officer may charge a defendant by citation only if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer.

## **Pretrial Release/Detention**

### **In General**

A criminal defendant is generally entitled to be released pending trial.<sup>3</sup> A judicial officer must release a defendant unless the officer finds that there is no permissible nonfinancial condition that may be attached to a release that will reasonably ensure the defendant's appearance in court and the safety of each alleged victim, other specified persons, or the community. If, from all circumstances, the court believes that the defendant in a criminal case will appear as required, the defendant may be released on personal recognizance. Accordingly, most defendants are eligible for, and will be released on, personal recognizance. However, for any type of pretrial release, including personal recognizance, all defendants must agree to (1) not engage in any criminal conduct while on pretrial release and (2) appear in court when required to do so.

### **Ineligibility for Personal Recognizance**

Although Maryland law prioritizes release of criminal defendants before trial on personal recognizance, certain defendants are not eligible for this type of release as a matter of law. Defendants charged with a crime punishable by life imprisonment without parole are not eligible for release on personal recognizance. Furthermore, defendants who are charged with crimes of violence or other specified serious crimes are not eligible for release on personal recognizance if they have prior convictions for these crimes.

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<sup>3</sup> See §§ 5-101 and 5-202 of the Criminal Procedure Article for more information on exceptions to and restrictions on the general rule prioritizing the release of criminal defendants before trial.

## **District Court Commissioners**

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. However, a commissioner is statutorily prohibited from authorizing the release of defendants charged with certain serious crimes.

Those defendants charged as a drug kingpin, with escaping from a correctional facility, or with a crime of violence, among other offenses, may not be released pretrial by a District Court commissioner. A District Court commissioner also may not authorize the pretrial release of defendants charged with specified firearms crimes who have prior convictions for specified firearms crimes or a crime of violence. In addition, a District Court commissioner may not authorize the pretrial release of defendants charged with committing a crime of violence or other specified serious felonies and misdemeanors while released on bail or personal recognizance. Pretrial release of such defendants may be authorized only by a judge and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions.<sup>4</sup>

## **Pretrial Services Units**

Some jurisdictions have established pretrial services units that provide verified factual information that becomes available to assist the judge in setting conditions for release at a bail review hearing. The investigation by a pretrial services unit may 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 permit, a pretrial release plan can be designed by the pretrial services unit so that the defendant can be released under supervision of that unit, providing an option for the release of some offenders who are unable to make bail or who ordinarily would be confined until trial. Supervision may include residential placement, home detention, electronic monitoring, and testing or treatment for alcohol and drug use.

Under the Maryland Rules, when determining whether or not to release a defendant and the conditions of release, a judicial officer must consider the recommendations of a pretrial services unit that has administered a validated risk assessment to the defendant and is willing to provide an acceptable level of supervision over the defendant during the pretrial period if asked to do so.

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<sup>4</sup> See § 5-202 of the Criminal Procedure Article for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.



## **Factors in Pretrial Release Determinations**

A judicial officer must consider the specific facts and circumstances applicable to the defendant when determining whether or on what conditions to authorize release, including the ability of the defendant to meet a special condition of release with financial terms or comply with other special conditions. Additional factors that the judicial officer must consider under the Maryland Rules include the nature of the offense charged, the defendant's prior record, the defendant's employment and family resources, information presented by pretrial services and officer of the court investigations, propensity for willfully failing to appear, the safety of the alleged victim(s), and community safety.

## **Pretrial Release with Special Conditions**

A judicial officer may impose one or more special conditions of release if the officer finds that such conditions are necessary to ensure the defendant's appearance and protect the safety of victims, other specified persons, or the community. Special conditions of release that may be imposed on a defendant include no contact orders, prohibition of witness intimidation, reasonable travel restrictions, staying employed or in school, prohibition of firearms possession, counseling, periodic reporting, and refraining from drug use. If a judicial officer determines that a defendant should be released on other than personal recognizance or released by unsecured bond with special conditions, the judicial officer must impose the least onerous condition(s) of release to reasonably ensure the defendant's appearance in court and the safety of alleged victims, other specified individuals, and the community.

## **Release on Bail**

A judicial officer may also impose a financial condition of release, often referred to as "bail" or "bond," if there is a concern that the defendant will fail to appear in court. This condition is appropriate only to ensure the appearance of the defendant and may not be imposed solely to prevent future criminal conduct during the pretrial period or to protect the safety of any person or the community or to punish the defendant or placate public opinion.

Judicial officers may not use a predetermined charge-based schedule to set financial terms of release and may not impose bail or bond in a form or amount that results in the pretrial detention of the defendant solely because of the defendant's inability to meet the financial condition. However, the judicial officer may consider resources available to the defendant from all lawful sources when determining the defendant's ability to meet a financial condition of release. If the judicial officer requires collateral security, the officer must advise the defendant that any posted cash or property will be refunded at the

conclusion of the criminal proceedings if the defendant has not defaulted in the performance of the conditions of the bond.

A bail bond is the written obligation of the defendant, with or without a surety or collateral security, conditioned on the personal appearance of the defendant in court as required and providing for payment of a specified penalty (the amount of the bail) upon default. With a secured bond, a defendant may only be released from custody after posting the required bond. A defendant subject to an unsecured bond can be released without posting any money or collateral; however, the defendant is liable for the amount of the bond should he or she fail to appear in court as required.

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

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

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

## Detention Awaiting Trial

In Maryland, offenders who are arrested but not released on personal recognizance, on unsecured bond, or by posting bail, are held in the Baltimore Pretrial Complex or a county's local detention center. Generally, each county is responsible for operating and funding its detention center, although the State does provide assistance for both capital and operating expenses. However, the State operates and funds the Baltimore Pretrial Complex within the Department of Public Safety and Correctional Services.

## Preliminary Hearing

A defendant charged with any felony that is not within the jurisdiction of the District Court has a right to a preliminary hearing to determine whether there is probable cause to believe that the defendant committed the felony. Examples of these felonies include murder, rape, robbery, and serious controlled dangerous substances crimes. There is no right to a preliminary hearing in cases alleging felony theft or similar offenses (*e.g.*, bad checks, credit card misuse, forgery, and insurance fraud) that may be tried in either the District Court or a circuit court or in cases charging only misdemeanors. There also is no right to a preliminary hearing after a grand jury has returned an indictment because the grand jury has already made the determination that there is probable cause to believe the defendant committed the offense. If a defendant has a right to a preliminary hearing, a judicial officer must advise the defendant of this right at the time of the defendant's initial appearance.

To obtain a preliminary hearing, the defendant must request one within 10 days of the initial appearance. The hearing is scheduled within 30 days of the request. In some jurisdictions, a preliminary hearing may be scheduled as a matter of course for all eligible felonies, subject to the defendant's right to waive the hearing. If the defendant waives the right to a preliminary hearing, the State may thereafter file charges in the circuit court.

A District Court judge conducts the preliminary hearing. Only the prosecution may call witnesses, who are subject to cross-examination by the defense. Strict rules of evidence are not applied, and the only question to be decided is whether the State has established a *prima facie* case that there is probable cause to believe that the defendant committed the felony charged. If so, the State then has 30 days to (1) file a charging document in the circuit court; (2) enter a *nolle prosequi* or stet in the District Court; or (3) amend the charging document or file a new charging document charging the defendant with an offense within the District Court's jurisdiction. If the State's Attorney fails to take any of these actions, the District Court must dismiss the charge. If the judge determines that no probable cause has been shown, the felony charge must be dismissed. Under both of these circumstances, the dismissal is without prejudice; thus, the State may seek to charge the defendant again.

## **Discovery**

The State's Attorney is required to furnish or permit inspection of certain material and information about the case to the defendant, a process known as "discovery."

In District Court, discovery is only available for offenses that are punishable by imprisonment. In both the District Court and the circuit courts, the State's Attorney must provide to the defendant any material or information that tends to negate or mitigate the guilt or punishment of the defendant as to the offense charged known as "exculpatory evidence". Exculpatory evidence also includes all material or information in any form that tends to impeach a State's witness. In the circuit courts, and upon written request in the District Court, the State's Attorney must also provide (1) all written and oral statements of the defendant and any co-defendant; (2) the name and, subject to some exceptions, the address of each witness the State intends to call to testify; (3) statements of witnesses whom the State intends to call at trial; (4) information regarding pretrial identification of the defendant by a State's witness; (5) information regarding searches, seizures, eavesdropping, or electronic surveillance; (6) information about any expert witnesses that the State consulted with or intends to call to testify; (7) expert witness reports, including the results of any physical or mental examination, scientific test, experiment, or comparison; (8) the opportunity to inspect, copy, and photograph all documents, computer-generated evidence, recordings, photographs, or other tangible things that the State intends to use at a hearing or trial; and (9) the opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant.

In circuit court, the State's Attorney must also provide (1) the prior criminal record of the defendant and any co-defendant; (2) evidence of other crimes, wrongs or acts committed by the defendant that the State intends to offer at a hearing or trial; and (3) material and information that tends to impeach a State's witness, such as prior convictions, prior inconsistent statements, inducements for cooperation or testimony, a medical or psychiatric condition or addiction that might impair the witness's ability to testify truthfully or accurately, a prior failure to identify the defendant or a co-defendant, or the fact that the witness has taken but did not pass a polygraph examination.

The defendant also is required to provide certain discovery to the State. Upon request, the defendant must cooperate with the State in efforts to identify the defendant, including (1) being fingerprinted or photographed; (2) providing handwriting or voice samples; (3) appearing in a lineup; or (4) trying on articles of clothing. On motion and for good cause shown, the defendant may be ordered to permit the taking of bodily materials or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or to submit to a reasonable physical or mental examination. The defendant must also provide, upon request in District Court and without the necessity of a request in circuit court,

information about any expert witnesses that the defense intends to call to testify and any documents, computer-generated evidence, recordings, photographs, or other tangible things that the defense intends to use at a hearing or trial. In a circuit court case, the defendant must also provide information about defense witnesses, character witnesses, and alibi witnesses.

If discovery is not provided as required, the party who is entitled to receive the discovery may file a motion to compel discovery. If the court finds that a party has failed to comply with discovery rules or court orders concerning discovery, the court may enter an appropriate order, including ordering discovery, striking testimony or prohibiting the introduction of evidence, granting a reasonable continuance, or granting a mistrial.

## **Plea Bargaining**

Prior to trial, the State's Attorney and the defense often engage in a process commonly referred to as "plea bargaining" to determine whether they can come to some agreement to obviate the need for a full trial. In a typical plea agreement, the defendant agrees to enter a guilty plea in exchange for the State's agreement to reduce the charges or to recommend a sentence less than the maximum allowed by law. For example, a person charged with second degree murder, which carries a maximum sentence of 40 years, may agree to plead guilty to a charge of manslaughter, which carries a maximum sentence of 10 years in exchange for the State's agreement to recommend to the judge that an 8-year sentence be imposed. Similarly, a person charged with multiple counts may enter a plea agreement to have some counts dismissed in exchange for a guilty plea on others.

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

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

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

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



## Chapter 6. The Circuit Courts and the District Court

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This chapter will discuss the two levels of criminal trial courts in the State: (1) the circuit courts and (2) the District Court.<sup>1</sup>

### Circuit Courts

The Maryland Constitution establishes the circuit courts as the highest criminal trial courts. There is one circuit court in each county, although the courts are grouped geographically for administrative purposes into eight judicial circuits. Each circuit contains at least two counties, except for the eighth circuit that consists solely of Baltimore City. The Governor appoints the circuit court judges, subject to confirmation by the Senate. An appointed judge then stands for election to a 15-year term at the general election at least a year after the occurrence of the vacancy that the judge was appointed to fill. The election may be contested, as any member of the Maryland Bar who meets the minimum constitutional requirements may challenge the incumbent judge by filing as a candidate.

### 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. Concurrent jurisdiction allows the State, at the prosecutor's discretion, to charge the defendant in either a circuit court or the District Court.

The circuit courts are the only trial courts that provide for trial by jury. A jury trial is guaranteed in a criminal case under the Sixth and Fourteenth Amendment of the U.S. Constitution for all but petty offenses, as well as under the Maryland Constitution. Under Maryland statutory law, there is no right to a jury trial unless the crime is subject to a penalty of imprisonment, or there is a constitutional right to a jury trial for the crime. In general, the Maryland Constitution affords a defendant the right to a trial by jury in any misdemeanor or felony case with a potential sentence of 90 days or more, and the District Court is divested of jurisdiction if the defendant requests a jury trial.

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



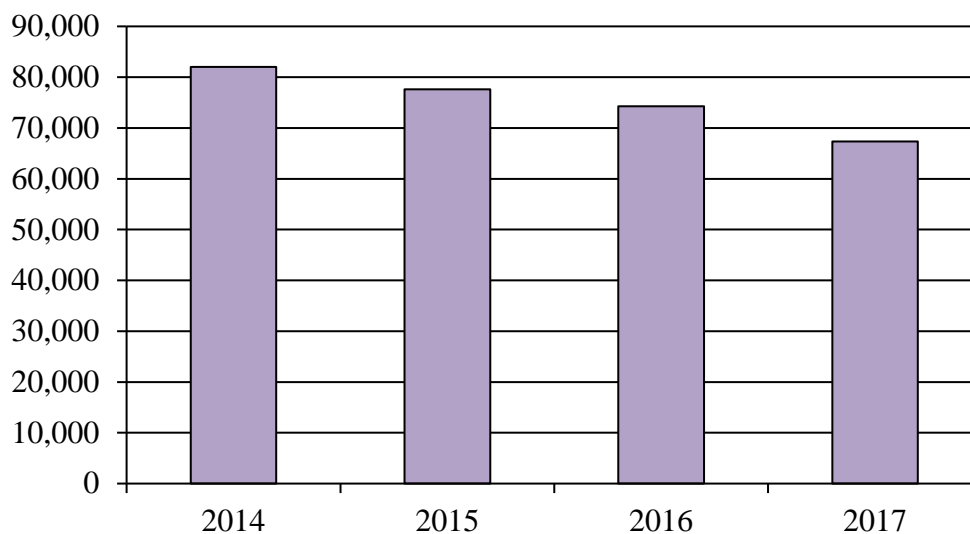
The circuit courts also exercise appellate jurisdiction over convictions in the District Court. See Chapter 11 of this handbook for a discussion of appeals and judicial review.

## Criminal Caseload

Exhibit 6.1 depicts circuit court criminal filings from fiscal 2014 through 2017. Annual filings have been falling in recent years, from approximately 82,000 in fiscal 2014 to approximately 67,000 in fiscal 2017, a decrease of nearly 18% for that period.

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**Exhibit 6.1**  
**Circuit Court Criminal Filings**  
**Fiscal 2014-2017**



Source: Maryland Judiciary

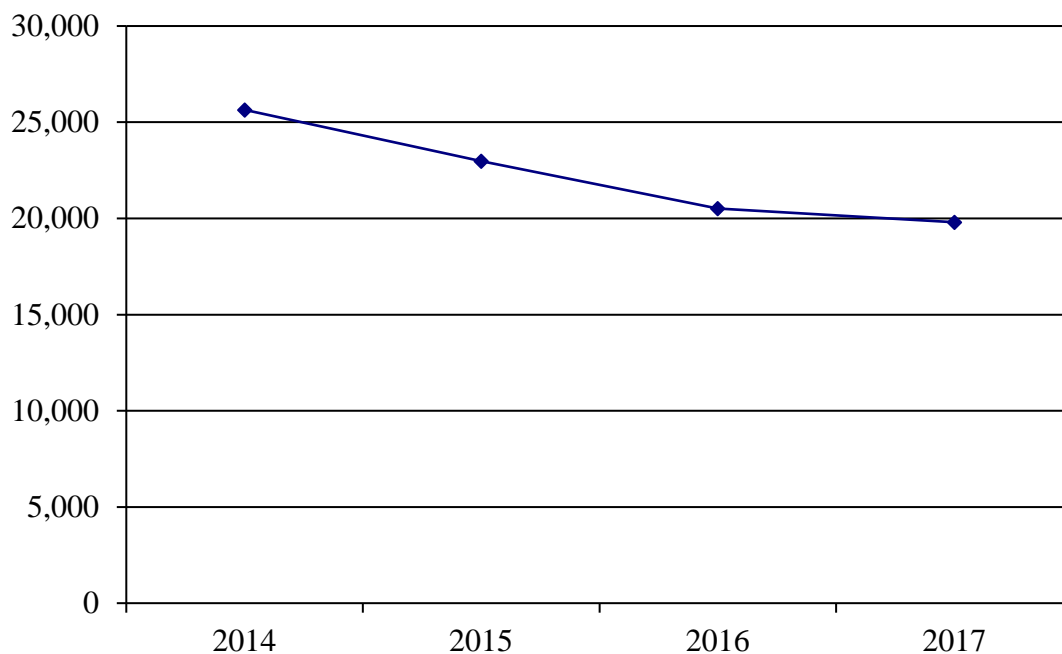
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## Juvenile Cases

The circuit courts also have jurisdiction over juvenile cases, typically involving youths under the age of 18. Exhibit 6.2 illustrates the number of juvenile cases opened and reopened from fiscal 2014 through 2017. During this period, the number of cases has steadily declined from about 25,600 in fiscal 2014 to about 20,000 in fiscal 2017. See Chapter 8 of this handbook for a discussion of the juvenile justice system.

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**Exhibit 6.2**  
**Circuit Court Juvenile Cases**  
**Original and Reopened**  
**Fiscal 2014-2017**



Source: Maryland Judiciary

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## **District Court**

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

The Governor appoints District Court judges to a term of 10 years subject to confirmation by the Senate. The Governor is required to reappoint a judge to another 10-year term, subject to the consent of the Senate, and the judge is not required to stand for election. The Chief Judge of the Court of Appeals appoints the Chief Judge of the District Court.

### **Criminal Jurisdiction**

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

- violations of the vehicle laws and the State Boat Act, unless the violation is a felony or the defendant is younger than age 16;
- all misdemeanor violations, including violations of statutory or common law; a county, municipal, or other ordinance; or a State, county, or municipal regulation; and
- certain felonies involving theft, bad checks, credit card offenses, forgery, insurance fraud, false workers' compensations claims, identity fraud, manslaughter by motor vehicle or vessel, homicide by motor vehicle or vessel while intoxicated or while impaired by alcohol, drugs or a controlled dangerous substance, counterfeiting, aggravated cruelty to animals, dog fighting, cockfighting, unauthorized access to computers and related materials, exploitation of a vulnerable adult, second degree assault on a law enforcement officer, and voting equipment offenses.

The District Court's jurisdiction is concurrent with that of the circuit courts in felony cases listed under the preceding discussion of jurisdiction and misdemeanor cases in which the maximum penalty is imprisonment of three years or more or a fine of \$2,500 or more. The District Court also has concurrent jurisdiction with the juvenile court in criminal cases arising under the compulsory public school attendance laws.

## **Criminal Caseload**

Exhibit 6.3 shows the number of criminal cases, excluding motor vehicle cases,<sup>2</sup> filed in the District Court statewide and by county from fiscal 2014 through 2017. Statewide, filings have decreased by almost 26% during that time period, from approximately 184,000 to 137,000 cases. Filings have decreased in most counties, with all but three jurisdictions seeing a decrease of 10% or more. Of the larger jurisdictions, Baltimore City saw the most significant change, going from approximately 41,200 filings in 2014 to approximately 27,000 filings in 2017, a decrease of almost 37%.

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<sup>2</sup> For further information about motor vehicle cases, see Chapter 3 of this handbook.

**Exhibit 6.3**  
**Criminal Cases Filed in the District Court\***  
**Fiscal 2014-2017**

<u>County</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>Percentage Change 2014-2017</u>
Allegany	3,084	2,914	2,782	3,118	1.1%
Anne Arundel	15,821	13,414	16,626	15,154	-4.2%
Baltimore City	41,869	31,939	27,738	26,544	-36.6%
Baltimore	18,173	15,458	15,395	14,515	-20.1%
Calvert	3,066	2,764	2,626	2,295	-25.1%
Caroline	1,409	1,097	1,001	1,114	-20.9%
Carroll	3,452	2,673	2,305	2,482	-28.1%
Cecil	4,175	3,534	3,340	3,678	-11.9%
Charles	5,333	4,935	4,617	3,920	-26.5%
Dorchester	1,625	1,341	1,233	1,168	-28.1%
Frederick	4,391	3,680	4,195	3,921	-10.7%
Garrett	1,049	801	775	622	-40.7%
Harford	5,410	4,516	4,693	4,601	-15.0%
Howard	4,553	3,660	3,504	3,435	-24.6%
Kent	674	524	415	495	-26.6%
Montgomery	18,823	15,039	15,040	14,742	-21.7%
Prince George's	29,869	21,181	20,733	19,610	-34.3%
Queen Anne's	1,331	986	1,033	1,044	-21.6%
Somerset	891	809	828	739	-17.1%
St. Mary's	2,911	2,621	2,619	2,164	-25.7%
Talbot	1,390	1,035	1,201	1,328	-4.5%
Washington	4,683	4,158	4,087	3,727	-20.4%
Wicomico	4,885	4,001	3,829	2,981	-39.0%
Worcester	4,971	4,075	3,263	3,335	-32.9%
<b>State</b>	<b>183,838</b>	<b>147,155</b>	<b>143,878</b>	<b>136,732</b>	<b>-25.6%</b>

\* Does not include motor vehicle cases.

Source: Maryland Judiciary

## **Protective Orders and Peace Orders**

The District Court has concurrent jurisdiction with the circuit courts over domestic violence protective order cases. It also has exclusive jurisdiction over peace orders and protective orders for individuals who pose an extreme risk for gun violence. Although these cases are civil proceedings, they are closely related to the criminal justice process. A petition for these orders may be filed with the District Court or, when the Office of the District Court Clerk is closed, a District Court commissioner. A petition for a domestic violence protective order may also be filed in the circuit court.

### **Domestic Violence Protective Orders**

An individual meeting specified relationship requirements, including spouses, cohabitants, and individuals with a child in common, may seek relief from abuse by filing a petition for a domestic violence protective order. If granted, a protective order may include various types of relief for the petitioner, including provisions requiring a respondent to refrain from abusing or contacting the petitioner and to stay away from the petitioner's home, school, or place of employment. Issues of custody, visitation, emergency family maintenance, and use and possession of the family home may also be addressed. If a final protective order is issued, it must order the abuser to surrender any firearms in the abuser's possession.

Exhibit 6.4 shows the number of domestic violence protective order cases filed in the District Court statewide and by county from fiscal 2014 through 2017. Statewide, between fiscal 2014 and 2017, there was a 24.6% increase in the cases filed in the District Court (from approximately 24,000 petitions to over 30,000). During the same period, most individual counties also saw an increase in the number of domestic violence protective order cases filed. It should be noted, however, that during the same period, legislation was enacted to expand eligibility for domestic violence protective orders to individuals in additional types of relationships. Although jurisdiction for domestic violence protective order cases is concurrent with that of the circuit court, the District Court handles the majority of these cases. In fiscal 2017, an additional 4,609 domestic violence protective order petitions were filed in the circuit courts.

**Exhibit 6.4**  
**Domestic Violence Protective Order Cases**  
**Filed in the District Court**  
**Fiscal 2014-2017**

<u>County</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>Percentage Change 2014-2017</u>
Allegany	360	366	360	374	3.9%
Anne Arundel	2,219	2,284	2,434	2,397	8.0%
Baltimore City	4,134	4,433	5,237	5,936	43.6%
Baltimore	3,288	3,255	3,696	3,619	10.1%
Calvert	296	321	388	418	41.2%
Caroline	164	146	174	173	5.5%
Carroll	382	390	396	468	22.5%
Cecil	455	494	538	550	20.9%
Charles	712	705	815	848	19.1%
Dorchester	131	163	182	159	21.4%
Frederick	708	723	687	708	0.0%
Garrett	104	119	121	172	65.4%
Harford	778	703	839	801	3.0%
Howard	507	519	648	698	37.7%
Kent	65	66	58	87	33.8%
Montgomery	2,159	2,331	2,709	2,997	38.8%
Prince George's	5,236	5,159	6,225	6,668	27.3%
Queen Anne's	175	162	164	168	-4.0%
Somerset	95	71	105	135	42.1%
St. Mary's	442	450	589	660	49.3%
Talbot	95	107	128	186	95.8%
Washington	1,119	1,235	1,203	1,362	21.7%
Wicomico	459	477	500	527	14.8%
Worcester	232	205	215	197	-15.1%
<b>State</b>	<b>24,315</b>	<b>24,884</b>	<b>28,411</b>	<b>30,308</b>	<b>24.6%</b>

Source: Maryland Judiciary

## **Peace Orders**

An individual who does not meet the relationship status required under the protective order provisions, but who shows a legitimate reason to fear harm, may petition for a peace order. A peace order must contain only the relief that is minimally necessary to protect the petitioner. A peace order may require another individual to refrain from threatening or committing abuse; end all contact with the petitioner; and stay away from the petitioner's home, place of employment, or school. A peace order may not order an individual to surrender firearms. Exhibit 6.5 shows the number of peace order cases filed in the District Court statewide and by county from fiscal 2014 through 2017. Statewide, there has been a slight decrease in the number of peace order filings in the District Court, from 19,784 cases in fiscal 2014 to 17,955 cases in fiscal 2017.



**Exhibit 6.5**  
**Peace Order Cases Filed in the District Court**  
**Fiscal 2014-2017**

<u>County</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>Percentage Change 2014-2017</u>
Allegany	186	206	191	204	9.7%
Anne Arundel	1,791	1,844	1,732	1,674	-6.5%
Baltimore City	3,583	3,784	3,275	2,808	-21.6%
Baltimore	2,440	2,492	2,470	2,258	-7.5%
Calvert	206	270	241	284	37.9%
Caroline	88	85	80	106	20.5%
Carroll	416	382	428	381	-8.4%
Cecil	197	218	205	151	-23.4%
Charles	644	708	593	608	-5.6%
Dorchester	128	169	198	125	-2.3%
Frederick	639	563	573	479	-25.0%
Garrett	63	64	73	89	41.3%
Harford	589	561	574	513	-12.9%
Howard	459	384	431	418	-8.9%
Kent	48	61	34	41	-14.6%
Montgomery	2,171	2,293	2,141	2,237	3.0%
Prince George's	4,250	4,087	3,954	3,780	-11.1%
Queen Anne's	134	115	116	95	-29.1%
Somerset	73	67	89	92	26.0%
St. Mary's	320	277	363	451	40.9%
Talbot	83	92	85	72	-13.3%
Washington	732	728	745	639	-12.7%
Wicomico	373	346	337	313	-16.1%
Worcester	171	141	141	137	-19.9%
<b>State</b>	<b>19,784</b>	<b>19,937</b>	<b>19,069</b>	<b>17,955</b>	<b>-9.2%</b>

Source: Maryland Judiciary

### **Extreme Risk Protective Orders**

Chapter 250 of 2018 established a new form of civil relief called an “extreme risk protective order.” The law sets forth a process by which certain mental health professionals, law enforcement officers, and family or household members of a respondent may seek an interim, temporary, or final court order to prevent a respondent from possessing or purchasing a firearm or ammunition for a limited period of time, based on a determination that the respondent poses a danger of causing self-injury or injury to others by possessing a firearm or ammunition. Chapter 250 requires a judge or a District Court commissioner to refer a respondent in an extreme risk protective order proceeding for an emergency mental health evaluation under specified circumstances. The law also establishes a process for the surrender of firearms and ammunition and a process for the return of firearms and ammunition at the expiration or termination of an extreme risk protective order.

### **Alternative “Problem-Solving” Court Programs**

In an effort to relieve overcrowded dockets, expedite cases, and provide a multidisciplinary and integrated approach to resolve the core issues facing those accused of certain types of crimes that have a high potential for recidivism, several different “problem-solving” court programs have been established for specific types of cases. These include (1) a drug treatment court program known as “drug court”; (2) a mental health treatment program known as “mental health court”; (3) a truancy reduction program known as “truancy court”; (4) a veterans treatment and assistance program known as “veterans court”; and (5) a diversion program for first-time, nonviolent felony drug offenders known as “Back-On-Track.”

As part of the annual appropriation to the Judiciary, the Office of Problem-Solving Courts, a department in the Administrative Office of the Courts, disseminated over \$4.6 million via grants to local problem-solving court programs in fiscal 2017.

### **Drug Court Programs**

The State operates over 30 drug courts in the circuit courts and the District Court for adult and juvenile offenders. A drug court is a specialized docket that handles drug and dependency-related cases through judicial intervention, intensive monitoring, support services, and continuous substance abuse treatment. These programs are used for offenders who are charged with less serious drug crimes and who do not have a history of violence. The drug treatment court program provides options other than commitment or incarceration. Terms of program participation require intensive supervision and alcohol and other drug treatment.

Family/dependency drug courts in several circuit courts address parents at risk of losing custody of their children due to alcohol and other drug dependence. Eligible participants can voluntarily enter prior to the filing of the petition, enter pre-adjudication at shelter care, or be required to participate as part of disposition.

Exhibit 6.6 describes the operational adult, juvenile, and family/dependency drug courts in Maryland as well as the number of drug court participants served in fiscal 2017.

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**Exhibit 6.6**  
**Drug Courts in Maryland**  
**Fiscal 2017**

<u>County</u>	<u>Location</u>	<u>Type of Program</u>	<u>Total Served</u>
Anne Arundel	Circuit Court	Adult	141
	District Court	Adult/Driving Under the Influence (DUI)	313
Baltimore City	Circuit Court	Adult	251
	Circuit Court	Family	163
	District Court	Adult	166
Baltimore County	Circuit Court	Juvenile	48
	Circuit Court	Family	21
Calvert	Circuit Court	Adult	109
Caroline	Circuit Court	Adult	33
Carroll	Circuit Court	Adult	86
Cecil	Circuit Court	Adult	138
Charles	Circuit Court	Family	50
Dorchester	District Court	Adult	44
Frederick	Circuit Court	Adult	82

<u>County</u>	<u>Location</u>	<u>Type of Program</u>	<u>Total Served</u>
Harford	Circuit Court	Family	23
	Circuit Court	Juvenile	13
	District Court	Adult	39
	District Court	DUI	21
Howard	District Court	Adult	19
	District Court	DUI	37
Montgomery	Circuit Court	Adult	104
Prince George's	Circuit Court	Adult	99
	Circuit Court	Juvenile	38
	Circuit Court	Re-Entry	18
	District Court	Adult	55
St. Mary's	Circuit Court	Juvenile	30
	Circuit Court	Adult/DUI	59
Talbot	Circuit Court	Problem-Solving	30
Washington	Circuit Court	Juvenile	17
Wicomico	Circuit Court	Adult	67
Worcester	Circuit/District Court	Adult	80
	Circuit Court	Juvenile	11
<b>Total</b>			<b>2,405</b>

Source: Maryland Judiciary

## Mental Health Court Programs

There are currently four mental health courts in the District Court, located in Baltimore City and Harford, Montgomery, and Prince George's counties. Additionally, there is a mental health court located in the Circuit Court for Montgomery County. The mental health court is a specialized docket designed to address the needs of individuals

with a mental health diagnosis who have been charged with a criminal offense. Similar to the drug courts, this program coordinates various treatment services in an effort to promote rehabilitation and reduce recidivism and incarcerations. In fiscal 2017, Maryland served approximately 772 persons in mental health court programs.

### **Truancy Reduction Court Programs**

Another type of problem-solving court, truancy courts, have been established in eight counties (Dorchester, Harford, Kent, Prince George's, Somerset, Talbot, Wicomico, and Worcester) to address the issue of truancy by intervening to determine and address the causes of poor school attendance.

In a county with a truancy court, a school official may file a civil petition with the circuit court alleging that a child who is required to attend school has failed to attend without lawful excuse. The court then intervenes to create a plan and coordinate the necessary social services to address the causes of truancy. The court may order the student to complete community service or to receive substance abuse treatment, for example. Participants are eligible for graduation from the program after remaining in the program for 90 days with no unexcused absences. Truancy courts served approximately 273 Maryland students in fiscal 2017.

### **Veterans Court Programs**

Maryland's two veterans court programs, located in the Baltimore City District Court and the Circuit Court for Prince George's County, offer substance abuse and mental health treatment, case management, supervision, family therapy, and job skills training to veterans with conditions including post-traumatic stress disorder, traumatic brain injury, and substance abuse disorder, who come into contact with the judicial system. In order to qualify for the program, a veteran must be charged with a nonviolent or felony offense, and have a documented history of substance abuse or mental illness. In fiscal 2017, veterans courts in Maryland served 67 individuals.

### **Back-on-Track Program**

The Back-on-Track Program is a pilot program in the Circuit Court for Prince George's County focused on reducing recidivism among first-time, nonviolent felony drug offenders. The program is aimed at a target population of 18- to 26-year-olds who have no prior felonious or violent convictions. Eligible participants may opt in to a 12- to 18-month program, designed to connect them with educational opportunities and job training. Upon the successful completion of the program, participants may have the offense for which they were charged removed from their records. The Back-on-Track Program started in June 2016.

## Chapter 7. Criminal Trials

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This chapter will discuss several aspects of criminal trials. The provisions regarding juries only apply in the circuit courts and not in the District Court, which does not conduct any jury trials. See Chapter 6 for a discussion of the circuit courts and the District Court.

### Court Rules

Generally, both the General Assembly and the Court of Appeals have authority under the Maryland Constitution to establish criminal trial procedures. However, trial procedures in the circuit courts and the District Court are primarily governed by the Maryland Rules of Procedure adopted by the Court of Appeals. The court utilizes the Standing Committee on Rules of Practice and Procedure to consider proposed rules and submit its recommendations to the court. The committee is composed of attorneys, judges, and other persons competent in judicial practice, procedure, or administration.

### Trial Courts

There are two types of criminal trials: (1) court or bench trials where a trial judge is the “trier of fact” who decides issues of fact and renders a verdict and (2) jury trials where a jury is the “trier of fact” that decides issues of fact and renders a verdict. The U.S. Constitution and Article 5 of the Maryland Declaration of Rights guarantee a criminal defendant a trial by jury. This right extends to a person charged with a crime subject to a penalty of imprisonment or a crime for which at common law there was a jury trial right. A defendant may waive the right to a jury and have a bench trial as long as the court finds that the waiver is knowing and voluntary. The State, however does not have a right to a trial by jury or the ability to elect a bench trial.

In the State’s two tiered trial court system, less serious cases (typically misdemeanors) generally originate in the District Court. Although such cases may be tried in the District Court with a judge serving as the trier of fact, jury trials are only available in circuit court. Therefore, if a criminal case originates in the District Court, and the defendant is entitled to a jury trial because the defendant faces a sentence of 90 days or more, the defendant may file a jury trial prayer to transfer the case to circuit court.<sup>1</sup> The procedures discussed in this chapter (other than those pertaining solely to juries) also apply to cases in which a defendant does not file a “jury trial prayer” and elects instead to have the case remain in District Court, as well as to cases that proceed as bench trials in the circuit courts.

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<sup>1</sup> In fiscal 2017, there were 16,717 jury trial prayers filed in the District Court.

Although this chapter focuses on trial procedures, a relatively small number of criminal cases ultimately result in a trial. Instead, the vast majority of criminal cases are disposed of by a guilty plea, *nolle prosequi* (a disposition in which the prosecutor declines to prosecute the charge), dismissal, or stet (a disposition in which the charge is placed on an inactive docket).

## Voir Dire

If a defendant elects a jury trial, the parties must select 12 jurors and 2 alternates to serve on the jury. The jurors are selected from the pool of persons summoned to appear for jury service on the trial date. In order to preserve the defendant's right to an impartial jury under Article 21 of the Maryland Declaration of Rights, the parties engage in a process known as "*voir dire*" which means to "speak the truth." During *voir dire*, jurors are placed under oath and the State and the defendant or defense counsel, with the help of the court, question the jurors about their backgrounds and potential biases. The purpose is to exclude from the jury any prospective jurors who cannot render a fair and impartial verdict based solely on the law and the evidence.

As part of the *voir dire* process, the State and the defendant are allowed to request that the court exclude potential jurors by exercising what are known as "for cause" challenges and "peremptory" challenges. The State or the defendant may request that the court exclude a prospective juror for cause based on either a statutory ground<sup>2</sup> that disqualifies a juror or any circumstances that may reasonably be regarded as rendering a person unfit for jury service. For example, a party may exercise a for cause challenge to exclude a juror who has expressed a preconceived opinion that one side or the other should prevail. Parties are not limited in the number of challenges for cause they may exercise.

Typically, after the court has ruled on challenges for cause, the process of seating the jury begins, and the parties may exercise peremptory challenges. The State and the defendant do not have to state a reason for excluding a prospective juror based on a preemptory challenge so long as exclusion is not unconstitutionally based on the juror's race. State law<sup>3</sup> provides that for a trial in which the State is seeking life imprisonment, the defendant is permitted 20 peremptory challenges, and the State is permitted 10 challenges. In cases involving potential sentences of 20 years or more, the defendant is permitted 10 peremptory challenges, and the State is permitted 5 challenges. In all other cases, each party is permitted 4 peremptory challenges. The parties typically exercise

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<sup>2</sup> Reasons for exclusion include the inability to speak or comprehend English and specified criminal convictions and pending charges. See § 8-103 of the Courts and Judicial Proceedings Article.

<sup>3</sup> See § 8-420 of the Courts and Judicial Proceedings Article; Maryland Rule 4-313.

alternating preemptive challenges until the required number of jurors and alternates has been selected.

Once the jury is impaneled, the courtroom clerk administers an oath regarding the jury's duty. Once the jury is sworn, double jeopardy attaches and the defendant may not be tried again for the same offense, except in limited circumstances. The trial judge must choose a sworn juror as jury foreperson to act as the spokesperson for the jury.

## **Opening Statement**

Both the State and the defendant have an opportunity to present an opening statement, with the State typically presenting first. During the opening statement, each party presents its version of the case to the jury (or the judge in a bench trial). There is no requirement that either or both of the parties present an opening statement, and the trial court affords the parties wide latitude regarding the content of the opening statement.

## **The State's Case**

### **Standard of Proof**

In a criminal case, a defendant is presumed to be innocent, and under both the U.S. Constitution and the Maryland Constitution, the State has the burden of proving the defendant's guilt "beyond a reasonable doubt." In proving a case beyond a reasonable doubt, the State does not have to prove guilt beyond all possible doubt or mathematical certainty. Instead, proof beyond a reasonable doubt requires such proof as would convince a person of the truth of a fact to the extent that the person would be willing to act upon such a belief without reservation in an important matter in the person's own business or personal affairs.

### **Witness Direct and Cross Examination**

In a criminal trial, the State presents its evidence first through witness examination, exhibits, and stipulations. A prosecutor's initial questioning of a State's witness is known as direct examination. Generally, direct examination questions must be open-ended, allowing the witness to present the information to the trier of fact. Direct examination questions must be relevant to a fact of consequence to the case. After the direct examination of a State's witness is concluded, the defendant, or if represented, the attorney representing the defendant, has an opportunity to question the witness through cross examination. Attorneys use cross-examination to bring out additional information or to test the knowledge or credibility of the witness. During cross-examination, attorneys



are allowed to ask leading questions, which are questions that suggest what the answer should be.

The Fifth Amendment to the U.S. Constitution protects a defendant from self-incrimination. As a result, in presenting its evidence, the State may not compel a defendant to testify in order to meet its evidentiary burden.

## **Evidentiary Burden**

The State has the burden of introducing evidence that is sufficient to authorize a finding by the trier of fact on the matter in issue, unless contradicted or explained, which is called a “*prima facie*” case. In order to establish a *prima facie* case, the State must generally offer evidence to establish the identity of the defendant as the perpetrator and the statutory or common law elements of the offense charged. At the end of the State’s case, the defendant may challenge the sufficiency of the State’s evidence and request a judgment of acquittal. If the court finds that the State failed to establish a *prima facie* case on a charge, the trial judge must enter a judgment of acquittal on that charge.

## **The Defense**

After the conclusion of the State’s case, the defendant is given an opportunity to present evidence; however, a defendant is not required to present any evidence unless the defendant raises an affirmative defense.<sup>4</sup> The defendant may compel witnesses to appear at trial to testify. The defendant’s attorney generally conducts a direct examination of the defendant’s witness followed by cross-examination of the witness by the prosecutor.

The defendant may also elect to testify. However, under the Fifth Amendment to the U.S. Constitution, the defendant has an absolute right to remain silent. An important part of this right is a prohibition on the trier of fact drawing an inference of guilt from the defendant’s decision not to testify.

## **Jury Instructions**

After the defendant has an opportunity to present a case, the trial judge reads to the jury a variety of jury instructions. Jury instructions are statements of law used to instruct and aid the jury in applying the law to the facts in order to reach a just verdict. Under the

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<sup>4</sup> An affirmative defense is one that concedes the basic position of the State but nevertheless asserts that the defendant is not guilty because the defendant’s action was justified or excused; *e.g.*, self-defense. In Maryland, an affirmative defense requires the person asserting it to establish its existence by a preponderance of the evidence.

Maryland Rules, the court is required to give jury instructions at the conclusion of all the evidence and before closing arguments in criminal cases. However, the court is also permitted to supplement those instructions at a later time and to give opening and interim instructions in its discretion. Generally, the court uses a set of standard prepared instructions from the Maryland Pattern Jury Instructions adopted by the Court of Appeals; however, the attorneys are often involved with assisting the judge in determining jury instructions. The standard instructions cover topics such as the burden of proof and the elements of the offense charged.

## **Closing Arguments**

At the conclusion of all of the evidence and after jury instructions, the State and the defendant or defendant's counsel may give closing arguments. Typically, the State gives its argument first, followed by the defense argument, and then, as the State has the burden of proof, the State is given the opportunity to argue last. The arguments themselves are not evidence, rather they serve as each party's last opportunity to persuade the judge or jury. Closing arguments are confined to the facts admitted into evidence; however, counsel may comment on all reasonable and legitimate inferences that may be drawn from the facts in evidence. The court affords the parties wide range regarding the content of closing arguments.

## **Jury Deliberation**

Once the judge has given the jury instructions and closing arguments are complete, the jury retires to the jury room to deliberate. The jury foreperson presides over the deliberation and if the jury has any questions regarding what the judge has said or the evidence presented, the foreperson may send questions in note form to the judge. The judge must notify the State and the defendant of any jury questions and allow both parties the opportunity to be heard regarding the answer provided to the jury. Once the jury has reached a verdict, the foreperson presents the verdict to the court. A jury verdict must be unanimous and read in open court. If all jurors cannot agree on a verdict, the court may declare the jury "hung" and order a mistrial, in which case the State may prosecute the defendant again.

## **Sentencing**

If a guilty verdict is rendered in either type of trial, the trial judge determines the sentence. See Chapter 10 of this handbook for a discussion of sentencing.



## Chapter 8. Juvenile Justice Process

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

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

The terminology used in the juvenile system differs from that used in the criminal system. For example, juveniles do not commit crimes; rather, juveniles commit “delinquent acts,” which are acts that would be crimes if committed by an adult. Juveniles are “adjudicated delinquent” instead of convicted, and the juvenile court makes “dispositions” for juveniles instead of imposing sentences. Additionally, while adult offenders are known as criminal defendants, juvenile offenders are referred to in the law as “respondents.”

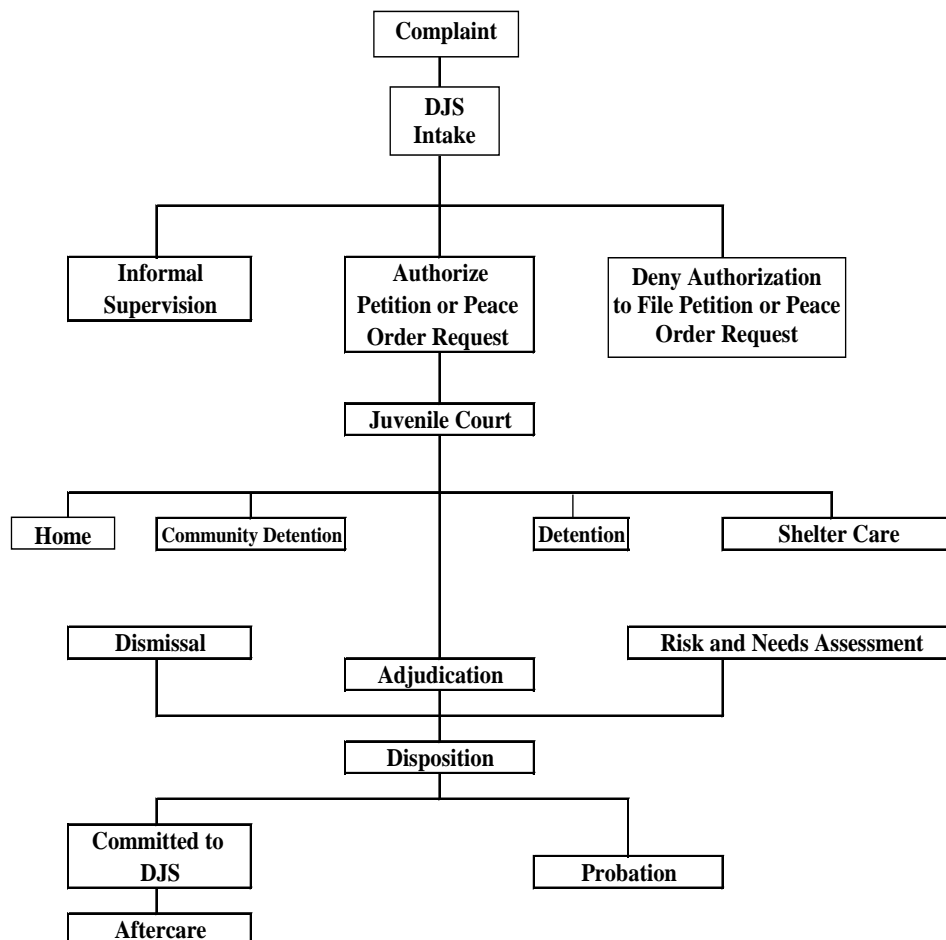
In addition to children who have committed delinquent acts, the juvenile justice system also governs “children in need of supervision,” which are children who require guidance, treatment, or rehabilitation and (1) are required by law to attend school but are habitually truant; (2) are habitually disobedient,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

The Department of Juvenile Services administers Maryland’s juvenile programs. The department’s goals include keeping supervised and committed youth safe while holding youth accountable for their actions and reducing violence against children through collaboration with law enforcement and other agency partners. Additionally, the department supports community programs intended to prevent delinquent acts by juveniles before State involvement becomes necessary.

Exhibit 8.1 shows the manner in which cases flow through the juvenile justice system.

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**Exhibit 8.1**  
**Case Flow through the Juvenile Justice System**



DJS: Department of Juvenile Services

Source: Department of Juvenile Services

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## **Intake**

The first point of contact that a child has with the State’s juvenile justice system is at intake. Intake occurs when a complaint is filed by a police officer or other person or agency having knowledge of facts that may cause a child to be subject to the jurisdiction of the juvenile court. Cases reported by police accounted for approximately 92% of the total number of complaints in fiscal 2017.<sup>1</sup>

### **Mental Health and Substance Abuse Screening**

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

### **Jurisdictional Inquiry**

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

The intake officer may make any of the following decisions: (1) deny authorization to file a petition or a peace order request or both in the juvenile court; (2) propose informal supervision; or (3) authorize the filing of a petition or a peace order request or both in the juvenile court. A “petition” is the pleading filed with the juvenile court alleging that a child is a delinquent child or a child in need of supervision. A “peace order request” is the initial pleading filed with the juvenile court that alleges the commission of any of certain acts against a victim by a child and that serves as the basis for a peace order proceeding.

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<sup>1</sup> In fiscal 2017, 21,530 cases were referred to the Department of Juvenile Services for intake.

For a more detailed description of a peace order request and a peace order proceeding, see below under “Juvenile Court – Peace Orders.”

### **Denial of Authorization to File a Petition or Peace Order Request**

The intake officer may deny authorization to file a petition alleging that a child is delinquent or in need of supervision or a peace order request in the juvenile court if the matter is not within the jurisdiction of the juvenile court or otherwise lacks legal sufficiency. In fiscal 2017, intake officers denied authorization to file a petition for lack of jurisdiction in 120 cases (less than 1% of total cases).

If the intake officer determines that the juvenile court does have jurisdiction over the matter, but that further action by the Department of Juvenile Services or the court is not necessary to protect the public or to benefit the child, the intake officer may deny authorization to file a petition or peace order request and resolve the case at intake. The child may receive immediate counseling, a warning, a referral to another agency for services, or a combination of these or other short-term interventions. In fiscal 2017, 8,207 cases (38% of total cases) were resolved at intake.

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

### **Proposal of Informal Supervision**

The intake officer may propose informal supervision if the juvenile court has jurisdiction and the child or the child's family needs assistance in preventing further legal violations, but the child does not require, and may not benefit from, judicial intervention or long-term formal supervision. To conduct informal supervision, consent must be received from the victim, the child, and the child's parents or guardian. Informal supervision may not exceed 90 days, unless extended by the court or as necessary to participate in a substance-related disorder treatment or a mental health program, and may include (1) referrals to other agencies; (2) completion of community service; (3) regular counseling; (4) supervision by the Department of Juvenile Services; (5) family counseling; (6) substance abuse treatment; and (7) other types of nonjudicial intervention. If the intake officer proposes informal supervision, the victim, the arresting police officer, or the person or agency that filed the complaint may appeal that decision to the State's Attorney in the county in which the delinquent act occurred.

If, at any time before the completion of the agreed-upon informal supervision, the intake officer believes that the informal supervision cannot be completed successfully, the intake officer may authorize the filing of a petition alleging delinquency or a peace order request in the juvenile court. In fiscal 2017, informal supervision was conducted in 3,140 cases (15% of total cases).

### **Release of Child to Custody of Parent or Guardian**

If the intake officer denies authorization to file a petition or a peace order request or recommends informal supervision, the child will be sent home to the custody of a parent or guardian.

### **Authorization to File a Petition or Peace Order Request**

If the intake officer determines that the juvenile court has jurisdiction over the matter and that judicial action is in the best interest of the public or the child, the intake officer may authorize the filing of a petition or a peace order request or both in the juvenile court.

In fiscal 2017, intake officers authorized 10,063 petitions (46.7% of total cases) for formal processing in juvenile court.

Exhibit 8.2 shows the distribution of 21,530 intake determinations for fiscal 2017.

### **Detention and Shelter Care Prior to Hearing**

If the filing of a petition is recommended, the child may be released to the custody of a parent or guardian prior to the hearing. In certain cases, the child may be assigned to community detention, which is 24-hour supervision of the child in the community through the use of daily in-person and telephone contacts with a Department of Juvenile Services worker. As part of community detention, the child may be required to wear an electronic monitoring device at all times to verify the whereabouts of the child.

If there is no suitable home environment, the child may be placed in shelter care while awaiting a juvenile court hearing. Shelter care provides temporary care and a variety of services for children in physically unrestricting facilities. Although the use of predisposition detention has decreased in recent years,<sup>2</sup> if the child is at risk of leaving the

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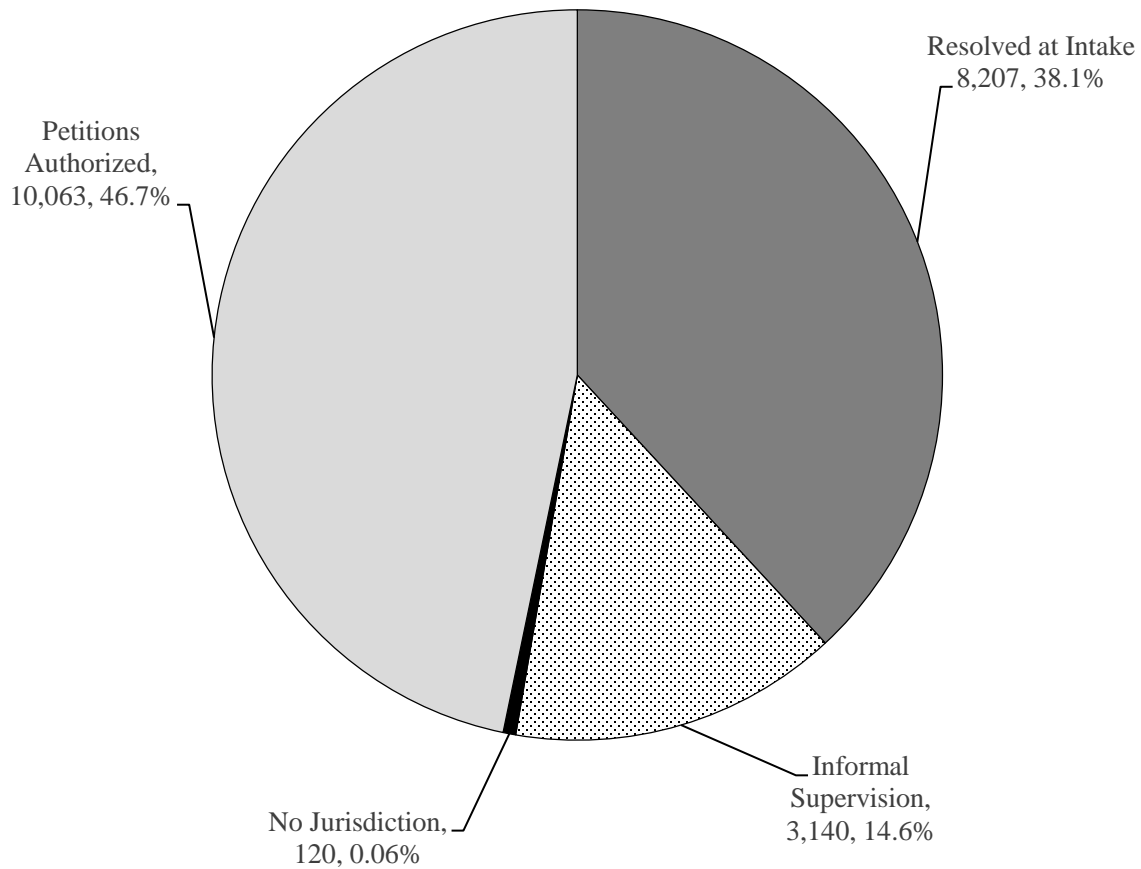
<sup>2</sup> In fiscal 2013, the average daily population of youth in detention who were awaiting disposition from the juvenile court was 235; in fiscal 2017, the average daily population was 126.



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.

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**Exhibit 8.2**  
**Intake Determinations**  
**Fiscal 2017**



Source: Department of Juvenile Services

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## **Juvenile Court – Proceedings**

### **Petition**

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

### **Jurisdiction**

Generally, the juvenile court has jurisdiction over any child alleged to be delinquent or in need of supervision. However, the juvenile court does not have jurisdiction over (1) a child at least 14 years old alleged to have committed an act which would be a crime punishable by life imprisonment; (2) a child at least 16 years old alleged to have violated certain traffic or boating laws; (3) a child at least 16 years old alleged to have committed certain violent crimes; or (4) a child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult. These cases would be tried in adult criminal court. However, for items (1), (3), and (4) above, the criminal court may transfer the case back to juvenile court if the court determines from a preponderance of the evidence that transfer is in the interest of the child or society and certain other conditions are met. This is often referred to as "reverse waiver." A reverse waiver is not permitted in certain circumstances, such as when the child was previously convicted in an unrelated case excluded from the jurisdiction of the juvenile court or when the alleged crime is murder in the first degree and the accused child was 16 or 17 years of age when the alleged crime was committed.

### **Juvenile Competency**

At any time after a petition alleging that a child has committed a delinquent act is filed with the juvenile court, the court, on its own motion, or on motion of the child's counsel or the State's Attorney, must stay all proceedings and order the Maryland Department of Health or any other qualified expert to conduct an evaluation of the child's competency to proceed. This is to occur if there is probable cause to believe that the child has committed the delinquent act, and there is reason to believe that the child may be incompetent to proceed with a required waiver, adjudicatory, disposition, or violation of probation hearing. "Incompetent to proceed" means that a child is not able to understand the nature or object of the proceeding or assist in the child's defense.

The juvenile court must hold a competency hearing to determine whether the child is incompetent to proceed based on the evidence presented on the record. If the child is

found to be competent, the stay is lifted and proceedings on the child's petition continue. However, if the juvenile court determines that the child is incompetent to proceed, the court may order that competency attainment services be provided to the child or may dismiss the delinquency petition.

## **Waiver**

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

## **Lead Testing**

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

## **Adjudication**

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

The purpose of an adjudicatory hearing is to determine whether the allegations in the petition are true. Before a child may be adjudicated delinquent, the allegations in the petition that the child has committed a delinquent act must be proven beyond a reasonable doubt. An allegation that a child is in need of supervision must be established by a preponderance of the evidence.

## **Disposition**

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

### **Classification Process**

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

### **Disposition Hearing**

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

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

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

The court may also adopt a treatment service plan, which is a plan recommended by the Department of Juvenile Services that proposes specific assistance, guidance, treatment, or rehabilitation of a child. Furthermore, a disposition may include the suspension or revocation of the child's driving privileges under certain circumstances. For example, if the child is found to have committed certain alcoholic beverage violations or certain violations relating to destructive devices, a disposition may include ordering the Motor Vehicle Administration to initiate an action to suspend the driving privileges of the child. If the child is found to have violated the State vehicle laws, including a violation involving an unlawful taking or unauthorized use of a motor vehicle, that violation must be reported to the administration, which must assess points against the child. Finally, the administration is required to suspend or revoke the driver's license of a child who is found to have committed certain drunk or drugged driving offenses or certain offenses involving leaving the scene of a traffic accident or fleeing and eluding a police officer.

At disposition, the court is prohibited from committing children who have been adjudicated delinquent for the commission of certain nonviolent offenses to the Department of Juvenile Services for out-of-home placement unless specified conditions are met.<sup>3</sup>

### **Restitution**

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

## **Commitment to the Department of Juvenile Services for Placement**

### **Residential Programs**

If the disposition ordered by the juvenile court includes commitment to the Department of Juvenile Services for out-of-home placement, the court may recommend the level of care for the child and the type of facility that the court considers appropriate. The department determines the particular residential facility and program that will best suit the needs of the child and considers factors including the type of treatment and level of security that is needed.

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

In fiscal 2017, there were 988 committed placements to the department. The average length of stay in committed placement was 195 days.

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<sup>3</sup> See § 3-8A-19 of the Courts and Judicial Proceedings Article.

**Exhibit 8.3**  
**Department of Juvenile Services**  
**State-operated Facilities**  
**Fiscal 2017**

<b><u>Facility Name</u></b>	<b><u>Location</u></b>	<b><u>Population Served/Type of Facility</u></b>	<b><u>Average Daily Population<sup>1</sup></u></b>	<b><u>Rated Capacity</u></b>
Green Ridge	Allegany	Committed	27	40
Thomas J.S. Waxter	Anne Arundel	Detention	22	42
Baltimore City Juvenile Justice Center	Baltimore City	Detention	43	120
Charles H. Hickey, Jr.	Baltimore County	Detention	36	72
Backbone Mountain	Garrett	Committed	27	48
Meadow Mountain	Garrett	Committed	26	40
Savage Mountain	Garrett	Committed	19	24
J. DeWeese Carter	Kent	Committed	9	14
Alfred D. Noyes	Montgomery	Detention	23	57
Cheltenham	Prince George's	Detention	35	72
Western MD Children's Center	Washington	Detention	15	24
Lower Eastern Shore Children's Center	Wicomico	Detention	14	24
Victor Cullen	Frederick	Committed	28	48

<sup>1</sup> Pursuant to Chapter 442 of 2015, juveniles awaiting a reverse waiver determination from the adult court are held at a juvenile detention facility except under specified circumstances. The statistics shown do not include this group, which had an average daily population of 114 in fiscal 2017.

Source: Department of Juvenile Services

## **Aftercare**

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

## **Juvenile Court – Peace Orders**

### **Peace Order Request**

In addition to, or instead of, authorizing the filing of a petition alleging delinquency in the juvenile court, an intake officer may file with the court a peace order request that alleges the commission of any of the following acts against a victim by the child, if the act occurred within 30 days before the filing of the complaint: (1) an act that causes serious bodily harm; (2) an act that places the victim in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment; (7) stalking; (8) trespass; (9) malicious destruction of property; (10) misuse of telephone facilities and equipment; (11) misuse of electronic communication or interactive computer service; (12) revenge porn; or (13) visual surveillance.

### **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.<sup>4</sup> The peace order may order the child to (1) refrain from committing or threatening to commit a prohibited act; (2) end all contact with the victim; (3) stay away from the victim’s home, place of employment, or school; or (4) participate in professionally supervised counseling. All relief granted in a peace order is effective for up to six months. A violation of any of

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<sup>4</sup> In fiscal 2017, the juvenile court issued 148 peace orders.

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 9. Incompetency and Not Criminally Responsible Findings

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There are two separate circumstances under which a mental disorder or mental retardation<sup>1</sup> is considered in a criminal proceeding. The first is in determining whether a defendant is competent to stand trial (*i.e.*, whether the defendant is mentally able to participate in the proceedings). The second is in determining whether a defendant is criminally responsible for the crime (*i.e.*, whether the defendant is mentally culpable for the crime). This chapter will discuss these two issues as they relate to adult defendants. For a discussion of competency issues relating to juvenile offenders, see Chapter 8 of this handbook.

### Examination of Defendant

If a defendant's competency to stand trial is at issue and the court has referred the defendant to the Maryland Department of Health for examination, a licensed psychologist or board certified psychiatrist designated by the department ("the evaluator") conducts the examination and sends the report to the court. If the evaluator cannot form a definitive opinion about the defendant's competency to stand trial, the evaluator informs the court, and the court enters an appropriate order for further examination.

When a court orders an examination of a defendant's criminal responsibility, the evaluator initially determines whether the defendant is competent to stand trial. If, in the evaluator's opinion, the defendant is competent to stand trial, the evaluator then completes the examination regarding criminal responsibility and sends a report to the court.

If the court orders further examination to determine a defendant's competency or criminal responsibility, the department determines which facility will conduct the examination. The examination may take place at one of four regional psychiatric hospitals under the jurisdiction of the Maryland Department of Health or at Clifton T. Perkins Hospital in Jessup, Maryland.<sup>2</sup> If the defendant is believed to have a diagnosis of mental retardation, the defendant may be evaluated at the jail, in the community, or at the Secure Evaluation and Therapeutic Treatment Program operated by the Developmental

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

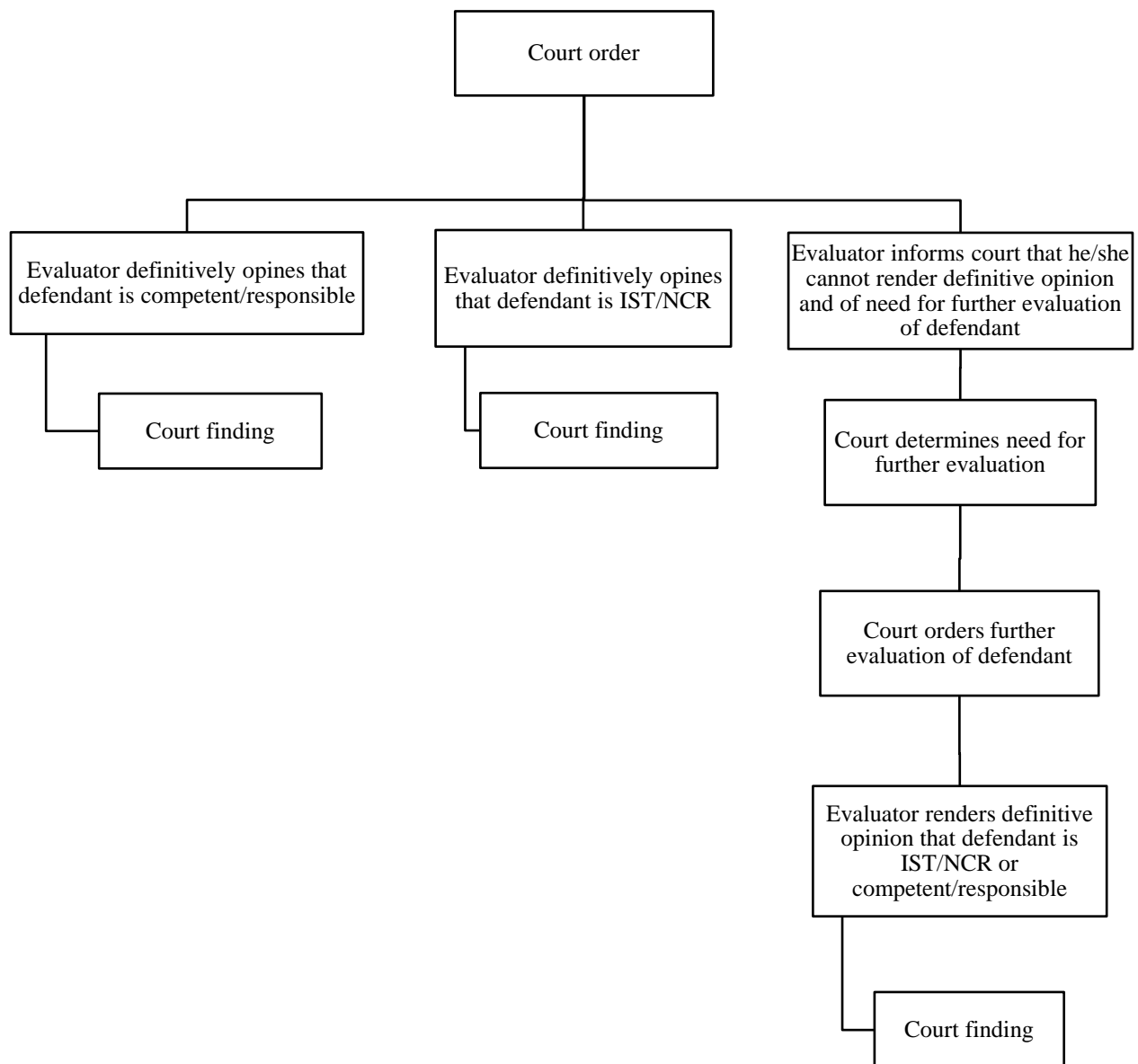
<sup>2</sup> The four regional psychiatric hospitals are Spring Grove Hospital, Springfield Hospital, Eastern Shore Hospital Center, and the Thomas B. Finan Center.

Disabilities Administration. Usually, defendants with a primary diagnosis of mental disorder who are charged with a violent crime receive further examination at Clifton T. Perkins Hospital, which is the only maximum-security hospital in the State. Defendants charged with other offenses are evaluated at one of the four regional hospitals.

The results of the examinations are forwarded to the court for a final determination as to the defendant's competency. The reports on criminal responsibility are used at the criminal trial to assist the trier of fact (a judge or jury) in determining a defendant's criminal responsibility. Exhibit 9.1 contains a general overview of the process for evaluation of defendants for competency to stand trial and criminal responsibility.

In some jurisdictions, the department conducts examinations at the request of a mental health court. A mental health court is a specialized court docket designed to address the needs of individuals with a primary mental health diagnosis using a problem-solving approach rather than an adversarial court process. Mental health courts have been established in Baltimore City and Harford, Montgomery, and Prince George's counties. For additional discussion on mental health courts, see Chapter 6 of this handbook.

**Exhibit 9.1**  
**General Overview of Evaluation Process for**  
**Incompetency to Stand Trial (IST) and Not Criminally Responsible (NCR)**



Source: Maryland Department of Health; Department of Legislative Services

## **Incompetency to Stand Trial**

### **Overview**

By statute, a defendant is incompetent to stand trial if the defendant is not able to understand the nature or object of the proceeding or assist in the defense. As this definition indicates, incompetency in this context is not related to the actual guilt or innocence of the defendant. Rather, incompetency concerns the current mental ability of the defendant to participate in the proceedings and assist in his or her defense.

The issue of competency may be raised by the judge, prosecuting attorney, defense counsel, or the defendant. However, ultimately the trial judge determines whether a defendant is competent to stand trial. For a determination of competency, the court must find beyond a reasonable doubt that the defendant is able both to understand the nature and object of the proceeding and to assist in the defense.

Prior to making this determination, the court may order the department to conduct an examination on a finding of good cause to do so and after giving the defendant an opportunity to be heard. The department must generally send a report of its findings to the court, the prosecuting attorney, and the defense counsel within seven days. If, after completing its examination, the department opines that a defendant is incompetent to stand trial, the department will provide an opinion in a supplemental report as to whether the defendant, as a result of a mental disorder or mental retardation, would present a danger to self or the person or property of another if released to the community.

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

### **Incompetent to Stand Trial – Defendant Dangerous**

If, after a hearing, the court finds that the defendant is incompetent to stand trial and, because of mental retardation or a mental disorder, is a danger to self or the person or property of others, the court must order the defendant committed to a facility designated by the Maryland Department of Health until the court finds that the defendant is (1) no longer incompetent to stand trial; (2) no longer a danger to self or the person or property of others due to a mental disorder or mental retardation; or (3) not substantially likely to become competent to stand trial in the foreseeable future. The Developmental Disabilities Administration must provide necessary care or treatment for a defendant committed after being found incompetent to stand trial due to mental retardation.

The department must admit the defendant to a facility as soon as possible but no later than 10 business days after the date the department received the order of commitment. The department must notify the court of the date of admission. If the department fails to timely place a defendant in a facility, the court may impose any sanction reasonably designed to compel compliance, including requiring the department to reimburse a detention facility for costs incurred as a result of the delayed placement.

If a defendant is committed to a department facility because of a mental disorder, the court may order the department to (1) evaluate whether there is a substantial likelihood that, without immediate treatment, including medication, the defendant will remain a danger to self or the person or property of another and (2) develop a prompt plan of treatment. The department must comply with the court's order as soon as possible after the defendant's admission to the facility but no later than 48 hours after admission.

For those defendants who are committed to a facility, the court is required to hold a competency review hearing annually to determine whether the defendant continues to meet the criteria for commitment stated above. The court is also required to hold a hearing (1) within 30 days after the filing of a motion by the State's Attorney or counsel for the defendant setting forth new facts or circumstances relevant to the determination or (2) within 10 business days after receiving a report from the department stating opinions, facts, or circumstances that have not been previously presented to the court and are relevant to the determination.

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

At a competency review hearing, if the court finds that the defendant is incompetent to stand trial due to a mental disorder and is not likely to become competent in the foreseeable future, the court must civilly commit the defendant to an inpatient psychiatric facility that the department designates, on a finding by clear and convincing evidence that:

- the defendant has a mental disorder;
- inpatient care is necessary;
- the defendant presents a danger to the life or safety of self or others;

- the defendant is unable or unwilling to be voluntarily committed to a medical facility; and
- there is no less restrictive form of intervention that is consistent with the welfare and safety of the defendant.

If the defendant is found incompetent to stand trial due to mental retardation, the court must order the confinement of the defendant for 21 days as a resident in a Developmental Disabilities Administration facility for the initiation of admission proceedings, if the defendant, because of mental retardation, is a danger to self or others.

### **Incompetent to Stand Trial – Defendant Not Dangerous**

If the court finds that the defendant is incompetent to stand trial but is not dangerous to self or the person or property of others due to a mental disorder or mental retardation, the court may release the defendant on bail or recognizance and may order the defendant to obtain treatment as a condition of release. The department may make recommendations for conditions necessary to ensure the safety of the defendant and the public, which may be incorporated into a pretrial release order. Either the department's Community Forensic Aftercare Program or a local jurisdiction's Pretrial Services Program will monitor a defendant on pretrial release. For these defendants, the court is required to hold a hearing annually from the date of release and at any time upon the motion of the State's Attorney or counsel for the defendant. The court may also hold a hearing at any time on its own initiative and may convene periodic status hearings to assess the defendant's compliance with the conditions of pretrial release, competency to stand trial, and dangerousness.

At a hearing described above, the court must reconsider whether the defendant remains incompetent to stand trial or is not a danger to self or the person or property of others as a result of a mental disorder or mental retardation. The court may modify or impose additional conditions of release on the defendant at the hearing. If the court finds that the defendant remains incompetent, is not likely to attain competency in the foreseeable future, and is dangerous, the court must revoke the pretrial release of the defendant and either civilly commit the defendant to a psychiatric facility or confine the defendant to a Developmental Disabilities Administration facility in accordance with the provisions described above pertaining to dangerous defendants.

## **Reporting Requirements**

As long as the defendant remains committed to the department, the department is required to submit a report to the court every six months from the date of commitment and whenever the department determines that (1) the defendant is no longer incompetent to stand trial; (2) the defendant is no longer a danger because of a mental disorder or mental retardation; or (3) there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future. If the report states an opinion that the defendant is competent to stand trial or is no longer a danger as a result of a mental disorder or mental retardation and services are necessary to maintain the defendant safely in the community, maintain competency, or restore competency, the department must include a supplemental report providing a plan for services. The plan must include, if appropriate, mental health treatment; vocational, rehabilitative, or support services; housing; case management services; alcohol or substance abuse treatment; and other clinical services.

## **Dismissal of Charges**

If the defendant remains incompetent to stand trial, whether or not the defendant is confined, and unless the State petitions the court for extraordinary cause to extend the time, the court must dismiss all charges:

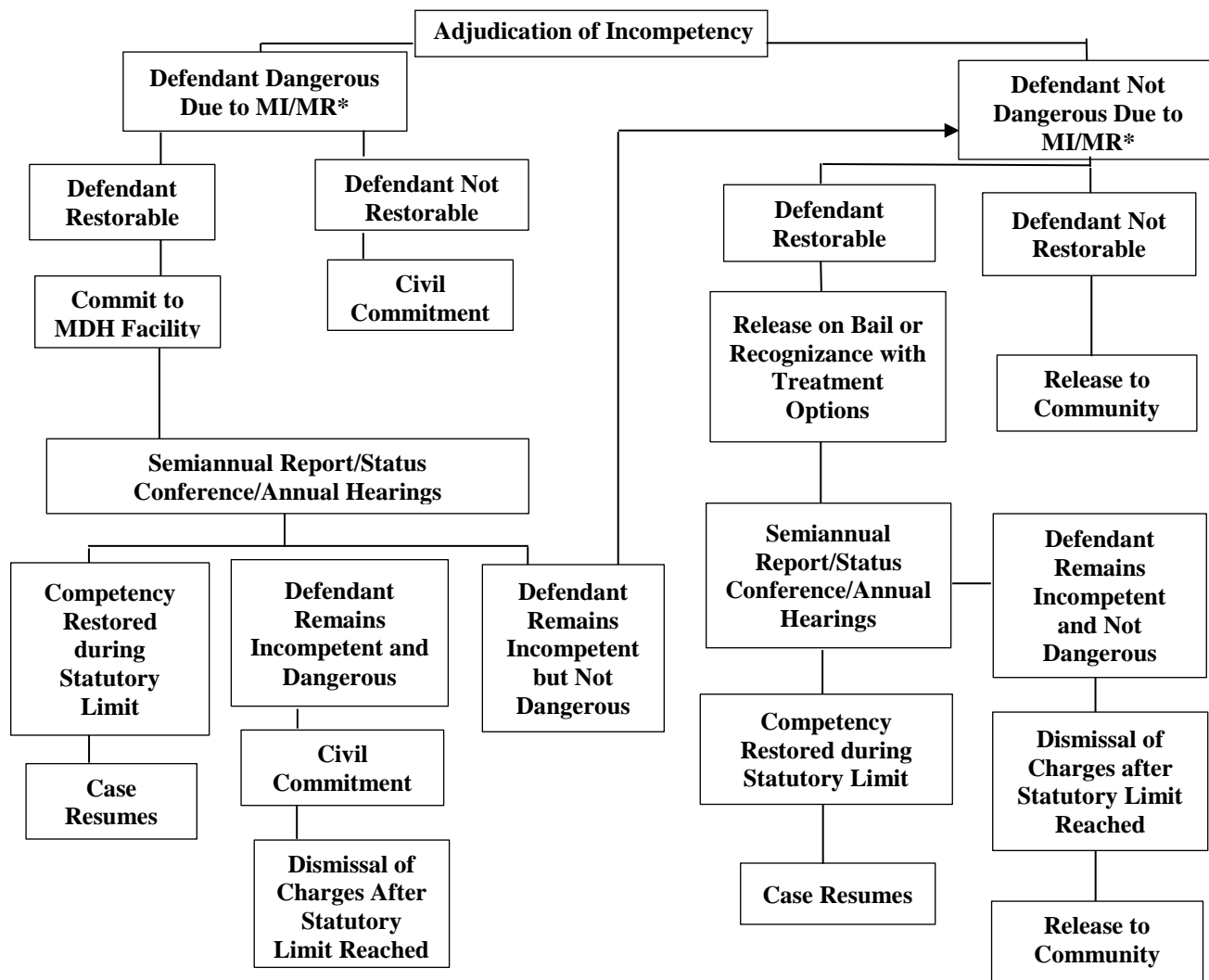
- after the lesser of the expiration of five years or the maximum sentence for the most serious offense charged, if the defendant is charged with a felony or crime of violence;
- after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged, if the defendant is charged with an offense not described above; or
- at any time if the court finds that resuming the criminal proceeding would be unjust because so much time has passed, if notice and an opportunity to be heard have been provided to the State's Attorney and victim as specified in statute.

See Exhibit 9.2 for a chart outlining procedures after a determination of incompetency to stand trial.

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



### Exhibit 9.2 Incompetent to Stand Trial



MDH: Maryland Department of Health

MI: mental illness

MR: mental retardation

Source: Maryland Department of Health

## Not Criminally Responsible Findings

### Overview

In order to be guilty of a crime, a person must not only commit a criminal act but also generally must have had a necessary mental state at the time of the act, sometimes called an intent to commit the act. If an individual injures another or commits an act while unconscious (*e.g.*, while sleepwalking or under anesthesia), this individual is not guilty of what would be a crime under ordinary circumstances. Similarly, the law recognizes that a person should be found not criminally responsible if the person commits a criminal act because a mental disorder or mental retardation hinders the person's ability to comply with the law or understand that what he or she was doing was criminal. The plea of not criminally responsible is often referred to as the insanity defense. Unlike the issue of competency to stand trial, the focus of the criminally responsible concept is on the mental state of the defendant at the time of the crime. Under Maryland law, a defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or mental retardation, lacks substantial capacity to appreciate the criminality of that conduct or to conform that conduct to the requirements of law. The law further clarifies that a mental disorder does not mean an abnormality manifested only by repeated criminal behavior or other antisocial misconduct.

If a defendant intends to rely on a defense of not criminally responsible, the defendant must enter a written plea at the time provided for initial pleading unless, for good cause shown, the court allows the plea to be filed later. After the plea is entered, the court may order the Maryland Department of Health to evaluate the defendant and to report back to the court, the State, and the defendant within 60 days. The department conducts the evaluation of criminal responsibility only when the defendant is found to be competent and adopts the plea of not criminally responsible. If a competent defendant voluntarily and intelligently withdraws the plea, the department does not proceed with the evaluation of criminal responsibility.<sup>3</sup>

### Trial Procedures

In a trial involving a plea of not criminally responsible, the trier of fact (either a judge or jury) must first find beyond a reasonable doubt that the defendant committed the criminal act. After the trier of fact determines that the defendant committed the act, it must then decide whether the defendant has proven by a preponderance of the evidence<sup>4</sup> that the defendant is not criminally responsible for committing the act.

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<sup>3</sup> *Treece v. State*, 313 Md. 665, 547 A.2d 1054 (1988).

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

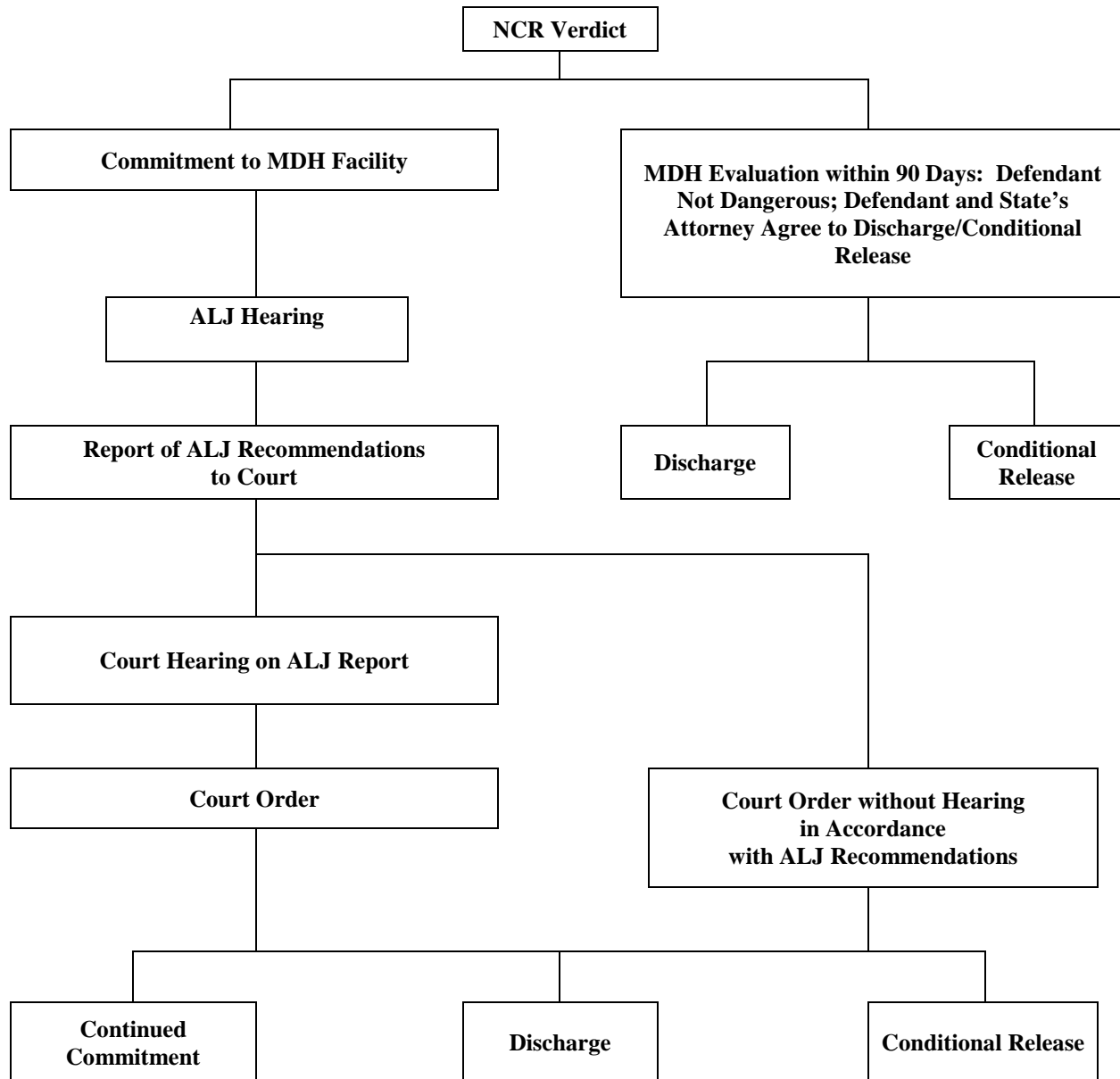
## **Commitment**

After a verdict of not criminally responsible, a court ordinarily is required to order the defendant committed to a facility designated by the Maryland Department of Health for institutional inpatient care or treatment. The department is required to admit the defendant to a designated facility as soon as possible but no later than 10 business days after the department receives the order or commitment. The department must also notify the court of the date the defendant was admitted to the facility. If the department fails to timely place the defendant in a facility, the court may impose any sanction reasonably designed to compel compliance, including requiring the Maryland Department of Health to reimburse a detention facility for costs incurred as a result of the delayed placement.

If the court commits a defendant who was found not criminally responsible primarily because of a mental disorder, the court may order the Maryland Department of Health to (1) evaluate the defendant; (2) develop a prompt plan of treatment; and (3) evaluate whether there is a substantial likelihood that, without immediate treatment, including medication, the defendant will remain a danger to self or the person or property of another. The department must comply with the court's order as soon as possible after the defendant's admission to the facility but no later than 48 hours after admission.

While commitment to a facility is typically required, the court may release a defendant after a not criminally responsible verdict if (1) the Maryland Department of Health issues an evaluation report within 90 days prior to the verdict stating that the defendant would not be a danger if released, with or without conditions and (2) the State's Attorney and the defendant agree to the release and any conditions the court chooses to impose. See Exhibit 9.3 for a chart on the procedure following a not criminally responsible verdict.

**Exhibit 9.3**  
**Procedure Following Not Criminally Responsible (NCR) Verdict**



ALJ: administrative law judge

MDH: Maryland Department of Health

Source: Maryland Department of Health

## **Release After Commitment of Defendants Found to be Not Criminally Responsible**

A committed defendant is eligible for release only if the defendant proves by a preponderance of the evidence that the defendant will not be a danger to self or to the person or property of others due to a mental disorder or mental retardation if released from commitment with or without conditions. Within 50 days after the finding of not criminally responsible and commitment to the Maryland Department of Health, unless waived by the defendant, the department must hold a hearing at the facility before an administrative law judge from the Office of Administrative Hearings on the issue of whether the individual is eligible for discharge or conditional release from inpatient confinement or requires continued commitment.

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

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

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

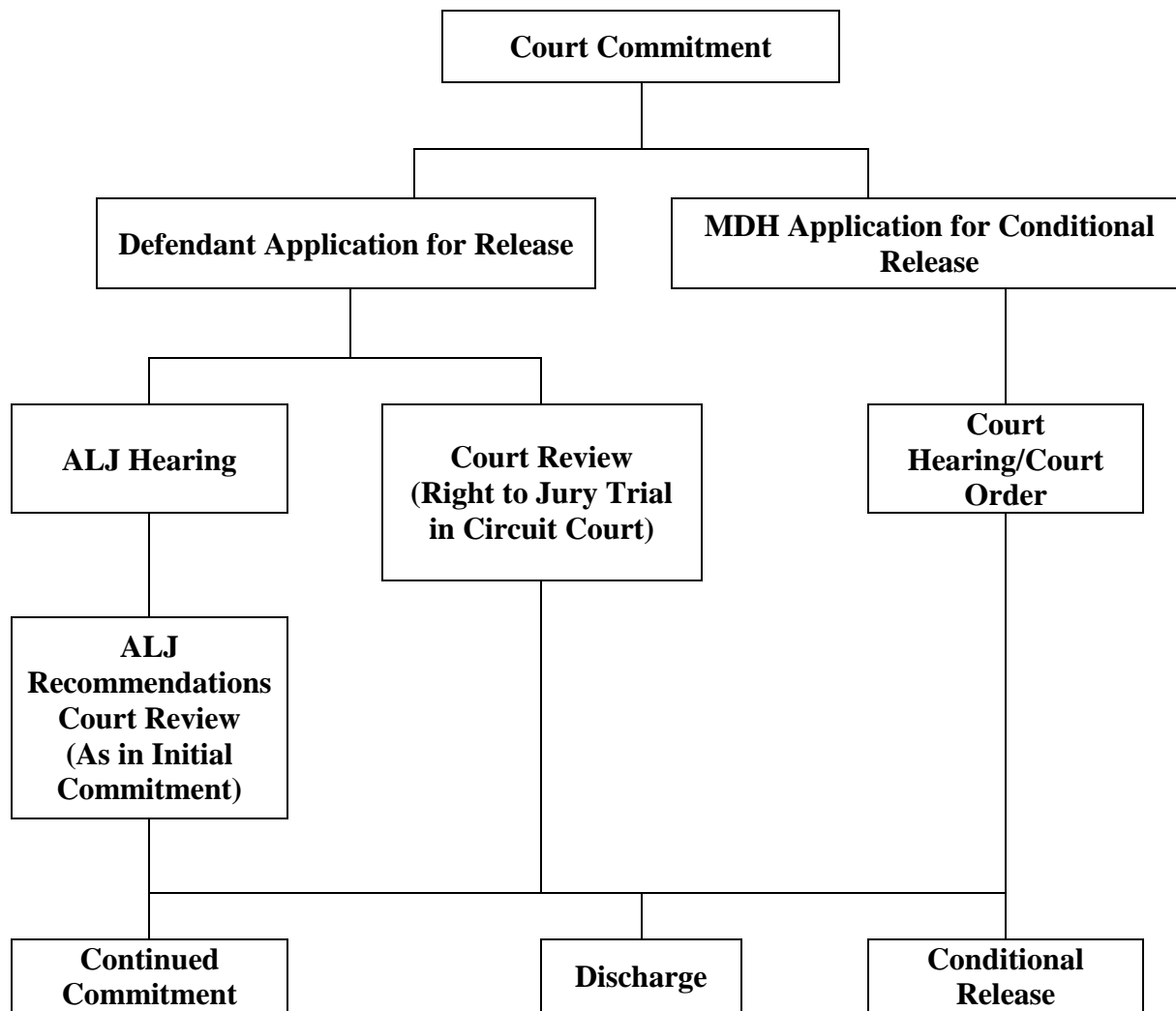
Usual conditions of release include provisions for housing (*e.g.*, residential rehabilitation housing, supervised housing, *etc.*), mental health treatment, daytime activities (*e.g.*, psychosocial programs, vocational training, *etc.*), and alcohol or substance abuse treatment. A conditional release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

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

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

In addition, the Maryland Department of Health may apply at any time to the court to order the defendant's conditional release. The department is required to send a copy of the application to the defendant, the defendant's counsel, and the State's Attorney. After receipt of the application, the court may hold a hearing on the application or may issue an order either continuing commitment or allowing the conditional release. See Exhibit 9.4 for procedures relating to the continued commitment of defendants.

**Exhibit 9.4**  
**Not Criminally Responsible – Continued Commitment**



ALJ: administrative law judge

MDH: Maryland Department of Health

Source: Maryland Department of Health

The Community Forensic Aftercare Program within the Behavioral Health Administration's Office of Forensic Services monitors all cases of individuals on conditional release.

## **Revocation or Modification of Conditional Release**

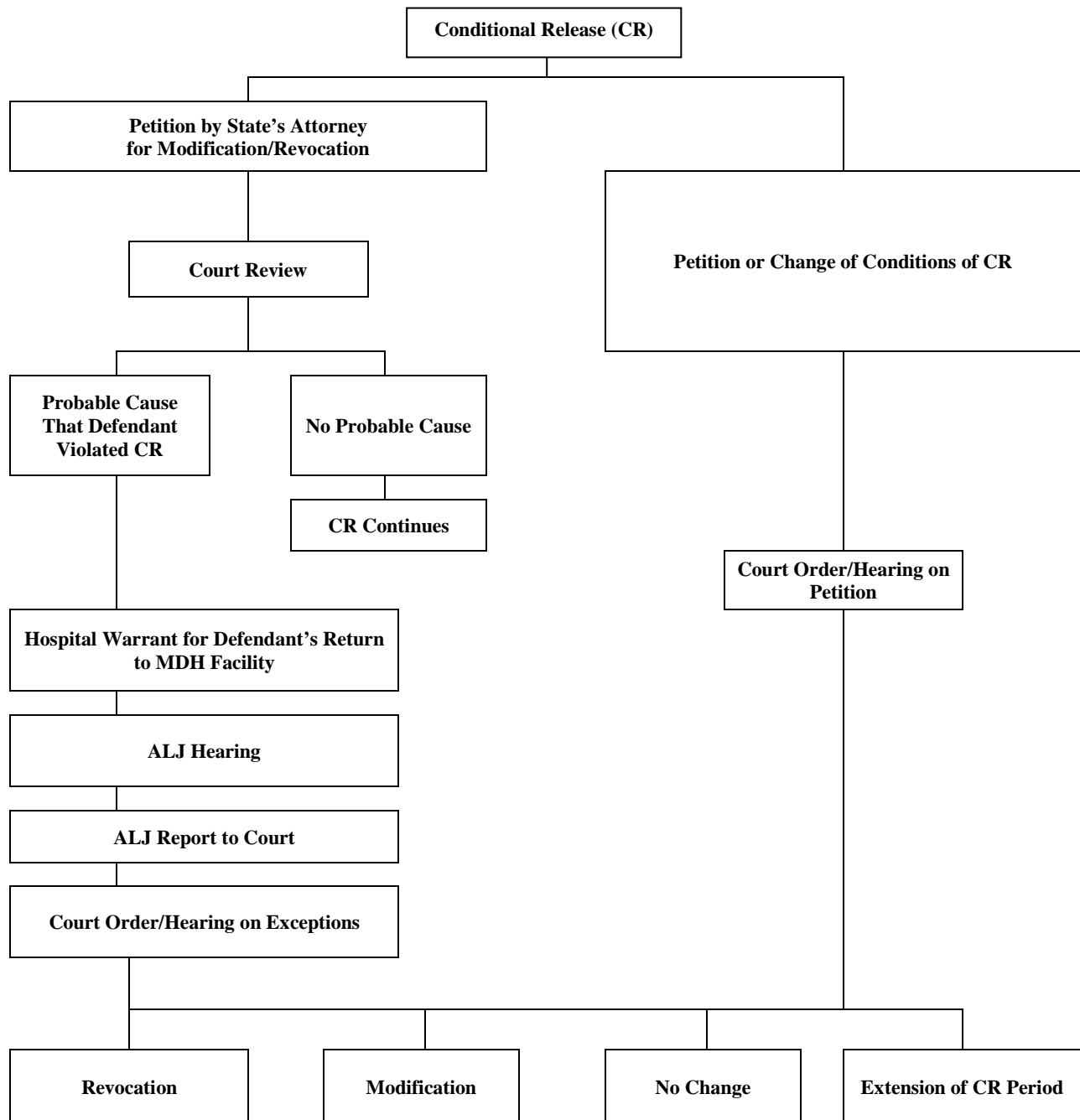
If the State's Attorney receives a report that a defendant who was given a conditional release has violated a condition of release, or if the State's Attorney is notified by the court or the Maryland Department of Health of a violation, the State's Attorney must conduct an investigation. If the State's Attorney determines that there was a violation and believes that further action is necessary, the State's Attorney must promptly notify the department and file with the court a petition for modification or revocation of conditional release. If the court determines that there is not probable cause to believe that a violation occurred, the court must note this determination on the petition and notify the State's Attorney, the department, and the person reporting the violation. If the court decides that there is probable cause to believe that a violation occurred, the court must issue a hospital warrant for the defendant's apprehension and return to the department's jurisdiction and notify the State's Attorney, the defendant's counsel, the department, the person reporting the violation, and the administrative law judge. The individual is usually returned to the facility from which the individual had been released.

Unless all parties agree to an extension or the administrative law judge finds good cause, a hearing must be held within 10 days after the defendant's return to the department under the hospital warrant. At the hearing, the defendant is entitled to representation by an attorney, and all parties are entitled to submit evidence and call witnesses. The State is required to show by a preponderance of the evidence that the violation occurred. If the State meets this burden, the defendant may nevertheless prove by a preponderance of the evidence eligibility for continued release. The administrative law judge is required to report the findings and recommendations to the court promptly. Any party may file timely exceptions. After receipt of the report, and after reviewing any exceptions filed, the court may revoke the release, continue the release, modify the terms of release, or extend the conditional release for an additional five-year term.

The Maryland Department of Health and the State's Attorney may petition the court to change the conditions of release at any time. Unless good cause is shown for an earlier hearing, a defendant on conditional release may petition the court for a change in conditions after six months on release. Thereafter, the defendant may petition for a change annually. If, however, the defendant has a physician's or psychologist's affidavit stating that the defendant's mental condition has improved, the defendant may petition for a change at any time. See Exhibit 9.5 for procedures relating to a revocation/modification of conditional release.



### Exhibit 9.5 Revocation/Modification of Conditional Release



ALJ: administrative law judge

MDH: Maryland Department of Health

Source: Maryland Department of Health

## **Victims' Rights**

A victim of a crime who has filed certain requests for notification<sup>5</sup> is entitled to notification of all hearings and proceedings concerning a defendant who has been found incompetent to stand trial or not criminally responsible for a crime involving the victim. For a discussion of victims' rights, see Chapter 12 of this handbook.

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<sup>5</sup> See § 11-104 of the Criminal Procedure Article.



## Chapter 10. Sentencing

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

A sentence is usually expressed in the law as a monetary fine, a term of imprisonment or probation, or a combination of these elements. In many cases, Maryland law states a maximum sentence for an offense but does not identify a minimum sentence, leaving sentencing to the discretion of the court. For some offenses in which a minimum sentence is specified, however, the court may have some discretion in imposing a penalty of less than the statutory minimum sentence.

The following circumstances require the application of mandatory minimum sentencing which the court may not suspend: (1) use of a firearm in a felony or crime of violence; (2) use of a firearm in a drug trafficking crime; (3) possession of a firearm if the person was previously convicted of a federal charge or an offense in another state that would constitute a disqualifying crime of violence or drug crime if committed in Maryland; (4) volume drug dealing and being a drug kingpin; (5) crimes of violence as a subsequent offense; (6) wearing, carrying, or transporting a handgun that is loaded with ammunition if the person was previously convicted of specified weapons offenses; and (7) commission of first- or second-degree rape or first- or second-degree sexual offense<sup>1</sup> by a person at least 18 years old when the victim is younger than age 13. In addition, first degree murder carries a mandatory life sentence that may be either with or without the possibility of parole. Certain subsequent drunk and drug-impaired driving offenders are also subject to mandatory sentences. See Chapter 3 of this handbook for additional discussion of drunk and impaired driving.

Most, but not all, criminal violations are found in statutory law. Some offenses are common law crimes. Common law refers to the body of law developed over time in England and adopted by the American colonies. It is based primarily upon judicial precedent or court decisions. For example, an attempt to commit a crime is generally a common law offense. However, some common law offenses (*e.g.*, attempted murder) have been codified as statutory crimes. If statute does not prescribe a penalty for a common law crime, the penalty imposed is within the discretion of trial court, so long as it does not violate the constitutional prohibition on cruel and unusual punishment. See Chapter 1 of this handbook for a discussion of common law crimes.

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<sup>1</sup> Chapters 161 and 162 of 2017 (1) reclassified criminal conduct classified as sexual offense in the first degree and sexual offense in the second degree as rape in the first degree and rape in the second degree, respectively and (2) made conforming statutory changes. Chapters 161 and 162 took effect on October 1, 2017.

## **Justice Reinvestment Act**

Chapter 515 of 2016, also known as the Justice Reinvestment Act, establishes a significant shift in how the State penalizes crimes, and includes modifications of a number of criminal penalties.

The Act:

- alters provisions relating to sentencing, corrections, parole and offender supervision;
- alters provisions relating to criminal gangs and makes it easier for prosecutors to establish gang activity as a criminal enterprise, which is subject to more stringent penalties;
- increases penalties for specified violent crimes;
- incorporates treatment access as a critical component of public safety policy; and
- facilitates reinvestment of the savings generated from corrections policy changes into strategies to increase public safety and reduce recidivism.

## **Sentencing Guidelines**

Maryland was one of the first states to initiate a sentencing guideline system. After first being piloted in four jurisdictions, the guidelines have been in effect statewide since 1983. Maryland's voluntary guidelines were originally designed by circuit court judges for circuit court judges. In 1996, the Maryland Commission on Criminal Sentencing Policy was established to examine issues relating to and make recommendations concerning "truth in sentencing" for Maryland. In its final report, this study commission recommended the creation of a permanent sentencing commission that would assume responsibility for the sentencing guidelines and the related administration and reporting. In response, in 1999, the Maryland General Assembly created the State Commission on Criminal Sentencing Policy. The commission's enabling legislation set out the following six legislative goals for sentencing in Maryland:

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

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

The commission oversees the State's voluntary sentencing guidelines. It consists of 19 members, including members of the Judiciary, members who are active in the Maryland criminal justice system, members of the Senate of Maryland and House of Delegates, public representatives, and a chairman appointed by the Governor. Using data collected from the sentencing guidelines worksheets, the commission monitors circuit court sentencing practices and adopts changes to the guidelines consistent with legislative intent when necessary. During the legislative session, the commission prepares statements containing fiscal and statistical information on proposed legislation affecting sentencing and corrections practice. The commission, in conjunction with consultants at Applied Research Services Inc., developed a sentencing/correctional simulation model to help project the potential impact of proposed changes to the sentencing guidelines on Maryland's correctional population. The model is designed to estimate the impact of changes in operating policies, sentencing practices, post-release practices, and external system pressures on the system. The responsibilities of the commission include reporting annually to the General Assembly regarding changes made to the sentencing guidelines and reviewing judicial compliance with the sentencing guidelines.

Further, the commission collects and automates the State sentencing guideline worksheets. Using the data collected, the commission monitors circuit court sentencing practices and adopts changes to the guidelines consistent with legislative intent. The data collected also supports the legislatively mandated use of a correctional population simulation model designed to forecast prison bed space and resource requirements. Any forecasts exceeding available State resources must include alternative guideline recommendations to bring prison populations into balance with State resources. The sentencing guidelines can be found in the *Code of Maryland Regulations*. The commission's instruction and sample case manual is published on the Internet.

Maryland's voluntary sentencing guidelines apply to criminal cases prosecuted in the circuit courts, with the exception of the following sentencing matters: (1) prayers for a jury trial and appeals from the District Court (unless a pre-sentence investigation is ordered); (2) crimes that carry no penalty of incarceration; and (3) violations of public laws and municipal ordinances. The guidelines determine whether an individual should be incarcerated and if so, provide a sentence length range. For each offense category (person, drug, and property), there is a separate grid or matrix, and there is a recommended sentence range in each cell of the grid. The sentence recommendation is determined in the grid by the cell that is the intersection of an offender's offense score and offender score. In drug and property offenses, the offense score is determined by the seriousness of the offense (seriousness category). In offenses against persons, the offense score is determined by the seriousness of the offense, the physical or mental injury to the victim, the weapon used, and any special vulnerability of the victim, such as being younger than 11 years old, 65 years or older, or physically or mentally disabled. The offender score is a calculation of the individual's criminal history and is determined by whether or not the offender was in the criminal justice system at the time the offense was committed, has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

The guideline sentence range represents only nonsuspended time. The actual sentence accounts for credit for time served, suspended time, length of probation, any fine, restitution, and community service. If a judge imposes a sentence of probation, the length of the probation is left to the judge's discretion, within statutory limits. Sentencing judges may, at their discretion, impose a sentence outside the guidelines. Judges who wish to sentence outside the guidelines, however, are required to submit an explanation to document the reason or reasons for the departure.

When the guidelines were originally drafted by the study group, it was expected that two-thirds of sentences would fall within the recommended sentencing ranges, and when sentencing practice resulted in departures from the recommended range in more than one-third of the cases, the guidelines would be revised. Since that time, the commission has adopted the goal of 65.0% as the benchmark standard for guidelines compliance. The rate of compliance with the guidelines in fiscal 2017 was 81.0% for all offenses – compared to 75.8% in fiscal 2013. Compliance was highest for sentences for offenses against persons (83.2%), followed by sentences for drug offenses (81.9%) and sentences for property offenses (79.1%).

## **Probation**

Probation is a disposition that allows an offender to remain in the community, frequently requiring compliance with certain standards and special conditions of supervision imposed by the court. A court has broad authority to impose reasonable

conditions to fit each case. A standard condition of probation, for example, prohibits the offender from engaging in any further criminal activity. Additional conditions may require an offender to participate in drug or alcohol treatment, refrain from the use of drugs or alcohol, participate in counseling (common in domestic violence and sexual offense cases), pay restitution, or refrain from contacting or harassing the victim of the crime and the victim's family. A judge may also order "custodial confinement," which usually refers to home detention or in-patient drug or alcohol treatment but can also include other forms of confinement short of imprisonment.

If an offender is alleged to have violated a condition of probation, the offender is returned to court for a violation of probation hearing. If the court finds that a violation occurred, it may revoke the probation and impose a sentence allowed by law. The court may alternately choose to continue the offender on probation subject to any additional conditions it chooses to impose. Probation may either be probation before judgment (commonly known as "PBJ") or probation following judgment.

### **Probation Before Judgment**

Probation before judgment requires a finding of guilt by a judge or jury – either after trial or after a guilty plea by the defendant. However, if the judge finds that it is in the best interests of the defendant and also consistent with the welfare of the people of the State, the judge may, instead of entering a judgment of conviction, grant the defendant probation before judgment. This disposition allows the judge to impose a reasonable punishment upon the defendant without including the taint of a conviction that could have adverse consequences on the defendant's future. In the case of motor vehicle offenses, probation before judgment allows for the imposition of a penalty without the additional imposition of points on a defendant's driving record, enabling the defendant to avoid, when deemed appropriate, possible license sanctions and insurance issues.

A judge may impose a fine as a condition of probation before judgment. A court may not impose probation before judgment for specified alcohol- and/or drug-related driving offenses if the defendant has previously been convicted of or been granted probation before judgment for an alcohol- and/or drug-related driving offense within 10 years of the current offense. A court may also not impose probation before judgment if the offense is rape or a sexual offense (except for a fourth-degree sexual offense) involving a victim younger than 16 years of age. Generally, a court is prohibited from imposing probation before judgment for a second or subsequent controlled dangerous substance crime. However, a court may impose probation before judgment on a defendant for a second offense of possession of a controlled dangerous substance if (1) the defendant has been convicted once previously of or received probation before judgment once previously for possession of a controlled dangerous substance; (2) the court requires the defendant to



graduate from drug court or successfully complete a substance abuse treatment program as a condition of probation; and (3) the defendant graduates from drug court or successfully completes a substance abuse treatment program as required.

Upon fulfilling the conditions of probation before judgment, the defendant is discharged from probation by the court, and that discharge “is without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of a crime.” Under certain circumstances, a defendant who fulfills the conditions of probation before judgment may file a petition for expungement of the police record, court record, or other record maintained by the State or political subdivision relating to the defendant.

### **Probation Following Judgment**

Probation following judgment allows the court to impose any sentence provided by law and to impose conditions on an offender after the court has entered a judgment of conviction. Following that judgment, the court may suspend the imposition or execution of a sentence and place the offender on probation. Often courts will impose a split sentence, requiring the offender to serve a portion of an imposed period of incarceration (but suspending the remainder of that period) after which the offender will begin a period of probation. If the court orders a term of imprisonment, the court may order that the term of probation commence on the date that the offender is released from imprisonment. In general, a term of probation following judgment may not exceed five years if probation is ordered by a circuit court or three years if ordered by the District Court. A longer term of probation may be ordered for a sexual crime involving a minor, for the purpose of making restitution, or for commitment to the Maryland Department of Health for substance abuse treatment.

### **Supervised Probation**

If a court grants probation, the court may order the probation to be supervised or unsupervised. For minor or nonviolent first-time offenses, a court typically does not order supervised probation. For example, if a court orders probation before judgment for a minor speeding ticket, the court most likely will not order supervised probation. For more serious offenses, however, a court will order the offender to be supervised by the Department of Public Safety and Correctional Services. An offender placed on supervised probation is required to pay a monthly fee of \$50 to the department unless exempted by law.

The department supervises probationers and parolees who are serving sentences in the community. As of June 2018, approximately 505 parole and probation agents and 73 drinking driver monitors were responsible for the supervision of approximately

49,244 offenders – 30,661 under probation supervision, 10,251 being monitored by the Drinking Driving Monitor Program, 3,279 under mandatory release supervision, and 4,681 under parole supervision. In addition, another 55 community supervision agents function as full-time investigators, conducting pre-sentence, pre-parole, and other types of investigations for the Maryland Parole Commission, the courts, and other criminal justice agencies. See Chapter 16 of this handbook for a full discussion of parole and mandatory release supervision.

An offender on supervised probation is assigned to a community supervision agent, and a written case plan is developed by that agent that includes not only the conditions of probation imposed by the court or parole commission but also the risk factors and needs identified during the course of supervision. Supervision is focused on addressing these elements in a manner intended to reduce the offender's potential for recidivism and increase the offender's ability to establish and maintain a more productive lifestyle.

Pursuant to the Justice Reinvestment Act, the Division of Parole and Probation within the Department of Public Safety and Correctional Services must administer a validated screening tool on each individual on parole or mandatory supervision and conduct a risk and needs assessment and develop an individualized case plan for each individual who has been screened as moderate or high risk to reoffend. The Division of Parole and Probation must supervise the individual based on the results of the validated screening tool or the assessment.

The Department of Public Safety and Correctional Services is required by the same legislation to establish a program to implement the use of graduated sanctions in response to technical violations of conditions of supervision and adopt policies and procedures to implement the program and ensure that specified due process protections and supervisory guidelines are in place. The Division of Parole and Probation must provide notice to the court and to the Maryland Parole Commission regarding a technical violation and any graduated sanctions imposed as a result. The court and the Maryland Parole Commission may impose sentences up to a specified maximum for a revocation due to a technical violation but may depart from the limits if adhering to the limits would create a risk to public safety or to a victim or witnesses. The court may also depart from the specified limits if the court commits the probationer or defendant for substance abuse treatment.

The size of a general supervision caseload is approximately 95 cases, but caseload size varies within the department's specialized programs such as the sexual offender and the Violence Prevention Initiative caseloads which average 42 and 47 offenders, respectively.

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

## **Earned Compliance Credit Program**

Pursuant to legislation enacted in 2012, the Department of Public Safety and Correctional Services established a program of earned compliance credits. The purpose is to create a reduction in the period of active supervision for a “supervised individual” and to develop policies and procedures for implementation. With certain exceptions, a “supervised individual” means an individual placed on probation by a court or one who is serving a period of parole or mandatory release supervision after release from a correctional facility. The Justice Reinvestment Act expands eligibility for earned compliance credits to individuals convicted of specified offenses involving controlled dangerous substances.

An “earned compliance credit” is a 20-day reduction from the period of active supervision of the supervised individual for every month that a supervised individual:

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

A supervised individual whose period of active supervision has been completely reduced as a result of earned compliance credits must remain on “abatement” until the expiration of the individual’s sentence, unless the individual consents to continued active supervision or violates a condition of probation, parole, or mandatory release supervision, including failure to make a required payment of restitution. If a supervised individual violates a condition of probation while on abatement, a court may order the person to be returned to active supervision. “Abatement” means an end to active supervision without alteration of the legal expiration date of the case or affecting the supervised individual’s

obligation to obey all laws, report as instructed, and obtain written permission from the department before relocating outside the state. Under the Justice Reinvestment Act, the Division of Parole and Probation must develop an automated application for the tracking and awarding of earned compliance credits. Also, a supervised individual who is placed on abatement is not required to regularly report to a parole or probation agent or pay supervision fees.

Furthermore, the Act requires the Division of Parole and Probation to place certain individuals who are on probation, parole, or mandatory supervision on abatement status when a combination of time served on probation, parole, or mandatory supervision and earned compliance credits satisfy the specified individual's active term of supervision.

## **Interstate Compact for Adult Offender Supervision**

According to the Bureau of Justice Statistics, there are an estimated 4.65 million adult men and women under federal, State, or local probation or parole jurisdiction. Of that number, more than 227,000 legitimately relocate across state lines each year. The Interstate Compact for Adult Offender Supervision is a congressionally authorized agreement that governs the transfer of supervision for parolees and probationers among the member states to the compact.

Maryland became a member of the existing compact in 2001. The Uniform Act for Out-of-State Parolee Supervision was first enacted in 1937 and has been revised through the years. The existing compact continues the public safety mission by providing for uniform rules and guidelines governing the transfer of an offender's parole or probation supervision from one state to another. An offender continues to be supervised under the terms of release established by the sentencing court or paroling authority of the original sentencing jurisdiction, even after relocation to another state. All 50 states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico have enacted the existing compact.

## **Sexual Offenses**

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. These laws have become popularly known as either "Megan's Law" or "Jessica's Law" in memory of children who have been sexually assaulted and murdered by convicted sex offenders.

The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), conditioned receipt of federal grant assistance on conformity by the states with various

aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification of registration requirements, duration of registration, access to and sharing of information, and penalties for failure to register. Failure to comply with SORNA puts a state at risk of losing 10% of Byrne Justice Assistance grants, which all states use to pay for crime fighting efforts including drug task forces, anti-gang units, police overtime, and other law enforcement activities.

In 2010, Maryland's sex offender registration laws were substantially revised in an effort to comply with SORNA and increase penalties for certain sex offenses committed against minors. Among the enacted provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life. If a Tier I sex offender meets specified requirements, the registration term may be reduced to 10 years. A sex offender is required to register in each county where the offender habitually lives. The term "habitually lives" includes any place where a person visits for longer than five hours per visit more than five times within a 30-day period. A sex offender who is homeless is required to register in person within a specified period of time with the local law enforcement unit in the county where the registrant habitually lives and to reregister weekly while habitually living in the county.

Sex offender registration provisions are applied retroactively to a person who (1) is under the custody and supervision of a supervising authority on October 1, 2010; (2) was subject to registration on September 30, 2010; (3) is convicted of any felony on or after October 1, 2010, and has a prior conviction for an offense for which sex offender registration is required; or (4) is convicted on or after October 1, 2010, of sexual solicitation of a minor, regardless of whether the victim was a minor. The term of retroactive registration for a Tier I or II sex offender must be calculated from the date of release.

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

In *Department of Public Safety & Correctional Services v. Doe*, 439 Md. 201 (2014), the Court of Appeals further held that where SORNA includes a provision regarding the resolution of conflicts between the federal law and State constitutions, an individual to whom the registration requirement would be applied retroactively cannot be required to register involuntarily as a sex offender in the State. Moreover, the court concluded that where the court has declared the retroactive application of the State's sex offender registry to be unconstitutional as articulated in *Doe I*, the State must remove the individual's information from the registry.

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

### **Lifetime Supervision**

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

- a sexually violent predator;
- a person convicted of first- or second-degree rape or attempted first- or second-degree rape;
- a person convicted of first- or second-degree sexual offense, attempted first-degree sexual offense, specified circumstances of second-degree sexual offense, or an attempt to commit specified circumstances of second-degree sexual offense, as those offenses existed before October 1, 2017;
- a person convicted of sexual abuse of a minor if the violation involved a child younger than the age of 12;
- a person required to register with the person's supervising authority because the person was at least 13 years old but not older than 18 years old at the time of the act; or
- a person convicted more than once arising out of separate incidents of a crime that requires registration.

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

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

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

### **Juveniles – Sex Offender Registration**

A person who has been adjudicated delinquent for an act that would constitute first- or second-degree rape or first- or second-degree sexual offense (as those offenses existed before October 1, 2017) if committed by an adult must register with a supervising authority at the time the juvenile court's jurisdiction terminates (usually at age 21), for inclusion on the State's sex offender registry if (1) the person was at least 13 years old at the time the qualifying delinquent act was committed; (2) the State's Attorney or the Department of Juvenile Services requests that the person be required to register; (3) the court determines by clear and convincing evidence after a hearing (90 days prior to the time the juvenile court's jurisdiction is terminated) that the person is at significant risk of committing a

sexually violent offense or an offense for which registration as a child sexual offender is required; and (4) the person is at least 18 years old.

A person must also register with the Department of Juvenile Services for inclusion in the registry of juvenile sex offenders if the person was adjudicated delinquent for an act committed when the person was a minor at least 14 years old and that, if committed by an adult, would constitute first-degree rape, second-degree rape, specified circumstances of third-degree sexual offense, first-degree sexual offense, or second-degree sexual offense (as those offenses existed before October 1, 2017). A juvenile registrant must appear in person at a location designated by the Department of Juvenile Services every three months to (1) update and verify the information included in the registry and (2) allow the Department of Juvenile Services to take a digital image of the juvenile registrant.

### **Sexual Offender Advisory Board**

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

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

### **Home Detention**

Over the last 32 years, alternative-to-incarceration programs have been implemented by the Department of Public Safety and Correctional Services and by many local jurisdictions. Use of these programs has expanded in recent years. On an average day, 188 State prisoners are in a home detention program for a variety of offenses. In addition, a number of offenders are monitored through county programs. The following jurisdictions are authorized to have a home detention program: Baltimore City and Allegany, Anne Arundel, Baltimore, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, St. Mary's, Washington, and Wicomico counties.



Postconviction home detention is a type of alternative confinement that is used for persons who have been convicted of a crime. It allows the person to continue to live in the person's residence and continue to work but is designed to provide supervision over the person's activities. Electronic monitoring, usually by way of a waterproof, weatherproof, pager-sized device attached to an offender, either on the wrist or ankle, is designed to ensure that the person is at home when not working. Monitoring is also undertaken in person or over the telephone.

The Department of Public Safety and Correctional Services may approve an inmate committed to the custody of the department for participation in the State home detention program. In addition, the department is authorized to license and regulate private home detention companies. However, the vast majority of home detention carried out in the local jurisdictions does not involve the use of private home detention companies. The department may also request national and State criminal history record checks on the operators and employees of such companies. A more comprehensive discussion of alternatives to incarceration can be found in Chapter 14 of this handbook.

## **Diversion for Substance Abuse Treatment**

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

In Maryland, the evaluation of nonviolent offenders for drug or alcohol dependency and the diversion of such defendants to treatment services may be made as an alternative to incarceration. These provisions allow State's Attorneys and the Parole Commission to divert inmates to substance abuse treatment and also provide direct access by courts to substance abuse evaluation, referral, and treatment.

The Justice Reinvestment Act establishes the intent of the General Assembly that the Governor provide funding annually in the State budget for, among other things, (1) the Maryland Department of Health to expand the use of drug treatment for offenders and (2) the Division of Correction and the Division of Parole and Probation to expand treatment and programming for substance abuse treatment, mental health treatment, and cognitive-behavioral treatment.

The Maryland Substance Abuse Treatment Fund was established in 2004 as a nonlapsing fund to be used for evaluation and treatment of criminal defendants for drug or alcohol abuse problems. Also, each county is required to have a local drug and alcohol abuse council to develop a local plan to meet the county's needs for drug and alcohol abuse

evaluation, prevention, and treatment services and to review funding requests for the provision of services. Therapeutic assistance for substance abuse is available in every jurisdiction in Maryland. The circuit courts' Family Support Services Coordinator in each county can refer parties to resources equipped to help those with substance abuse problems. In addition to substance abuse assessments, courts have access to addictions counselors, substance abuse programs, and self-help groups who can provide treatment and/or information to individuals. The court can make referrals for treatment in appropriate cases.



## Chapter 11. Judicial Review

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A person convicted of a crime has a number of alternatives for seeking review of a conviction or a sentence. The options include (1) appeal to a circuit court for a trial *de novo* (if the trial was in the District Court); (2) review at the trial court level (motion for new trial, motion for revision of sentence, and petition for writ of actual innocence); (3) sentence review by a three-judge panel; (4) *in banc* review; (5) DNA evidence – post conviction review; (6) appellate review by the Court of Special Appeals; (7) appellate review by the Court of Appeals; (8) petition under the Uniform Postconviction Procedure Act; (9) *habeas corpus* review (both State and federal); (10) *coram nobis*; and (11) postconviction review in federal court. In general, a defendant is not limited to any particular option for judicial review and may pursue multiple avenues for review in connection with a single conviction.

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

- a dismissal or quashing of a criminal charge before trial;
- a failure of a judge to impose a required sentence;
- imposition or modification of a sentence that is in violation of the Maryland Rules; and
- a decision granting a defendant's motion to exclude evidence in certain felony drug cases and crimes of violence cases.

### **Appeal from District Court – Trial *De Novo***

A defendant tried and convicted in the District Court in a criminal case has a right to appeal to a circuit court. A notice of appeal must generally be filed within 30 days after the verdict. On appeal, the case is tried *de novo*. A *de novo* trial is a completely new trial that does not rely on the record from the first trial.

On the appeal to the circuit court, a defendant has a right to trial by jury if the offense charged is subject to a penalty of imprisonment or there is a constitutional right to a jury trial for that offense. See Chapter 6 of this handbook for a discussion of the right to a jury trial.

## **Review by Trial Court**

### **New Trial**

In general, a defendant has 10 days after the verdict to file a motion for a new trial, and the trial court has discretionary authority to grant a new trial if the court finds that a new trial is in the interest of justice. There are many grounds on which a defendant may base a motion for a new trial. However, there are specific grounds that allow the defendant more time to file the motion, including (1) an unjust or improper verdict; (2) fraud, mistake, or irregularity; (3) newly discovered evidence; or (4) an act of prostitution as a victim of human trafficking.

A defendant has 90 days after sentencing to file a motion for a new trial based on either an unjust or improper verdict, such as a verdict contrary to evidence, or fraud, mistake, or irregularity. Allegations that constitute fraud, mistake, or irregularity include misconduct of a juror, bias and disqualification of jurors, misconduct or error of the judge, and prosecutorial misconduct.

A defendant has one year after sentencing or the date on which the court received a mandate (*i.e.*, ruling) from the Court of Appeals or the Court of Special Appeals, whichever is later, to file a motion for a new trial based on newly discovered evidence. This motion must allege that newly discovered evidence exists that could not have been discovered by due diligence within 10 days after the original verdict. However, a defendant may file a motion for a new trial based on newly discovered evidence at any time, if the newly discovered evidence is based on DNA identification testing or other generally accepted scientific techniques, the results of which, if proven, would show the defendant is actually innocent of the crime. (This procedure is distinct from postconviction review based on DNA evidence discussed below.)

A defendant who has been convicted of prostitution may file a motion to vacate the judgment and request a new trial if, when the defendant committed the act of prostitution, the defendant was a victim of human trafficking. This motion must be filed within a reasonable time after the conviction. In lieu of a new trial, the court may also vacate the conviction or modify the sentence.

### **Revision of Sentence**

A court may correct an illegal sentence at any time. In addition, a court has revisory power over a sentence in cases of fraud, mistake, or irregularity.

A court also has revisory power over a sentence if the defendant files a motion seeking a revision within 90 days after imposition of the sentence. The court may not, however, revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and may not increase the sentence. In the District Court, this revisory power only applies if an appeal has not been perfected or has been dismissed.

A court may modify, reduce, correct, or vacate a sentence only on the record in open court after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. See Chapter 12 of this handbook for a discussion of victims' rights.

### **Writ of Actual Innocence**

A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a writ of actual innocence in the circuit court for the county in which the conviction was imposed. If the conviction resulted from a trial, the person must claim that there is newly discovered evidence that (1) creates a substantial or significant possibility that the result may have been different and (2) could not have been discovered in time to move for a new trial. If the conviction resulted from a guilty plea, an Alford plea, or a plea of *nolo contendere*, the person must claim that there is newly discovered evidence that (1) establishes by clear and convincing evidence the petitioner's actual innocence and (2) could not have been discovered in time to move for a new trial.

The State must be notified of the petition and may file a response. A victim or the victim's representative must be notified, as well, and has the right to attend the hearing on the petition. If the court finds that the petition fails to assert grounds on which relief may be granted, the court may dismiss the petition without a hearing.

In the case of a petition where the conviction resulted from a trial, the court may (1) set aside the verdict; (2) resentence; (3) grant a new trial; or (4) correct the sentence, as the court considers appropriate.

If the conviction resulted from a guilty plea, an Alford plea, or a plea of *nolo contendere*, when assessing the impact of the newly discovered evidence on the strength of the State's case against the petitioner at the time of the plea, the court may consider admissible evidence submitted by either party, in addition to the evidence presented as part of the factual support of the plea, that was contained in law enforcement files in existence at the time the plea was entered.

If the court determines that the evidence establishes the petitioner's actual innocence by clear and convincing evidence, the court may allow the petitioner to withdraw the guilty plea, Alford plea, or plea of *nolo contendere* and (1) set aside the conviction; (2) resentence; (3) schedule the matter for trial; or (4) correct the sentence, as the court considers appropriate. When determining the appropriate remedy, the court may allow both parties to present any admissible evidence that came into existence after the plea was entered and is relevant to the petitioner's claim of actual innocence. The State or the petitioner may appeal an order entered by the court on a petition filed for a conviction that resulted from these pleas.

### **Sentence Review by Three-judge Panel**

With certain exceptions, a person convicted in a circuit court who received a sentence of at least two years in a correctional facility may request that a panel of three judges from that circuit court review the appropriateness of the sentence. The sentencing judge may not be a member of the review panel but may sit with the review panel in an advisory capacity. The defendant must file a motion within 30 days after sentencing to exercise this right to review.

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

A defendant may only appeal a review panel's decision to increase a sentence. In that case, the defendant may appeal on the limited grounds that the sentence was not within statutory or constitutional limits or that the panel acted from ill will, prejudice, or other impermissible considerations.

### ***In Banc* Review**

Under the Maryland constitution, a criminal defendant may request an *in banc* review of any legal issue raised during trial if the trial was conducted by fewer than three circuit court judges of the judicial circuit. Pursuant to the Maryland Rules, an *in banc* review hearing is held by a panel of three judges from the same judicial circuit where the trial was conducted. The constitutional right to an *in banc* hearing does not, however, apply to all criminal cases. The constitutional provision excludes cases appealed from the District Court and misdemeanors not punishable by confinement in the penitentiary.

An *in banc* hearing provides an inexpensive form of judicial review that has been called the "poor person's appeal." As with appeals, the review panel decides questions of

law properly preserved at trial but more expeditiously and without the expense and formality of an appeal.

The notice for the *in banc* hearing must be filed within 10 days after an entry of judgment or 10 days after a motion for a new trial is denied or withdrawn. A hearing must be held as soon as practicable. However, the parties may waive a hearing by notifying the clerk of the court.

If the *in banc* court rules in favor of a criminal defendant, the State has the right to seek review by the Court of Appeals by filing a petition for a writ of *certiorari*. The criminal defendant who sought *in banc* review, however, is precluded from appealing the decision of the *in banc* panel.

## **DNA Evidence – Postconviction Review**

A person who is convicted of a crime of violence may file a petition requesting that the court (1) order DNA testing of scientific identification evidence that the State possesses that is related to the conviction or (2) order a law enforcement agency to search a law enforcement database to identify the source of the physical evidence used for DNA testing. A petitioner also may move for a new trial on the grounds that the conviction was based on unreliable scientific identification evidence and a substantial possibility exists that the petitioner would not have been convicted without the evidence.

The court must order DNA testing if the State agrees to the testing, or if the court finds that (1) a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing and (2) the requested DNA test employs a method of testing generally accepted within the relevant scientific community. If the results of the DNA testing are unfavorable to the defendant, the court must dismiss the petition, and the defendant is required to pay for the testing. If the results of the DNA testing are favorable to the defendant, the court must order the State to pay the costs of the testing.

In addition, a court must order a DNA database search if the State agrees to the search or if the court finds that a reasonable probability exists that a search has the potential to provide exculpatory or mitigating evidence relating to a wrongful conviction or sentencing.

If the petitioner was convicted as the result of a trial, the court is required to either open a proceeding under the Uniform Postconviction Procedure Act discussed below or order a new trial if the court finds that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced



at trial. Alternatively, if the court finds that the test results produce relevant exculpatory or mitigating evidence but that a substantial possibility does not exist that the petitioner would not have been convicted or sentenced if the test results had been known, the court may still order a new trial, if the court finds that a new trial is in the interest of justice.

If the petitioner was convicted as the result of a guilty plea, an Alford plea, or a plea of *nolo contendere* and the court determines that the DNA test results establish by clear and convincing evidence the petitioner's actual innocence, the court may open or reopen a proceeding under the Uniform Postconviction Procedure Act or set aside the conviction and schedule the matter for trial. When assessing the impact of the DNA test results on the strength of the State's case against the petitioner at the time the plea was entered, the court may consider, in addition to evidence that was presented as part of the factual support of the plea, admissible evidence submitted by either party that was contained in law enforcement files in existence at the time of the plea. When determining an appropriate remedy, the court may consider any additional admissible evidence submitted by either party that came into existence after the plea was entered and is relevant to the petitioner's claim of actual innocence.

The State is required to preserve scientific identification evidence that the State has reason to know contains DNA material and is secured in connection with (1) first-degree murder; (2) second-degree murder; (3) manslaughter; (4) first-degree rape; and (5) second-degree rape. The State must preserve such evidence for the time of the sentence unless the State provides advance notice to the defendant, the defendant's attorney of record, and the Office of the Public Defender and no objection to the disposition is filed within 120 days.

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

## **State Appellate Court Review**

### **In General**

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

Special Appeals is the intermediate appellate court. Appellate review is conducted on the record made in the circuit court.

A defendant ordinarily has the absolute right to appeal to the Court of Special Appeals from a final judgment entered in a criminal case by a circuit court. A defendant who is tried in the District Court and appeals to a circuit court, however, may not subsequently appeal to the Court of Special Appeals. Rather, the defendant may file a petition for a writ of *certiorari* with the Court of Appeals. A defendant originally convicted in a circuit court may appeal to the Court of Special Appeals and request further review by the Court of Appeals through a petition for a writ of *certiorari*.

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

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

When an appellate court is called on to determine whether sufficient evidence exists to sustain a criminal conviction, it is not the function of the appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case; rather, the evidence is reviewed in the light most favorable to the State, giving due regard to the finding of fact, resolution of conflicting evidence, and opportunity to observe and assess the credibility of witnesses by the jury or the judge.

In such cases, an appellate court's standard of review is whether the factual findings were clearly erroneous. If there is any competent material evidence to support the factual findings, those findings cannot be held to be clearly erroneous.

By contrast, the clearly erroneous standard does not apply to a trial court's conclusions of law based on findings of fact; in these instances, whether the trial court was legally correct is the proper standard of review by the appellate court.

## Court of Special Appeals

The 15-member Court of Special Appeals typically sits in three-judge panels to hear cases, although in exceptional cases the court may decide by majority vote to sit *in banc*, or as a whole. The concurrence of a majority of a panel is necessary for a decision in a case. The types of cases heard by the Court of Special Appeals include:

- ***First Appeal of Right:*** A person convicted of a crime first tried in a circuit court is entitled to a direct appeal to the Court of Special Appeals for a review of the trial. This first direct appeal is an appeal “of right” because the Court of Special Appeals must hear the case. The first appeal must be taken within 30 days after final judgment of a circuit court or 30 days after a motion for a new trial is denied or withdrawn.
- ***Application for Leave to Appeal to the Court of Special Appeals:*** Certain defendants do not have an automatic right of appeal to the Court of Special Appeals. These defendants may still ask the court to review their cases. Such requests are called applications for leave to appeal because the granting of review by the Court of Special Appeals is discretionary, not mandatory. An application for leave to appeal might be made if the defendant (1) had pleaded guilty in a circuit court; (2) had been denied relief under the Uniform Postconviction Procedure Act; or (3) is appealing a circuit court's order revoking probation.

## Court of Appeals

The Court of Appeals is composed of seven judges. Although the Maryland Constitution only requires five judges to consider a case, in practice all seven judges hear most cases. Its criminal jurisdiction is generally discretionary, meaning the court may select which cases it will hear. Criminal cases are brought before the Court of Appeals in one of the following ways:

- ***Writ of Certiorari:*** Any party, including the State, may file a petition for a writ of *certiorari*, which means an application for the Court of Appeals to review a case on appeal in the Court of Special Appeals or circuit court.
- ***Court Initiative or Motion:*** The Court of Appeals may decide on its own initiative or motion to take a case from the docket of the Court of Special Appeals.

## Collateral Challenges

A collateral challenge is a separate and distinct civil procedure by which a defendant may challenge a conviction, sentence, or imprisonment. To make a collateral challenge, a defendant must initiate an entirely new action. If the defendant prevails in the civil court where the collateral relief was sought, the court then issues a writ directing the criminal court to take certain actions. There are three forms of collateral challenge under Maryland law: (1) a proceeding under the Uniform Postconviction Procedure Act; (2) a *habeas corpus* review; (3) and a writ of error *coram nobis*.

### Uniform Postconviction Procedure Act

The Uniform Postconviction Procedure Act was enacted in 1958 to attempt to create a simple statutory procedure in place of the common law *habeas corpus* and *coram nobis* procedures for challenging criminal convictions and sentences. (*Habeas corpus* and *coram nobis* remain available.)

Any person convicted of a crime in the District Court or a circuit court has a right to institute a proceeding for postconviction relief in a circuit court to set aside or correct a verdict. This right extends to a sentence of parole or probation, as well as confinement. A postconviction proceeding is not an inquiry into guilt or innocence; the trial and appellate review are where that issue is determined. Postconviction proceedings focus on whether the sentence or judgment imposed is in violation of the U.S. Constitution or the constitution or laws of the State. In theory, the scope of this inquiry is quite broad. The postconviction court may not, however, grant relief based on an allegation of a particular error if the petitioner has finally litigated or waived the error. As a practical matter, this requirement bars the petitioner from obtaining relief for most trial errors.

Unless extraordinary cause is shown, a petition for postconviction relief must be filed within 10 years of the sentence. The petition must be filed in the circuit court for the county where the conviction took place. A person may only file one petition arising out of each trial or sentence. A defendant is entitled to a hearing on the merits, the assignment of counsel, and a right of appeal. In the interests of justice, a court may reopen a postconviction proceeding that was previously decided.

The most common reason for seeking postconviction relief is a claim of ineffective assistance of counsel. Prosecutorial misconduct is another basis.

## State Habeas Corpus Review

An individual who is confined, detained, or on parole or probation may also petition for a writ of *habeas corpus* to challenge the legality of the confinement. The petition may be filed with a circuit court judge, with a judge of the Court of Special Appeals, or with a judge of the Court of Appeals. The court must limit its review to claims that the convicting court lacked jurisdiction or violated the defendant's fundamental rights. If the judge determines that the individual is detained without legal warrant or authority, the judge must order that the individual be released. Appeals are permitted only in limited situations.

## *Coram Nobis*

Another way to challenge the legality of a conviction is to file a petition for a writ of error *coram nobis*. The writ is available only available to a person who (1) challenges a conviction based on constitutional, jurisdictional, or fundamental grounds, whether factual or legal; (2) rebuts the presumption of regularity that attaches to the criminal case; (3) faces significant collateral consequences from the conviction; (4) asserts an alleged error that has not been waived or finally litigated in a prior proceeding; and (5) is not entitled to another statutory or common law remedy. The purpose of the writ of error *coram nobis* is to request that a court reopen or reconsider a matter that the court has already decided, based on an error of fact or law that was not raised as an issue at trial. For example, one ground for a writ of error *coram nobis* is that the defendant entered into an involuntary guilty plea.

A petition for writ of error *coram nobis* is filed with the court where the conviction took place. A petitioner may appeal from a circuit court's denial of *coram nobis* relief. The failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for writ of error *coram nobis*.

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

A defendant's right to seek relief through writ of error *coram nobis* may be limited by an equitable doctrine known as *laches*. In such cases, the doctrine of *laches* may bar a defendant from seeking *coram nobis* relief if the court determines that the defendant unreasonably delayed in asserting his or her claim for relief and that unreasonable delay has prejudiced the State's ability to defend against the petition for writ of error *coram nobis* or re prosecute the defendant. In *State v. Jones*, 445 Md. 324 (2015), the Maryland Court

of Appeals noted that for purposes of determining delay under *laches*, delay commences when a petitioner for a writ of *coram nobis* knew or should have known of the facts underlying the alleged error.

## **Federal Court Review of State Convictions**

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

- after exhausting all appellate review in the state courts, a defendant may petition the U.S. Supreme Court to consider the case; or
- a defendant may file a writ of *habeas corpus* in federal District Court. A federal court will not grant federal *habeas corpus* relief until a defendant has exhausted all available state remedies.

Issues raised in the federal courts must be presented as federal constitutional issues. Only those claims that were litigated fully in the state court will be considered for review by the federal courts.

## **Governor's Power of Pardon and Commutation**

In addition to the judicial remedies discussed in this chapter, the defendant may seek to have the Governor issue a pardon or commutation. See Chapter 16 of this handbook for a discussion of the Governor's power to pardon or commute.



## **Chapter 12. Victims' Rights**

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Maryland law explicitly provides certain rights for crime victims and their representatives. Article 47 of the Maryland Declaration of Rights requires the State to treat crime victims with “dignity, respect, and sensitivity during all phases of the criminal justice process.” Article 47 further provides that for circuit court cases, a crime victim, on request and if practicable, has the right to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the related terms are defined by law. Moreover, Maryland statutes grant a broad range of specific rights to a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) throughout the criminal justice process. This chapter will discuss these rights.

### **Victim Notification**

Law enforcement officers, District Court commissioners, and juvenile intake officers are responsible for giving an identified victim a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the filing or unsealing of an indictment or information, the prosecuting attorney must mail or deliver to a victim or the victim’s representative (1) a pamphlet that describes the rights, services, and procedures available to the victim or victim’s representative after the indictment or information is filed and (2) a notification request form by which the victim or victim’s representative may request notice of various proceedings. The pamphlets are prepared by the State Board of Victim Services. The exercise of many of the rights discussed in this chapter depends on a victim or victim’s representative completing a notification request form or otherwise requesting notifications and rights.

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



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

Once a victim or victim's representative has filed the notification request form or followed the Maryland Electronic Courts system protocol for electronic notice, the prosecuting attorney is required to notify the victim or victim's representative of (1) all court proceedings; (2) the terms of any plea agreement; and (3) the right to file a victim impact statement. Additionally, the prosecuting attorney must notify the victim or victim's representative of the terms of any agreement, action, or proceeding that affects the interests of the victim or victim's representative as soon after the proceeding as practicable. The clerk of the court must forward the victim's notification request with the offender's commitment order or probation order, and if an appeal is filed in the case, a copy of the request must be sent to the Attorney General and the court to which the case has been appealed. If the victim or victim's representative has followed the Maryland Electronic Courts system protocol, the clerk must electronically transmit the form or the registration information for the victim or the victim's representative through the Maryland Electronic Courts system. The notification request also requires a victim or victim's representative to be notified about postsentencing proceedings, such as an offender's eligibility for administrative release, parole hearing, or release under mandatory supervision, and if an offender violates a condition of release (*i.e.*, parole, probation, or mandatory supervision), escapes, is recaptured, or dies.

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

## **Specific Rights**

In addition to the notification rights, a victim of a crime has numerous other rights established by statute. These rights include the right:

- to have the victim's safety considered by the court, a District Court commissioner, or a juvenile intake officer in setting conditions of pretrial or prehearing release, including possibly imposing a condition of no contact with the victim;
- 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 cooperation with law enforcement and prosecution efforts;
- during any phase of the investigative proceedings or court proceedings, to be provided, to the extent practicable, a waiting area that is separate from a suspect or defendant and the family and friends of a suspect or defendant;
- if practicable, to attend any proceeding in which the right to appear has been granted to a defendant;
- to remain present, except under specific circumstances, at a criminal trial or delinquency hearing after initially testifying;
- to apply for, and have the court appoint, a qualified interpreter if the victim or victim's representative is deaf or cannot readily understand or communicate the spoken English language;
- if practicable and on request of the victim or the victim's representative, to personally, or through a representative, address the judge before the imposition of a sentence or other disposition, or conversely, to choose not to address the court and to make this decision without coercion;
- to file an application for leave to appeal to the Court of Special Appeals from an interlocutory order or appeal to the Court of Appeals from a final order that denies or fails to consider specified statutory rights of the victim of a crime;
- to advance notification of, and to present oral testimony at, a parole hearing or an administrative release hearing if the victim has made a request for the hearing to be open to the public;

- to advance notification of, and to present oral or written testimony at, a driver's license suspension hearing held as a result of a fatal vehicular accident if the victim's representative has filed a victim's representation notification form;
- to advance notification of a hearing related to lifetime sexual offender supervision if the victim or victim's representative has requested notification or filed a notification request form or, if applicable, have the notice provided by the Maryland Electronic Courts system;
- to advance notification of a hearing on a request for shielding of all court records relating to an interim, temporary, or final peace or protective order that has been denied or dismissed or to the entry of which the respondent consented, and the right to appear at the hearing and object to the shielding;
- to receive a copy of a petition for expungement of a juvenile record of a case in which the person was a victim and to file an objection to the expungement petition (both of these rights also extend to a family member of a victim who is listed in the court file as having attended the adjudication for the case in which the person is seeking expungement);
- to advance notification of, and to attend, a hearing on a petition for writ of actual innocence;
- to notification of certain subsequent proceedings following conviction or adjudication and sentencing or disposition of a defendant or child respondent, including appeals to the Court of Special Appeals or Court of Appeals, sentence review, or a hearing on a request to have a sentence modified or vacated;
- to request that the offender be prohibited from having any contact with the victim as a condition of parole, mandatory supervision, work release, or other administrative release;
- to address a three-judge panel that reviews a request to change an offender's sentence;
- to submit a victim impact statement and recommendation to be considered by the Maryland Parole Commission when an inmate is considered for commutation of sentence, pardon, or remission of sentence;
- to object to the issuance of a certificate of rehabilitation;<sup>1</sup>

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<sup>1</sup> For more information on certificates of rehabilitation, please see Correctional Services, §7-104.

- to be informed by the appropriate criminal justice agency of financial assistance, Criminal Injuries Compensation Act funds, and any other social services available;
- to be informed in appropriate cases by the State’s Attorney of the right to request restitution and, on request, be provided assistance in the preparation of the request and advice as to the collection of any restitution awarded;
- to be free from discrimination by an insurance provider based solely on information about the individual’s status as a victim of a crime of violence; and
- not to be deprived of employment solely because of job time lost attending a proceeding for which there is a right to attend.

Most of the rights available to a victim of a crime in which the offender is an adult are also available to a victim of a delinquent act by a child.

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

A circuit court may order, either on its own motion or by request of the State’s Attorney, the Department of Public Safety and Correctional Services or the Department of Juvenile Services to complete a presentence investigation (commonly referred to as a “PSI”) before sentencing or disposition. The report of the investigation must include a victim impact statement if the crime is a felony, or a delinquent act that would be a felony if committed by an adult, that caused physical, psychological, or economic injury to the victim or a misdemeanor that caused serious physical injury or death to the victim. A victim impact statement identifies any damages or injuries sustained by the victim, any request that the offender be prohibited from contacting the victim as a condition of release, and other information related to the impact of the crime on the victim. If the court does not order a presentence investigation, the State’s Attorney or the victim still has the right to prepare a victim impact statement for submission to the court.

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

## **Evidence**

A victim also has a number of rights related to genetic evidence recovered in the course of an investigation.

### **DNA**

In general, on written request of a victim of a crime of violence or the victim's representative, an investigating law enforcement agency must give the victim or the victim's representative notice when (1) an evidentiary DNA profile is obtained from evidence in the case; (2) a DNA profile developed in the case is entered into the DNA database system; and (3) any confirmed match of the DNA is received. An investigating law enforcement agency is not required to give notice in these cases if doing so would impede or compromise an ongoing investigation, or if the victim's representative is a suspect or a person of interest in the criminal investigation.

### **Sexual Assault Evidence Collection Kits**

A health care provider that performs a sexual assault evidence collection kit examination on a victim of sexual assault must provide the victim with written information that describes the laws and policies governing the testing, preservation, and disposal of a sexual assault evidence collection kit.

A law enforcement agency is prohibited from destroying or disposing of a sexual assault evidence collection kit or other crime scene evidence relating to a sexual assault that has been identified by the State's Attorney as relevant to prosecution within 20 years after the evidence is collected, unless the case for which the evidence was collected resulted in a conviction and the sentence has been completed or all suspects identified by testing a kit are deceased. A law enforcement agency with custody of a sexual assault evidence collection kit, on written request by the victim, must (1) notify the victim at least 60 days before the date of intended destruction or disposal of the evidence or (2) retain the evidence for at least 21 years or for a time period agreed to by the victim and the law enforcement agency.

### **No Contact Orders and Electronic Monitoring**

A court may prohibit a defendant from contacting the alleged victim. This restriction may be imposed as a condition of pretrial or post-trial release. Electronic monitoring may be a component of ensuring that a defendant stays away from restricted areas. The State Board of Victim Services must include in its pamphlets information regarding how to request that an offender be placed on electronic monitoring or electronic

monitoring with victim stay-away technology, which is a system of electronic monitoring that is capable of notifying a victim if the defendant is at or near a location from which the defendant has been ordered by the court to stay away. A victim impact statement must include any request for electronic monitoring or electronic monitoring with stay-away alert technology. On a finding of probable cause and before the issuance of an arrest warrant or a summons, a judicial officer must provide an individual filing an application for a statement of charges under Maryland Rule 4-211 with an opportunity to request reasonable protections for the safety of an alleged victim or the victim’s family.

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

## **Victim and Witness Intimidation**

Intimidation of victims and other witnesses impedes effective prosecution of crimes if the subject of the intimidation is unavailable to testify as a result of the intimidation. Maryland statutes aim to protect victims and other witnesses from intimidation in two ways.

First, a person who directly or indirectly intimidates a witness into (1) not reporting a crime; (2) testifying falsely about a crime; (3) withholding testimony about a crime; or (4) not appearing at proceedings related to a crime is subject to penalties ranging from a misdemeanor to a felony depending on the underlying crime to which the witness was supposed to testify.

Second, to deal with intimidation that succeeds in causing the unavailability of testimony, certain out-of-court statements of a witness may be used in a felony case involving a crime of violence if the statement is offered against a party that has engaged in, directed, or conspired to commit wrongdoing that was intended to and did procure the unavailability of the witness. These statements can only be allowed into evidence if, after a hearing, a court finds by clear and convincing evidence that the party against whom the statement is offered engaged in, directed, or conspired to commit the act that made the witness unavailable. Also, the statement must have been made under oath and subject to the penalties of perjury at a proceeding or in a deposition, have been written and signed by the declarant, or have been recorded at the time the statement was made. By committing

the act of wrongdoing that made the witness unavailable, the defendant effectively waives the Sixth Amendment right to confrontation that would otherwise make such statements inadmissible.

## **Victim Services**

### **Police Training**

The Maryland Police Training and Standards Commission operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. State law requires the commission to require police training schools to provide specific instruction on victim services during entry-level police training and at least every three years for in-service level police training. The curriculum must include special training, attention to, and study of (1) the criminal laws concerning human trafficking, including services and support available to, and the rights and appropriate treatment of victims of, human trafficking; (2) the contact with and treatment of victims of crimes and delinquent acts; (3) the notices, services, support, and rights available to victims and victims' representatives under State law; and (4) the notification of victims of identity fraud and related crimes of their rights under federal law.

### **Governor's Office of Crime Control and Prevention Programs**

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

The domestic violence program is designed to provide shelter or help finding shelter, counseling, information, referral, and rehabilitation for victims of domestic violence and their children. The office is responsible for (1) supervising the program; (2) setting standards of care and admission policies; (3) monitoring the operation of the program and evaluating its effectiveness; (4) adopting rules and regulations setting fees for services and governing the operation of each program; and (5) regularly consulting with the federally recognized State domestic violence coalition regarding domestic violence programs and policies, practices, and procedures that impact victims of domestic violence and their children.

The sexual assault crisis programs established by the Governor's Office of Crime Control and Prevention are required to provide specialized support services to adult and minor alleged victims of sexual assault and include a hotline and counseling service as well

as information on criminal prosecutions of sexual assault, civil law remedies available to victims, sexual assault evidence collection, and victims’ rights. The office is authorized to award grants to public or private nonprofit organizations to operate sexual assault crisis programs certified by the federally recognized State sexual assault coalition. The office is required to establish and sustain child advocacy centers and may contract with public or private nonprofit organizations to operate child advocacy centers.

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

### **Victim Services Unit**

Chapter 422 of 2018 established a Victim Services Unit in the Governor’s Office of Crime Control and Prevention to coordinate State responsibilities concerning services to victims, including the collection of restitution and reimbursements for sexual assault forensic evidence examinations (SAFE Exams) and other eligible expenses for cases involving rape, sexual offenses, or child sexual abuse. The unit also has oversight of Criminal Injuries Compensation Board, discussed below, and is responsible for collecting data, developing best practices, and coordinating with State and local entities regarding restitution.

### **Board of Victim Services**

The State Board of Victim Services in the Governor’s Office of Crime Control and Prevention consists of 22 members and is chaired by the Governor or the Governor’s designee. The board is responsible for developing the informational pamphlets that notify victims of the rights, services, and procedures available before and after the filing of a charging document, other than an indictment or information in the circuit court, and after the filing of an indictment or information in circuit court.

However, the primary function of the board is to administer the State Victims of Crime Fund, discussed below, and provide technical support for efforts to assist victims of crime through a victim services coordinator who is appointed by the Executive Director of the Governor’s Office of Crime Control and Prevention.



## Special Funds

An offender convicted of a crime is required to pay two costs: (1) court costs and (2) Criminal Injuries Compensation costs. Court costs are \$80 in the circuit courts and \$22.50 in the District Court. The Criminal Injuries Compensation costs are \$45 in the circuit court and \$35 in the District Court (except for nonincarcerable motor vehicle offenses, for which the costs are \$3). Portions of these costs are divided among the State Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund as described in Exhibit 12.1.

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

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

Source: Department of Legislative Services

## State Victims of Crime Fund

The State Victims of Crime Fund is a special continuing, nonlapsing fund that receives funding primarily from the Criminal Injuries Compensation costs described above. The State Board of Victim Services administers the fund to (1) carry out Article 47 of the Maryland Declaration of Rights and other laws designed to help crime victims;

(2) assist other agencies and persons providing services to crime victims; and (3) support child advocacy centers established by the Governor's Office of Crime Control and Prevention, which provide support services to victims. Grants by the board and administrative costs are paid from the fund. Grants must be equitably distributed among all purposes of the fund.

### **Victim and Witness Protection and Relocation Fund**

The Victim and Witness Protection and Relocation Fund is used to implement the Victim and Witness Protection and Relocation Program administered by the State's Attorneys' Coordinator. The program is designed to protect victims and witnesses and their families and to relocate these persons for purposes of protection or to facilitate their participation in court proceedings.

### **Criminal Injuries Compensation Fund**

The Criminal Injuries Compensation Board in the Victim Services Unit of the Governor's Office of Crime Control and Prevention administers a compensation program for victims of crime, persons who have made efforts to prevent crime, and their dependent survivors. The membership of the board must include a family member of a homicide victim. After review and evaluation of claims filed, the board awards compensation from the Criminal Injuries Compensation Fund for medical expenses, funeral expenses, property damage, disability or dependency claims, other necessary services, and lost wages under certain circumstances. In general, a claim must be filed with the board within three years after the occurrence of the crime or delinquent act or the death of the victim. However, in the case of child abuse, a claim may be filed until the date the child who was the subject of abuse reaches the age of 25 or, if the board determines that there was good cause for failure to file a claim by that date, at any time. A claim filed with the board is subject to review under the Administrative Procedure Act.

The Criminal Injuries Compensation Board is also responsible for the reimbursement of a physician, qualified health care provider, or hospital that is entitled to payment for expenses incurred providing a victim of an alleged rape or sexual offense or a victim of alleged child sexual abuse with (1) a physical examination to gather information and evidence; (2) emergency hospital care for up to 90 days after the initial physical examination; and (3) up to 5 hours of professional time to gather information and evidence at no cost to the victim.

The Criminal Injuries Compensation Fund is a special, nonlapsing fund that receives funding from several sources including investment earnings and federal matching funds derived from federal court costs. A small portion of the funding is from restitution paid by

a defendant to the fund for reimbursement of money already paid by the fund to a victim. However, the fund's principal source of money is from court costs and Criminal Injuries Compensation costs imposed in criminal cases.

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

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**Exhibit 12.2**  
**Criminal Injuries Compensation Fund Money Received and Awards**

<b>Fiscal Year</b>	<b><u>Money Received</u></b>		<b><u>Applications Made</u></b>	<b><u>Awards</u></b>	
	<b><u>Court Costs</u></b>	<b><u>VOCA Grant*</u></b>		<b><u>Awards Paid</u></b>	<b><u>Total Amount of Awards Paid</u></b>
2014	\$3,424,275	\$1,139,000	1,398	833	\$5,229,539
2015	3,275,790	1,812,804	1,345	646	3,954,624
2016	3,010,614	1,636,097	1,496	723	4,222,057
2017	2,804,087	1,471,599	1,527	481	3,075,638
2018	2,410,088	1,462,000	1,415	594	2,635,215

VOCA: Victim of Crime Act

\* Federal VOCA grants.

Source: Department of Public Safety and Correctional Services

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## Restitution

### In General

A victim may seek restitution if, as a direct result of a crime or delinquent act, including criminal acts involving the operation of a motor vehicle or vessel, the victim (1) incurred out-of-pocket expenses, financial losses, or a loss of earnings; (2) incurred property damage; or (3) received other benefits or had expenses paid by a governmental

entity or board as a result of a crime. If the victim is deceased, a minor, or disabled, a legal representative may seek restitution on the victim’s behalf. If a defendant is convicted or given probation before judgment or a child is adjudicated delinquent or given probation, the courts are generally required to order restitution to a victim when requested by the victim or the State if the court has evidence that the losses to the victim actually exist. The court may deny a request for restitution if the court finds that the defendant or juvenile does not have the ability to pay or other extenuating circumstances exist to show that restitution is inappropriate. The court must state on the record why restitution was not ordered if it was requested by the victim.

A victim who alleges that the victim’s right to restitution was not considered or was improperly denied may file a motion requesting relief within 30 days of the denial or alleged failure to consider. If the court finds that the victim’s right to restitution was not considered or was improperly denied, the court may enter a judgment of restitution. A victim may file an application for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider this statutory right of the victim.

If a judgment of restitution is entered, the court may order the restitution to be paid to the victim, the Maryland Department of Health, the Criminal Injuries Compensation Board, or any other governmental entity or third-party payor. A judgment of restitution is a money judgment in favor of the victim, governmental entity, or third-party payor. With limited exceptions, payment of restitution to a victim has priority over any payments to any other person or governmental unit. In accordance with program requirements, the Department of Public Safety and Correctional Services must withhold 20% of the earnings of an inmate in specified federal prison industry programs, to be used for compensation of victims of crime. If an inmate is not subject to this required withholding of earnings but is subject to an unsatisfied judgment of restitution, the department must withhold 25% of an inmate’s earnings for compensation of victims of crime.

The Department of Public Safety and Correctional Services or the Department of Juvenile Services must collect restitution and may assess a fee not exceeding 2% of the amount of the judgment on the defendant, juvenile, or juvenile’s parent to pay for the administrative costs of collecting payments. The applicable department then forwards the property or payments to the appropriate party in accordance with the judgment of restitution.

The Department of Public Safety and Correctional Services and the Department of Juvenile Services are required to notify the court and request an earnings withholding order if the defendant, juvenile, or liable parent does not make restitution. If, after a hearing, the court determines that the defendant, juvenile, or liable parent intentionally became

impoverished to avoid payment of the restitution, the court may find them in contempt of court or in violation of probation.

Delinquent accounts may be turned over to the Central Collection Unit of the Department of Budget and Management for further action, such as interception of lottery prizes, income tax refunds, and other measures. The Central Collection Unit may not compromise and settle a judgment of restitution unless the Division of Parole and Probation or the Department of Juvenile Services obtains the consent of the victim or the court orders otherwise because the victim cannot be located.

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

### **Juvenile Restitution**

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

### **Release from Incarceration**

Victims or their representatives, if the victim is deceased, a minor, or disabled, are entitled to certain rights concerning an inmate's release from incarceration.

If a victim files a notification request form or makes a written request to the Department of Public Safety and Correctional Services and maintains a current address, the department is required to notify the victim in writing at least 90 days before a parole release hearing. If a victim has filed a notification request, the commission must notify the victim at least 90 days before entering into a predetermined parole release agreement with an inmate. A victim is also entitled to notification when an inmate is being considered for a pardon, commutation, or remission of sentence. If practicable, a victim is to be notified in advance or as soon as possible of an inmate's escape, recapture, transfer, release, or death.

If the victim has requested the hearing to be open to the public, the victim is entitled to testify orally at a parole hearing. The Maryland Parole Commission may restrict the

number of individuals allowed to attend a parole hearing because of physical space limitations or safety concerns and may deny admittance to a dangerous or disruptive individual. On the written request of the chief law enforcement official responsible for an ongoing criminal investigation, some hearings may be closed to protect the investigation.

In addition, a victim of a crime has 30 days from the date of the parole commission’s notice to request that the Department of Public Safety and Correctional Services complete an updated victim impact statement. The department must complete the updated statement and provide it to the commission at least 30 days before the parole hearing.

At least 30 days before the parole hearing, a victim may make a written recommendation on the advisability of parole and may request that the inmate be prohibited from contacting the victim as a condition of parole, mandatory supervision, work release, or other administrative release. A victim may also request a meeting with a commission member at any time. The commission is required to consider any information received from a victim when making its decision. For a discussion of release from incarceration, see Chapter 16 of this handbook.

## **Patuxent Institution**

The Patuxent Institution is a maximum security correctional treatment facility under the Department of Public Safety and Correctional Services. The Patuxent Board of Review has parole authority independent of the Maryland Parole Commission. The membership of the board must include a member of a victims’ rights organization.

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

## **HIV and Hepatitis C Testing of Offenders**

The law allows a victim of a sexual offense or another criminal offense that may have resulted in a victim being exposed to an offender’s bodily fluids to request a court to order the offender to be tested for human immunodeficiency virus (HIV) or Hepatitis C. These requests can be made on an emergency, pretrial, or post trial basis.

Upon application by a victim of an alleged prohibited exposure, a circuit court judge or a District Court judge may issue an emergency order to obtain an oral swab from a person to be tested for the presence of HIV if there is probable cause to believe that the

person has caused a prohibited exposure to a victim. An application for an emergency order must be made in writing no later than 72 hours after the alleged prohibited exposure, signed and sworn to by the applicant and accompanied by an affidavit that sets forth the basis to believe that the person from whom an oral swab is requested has caused a prohibited exposure to a victim, and sealed.

The court may also order a person charged with a prohibited exposure to submit to an HIV or Hepatitis C test pretrial if the court, after a hearing, finds there is probable cause that an exposure occurred. The court must hold the hearing to determine probable cause within 30 days after the victim's written request for testing is presented to the court by the State's Attorney and must issue an order granting or denying the request within three days of the end of the hearing.

Additionally, on conviction for a crime involving a prohibited exposure, a granting of probation before judgment, or a finding of delinquency, a court is required to order an offender to submit to a test for HIV or Hepatitis C within 10 days after the victim submitted a written request for testing to the State's Attorney.

## Notoriety of Crimes Contracts

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

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

## **Chapter 13. Incarceration in Local Correctional Facilities**

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### **State Payments for Local Correctional Facilities**

The length of the sentence imposed on an offender often determines where an offender must serve the sentence. Generally, offenders serving a sentence longer than 18 months are incarcerated in State facilities. Offenders serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For an offender sentenced to a term between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at either a local correctional facility or the State prison system.

The State provides grants to counties for each inmate sentenced to at least one year in a local correctional facility and for each inmate who is sentenced to the State correctional system but is awaiting transfer from a local detention center. The State pays counties \$45 per day for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center and for each day that an inmate who has been sentenced to the custody of the State remains confined in a local facility awaiting transfer. Since October 1, 2017, counties may also receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility. The State does not provide funding to counties for days that inmates are confined in local correctional facilities before sentencing.

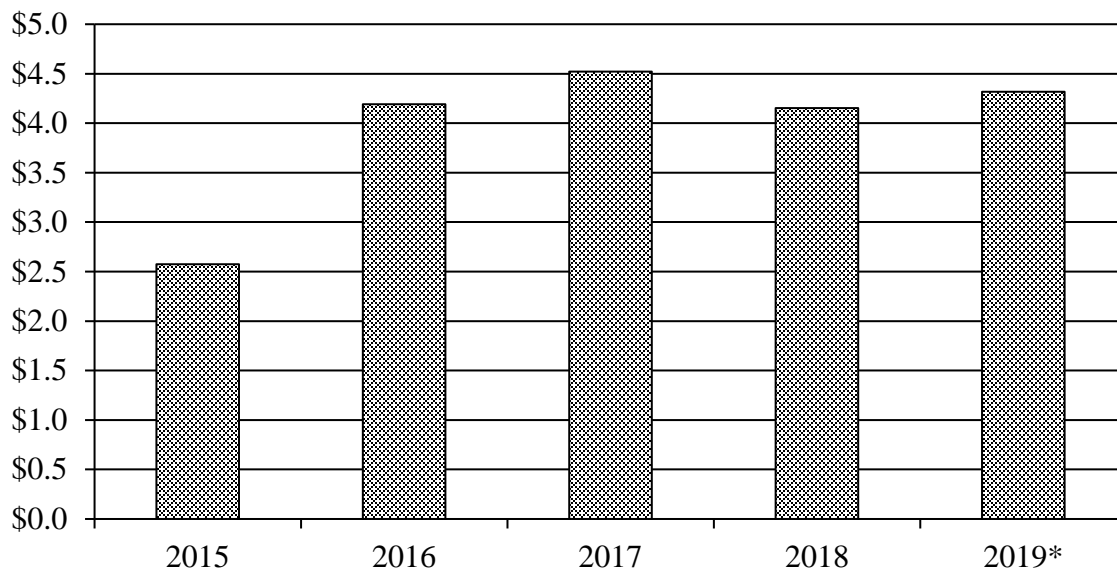
In addition, the State reimburses local jurisdictions for medical expenses exceeding \$25,000 for each inmate confined in a local correctional facility, regardless of whether the inmate has been sentenced. In fiscal 2017, the State paid \$353,959 to counties for this purpose.

Exhibit 13.1 shows the amount of State payments to local correctional facilities since fiscal 2015.

The aforementioned provisions do not apply in Baltimore City. The Baltimore City Detention Center is a State correctional facility. All inmates in Baltimore City are sentenced to the custody of the Department of Public Safety and Correctional Services, regardless of the sentence length or status.



**Exhibit 13.1**  
**State Payments to Local Correctional Facilities**  
**Fiscal 2015-2019**  
**(\$ in Millions)**



\* Legislative appropriation.

Source: Department of Public Safety and Correctional Services

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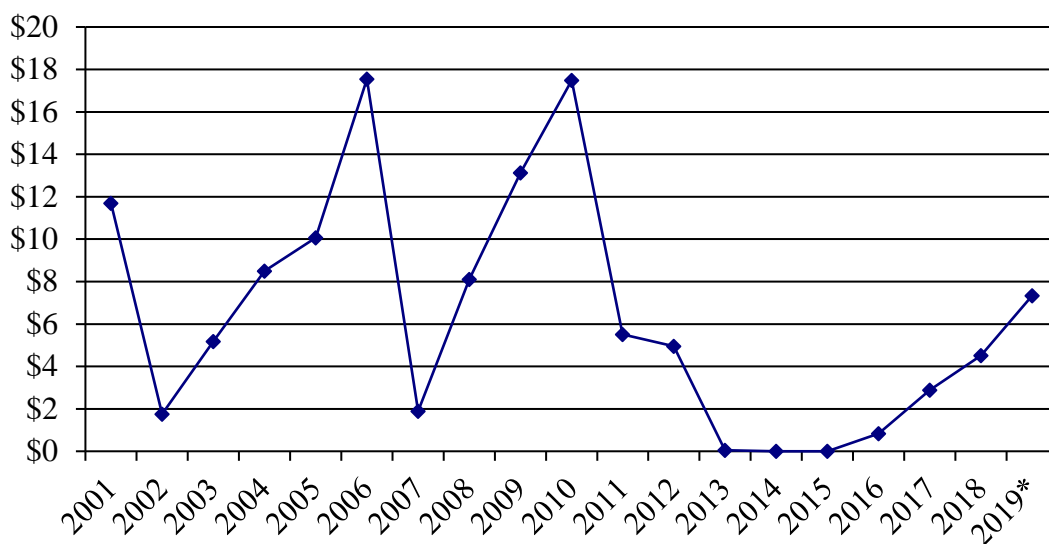
## **Local Jails and Detention Centers Construction Program**

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

Local subdivisions apply to the Department of Public Safety and Correctional Services for inclusion in the construction program, which provides either 100% or 50% funding for construction or expansion of local correctional facilities. To meet the needs of growing inmate populations at the local level, the State pays a minimum of 50% of eligible costs for construction or expansion of local detention centers. If a county can demonstrate that a portion of the expansion is necessary to house additional offenders serving between 6- and 12-month sentences due to changes in sentencing guidelines, then the State provides 100% of funding for that portion of the project. Most assistance grants require the local subdivision to provide equal or matching funds.

Since fiscal 2006, the State has appropriated more than \$84.2 million in local correctional facilities construction grants. As Exhibit 13.2 shows, capital appropriations for local correctional facilities have varied from year to year between fiscal 2006 and 2019.

**Exhibit 13.2**  
**Local Correctional Facilities**  
**Capital Appropriation**  
**Fiscal 2006-2019**  
**(\$ in Millions)**



\* Legislative appropriation.

Source: Department of Legislative Services

## Local Correctional Facility Population

The Department of Public Safety and Correctional Services is required to submit an annual report on local jail and detention center population statistics. The report does not include statistics for Baltimore City as offenders under the jurisdiction of Baltimore City are housed in State-operated facilities. Since 2011, the average daily population for local correctional facilities has steadily declined. Exhibit 13.3 contains information regarding the average daily population of local correctional facilities around the State as well as corresponding statistics for Baltimore City.

**Exhibit 13.3**  
**Local Correctional Facilities**  
**Average Daily Population**  
**Fiscal 2011-2016**

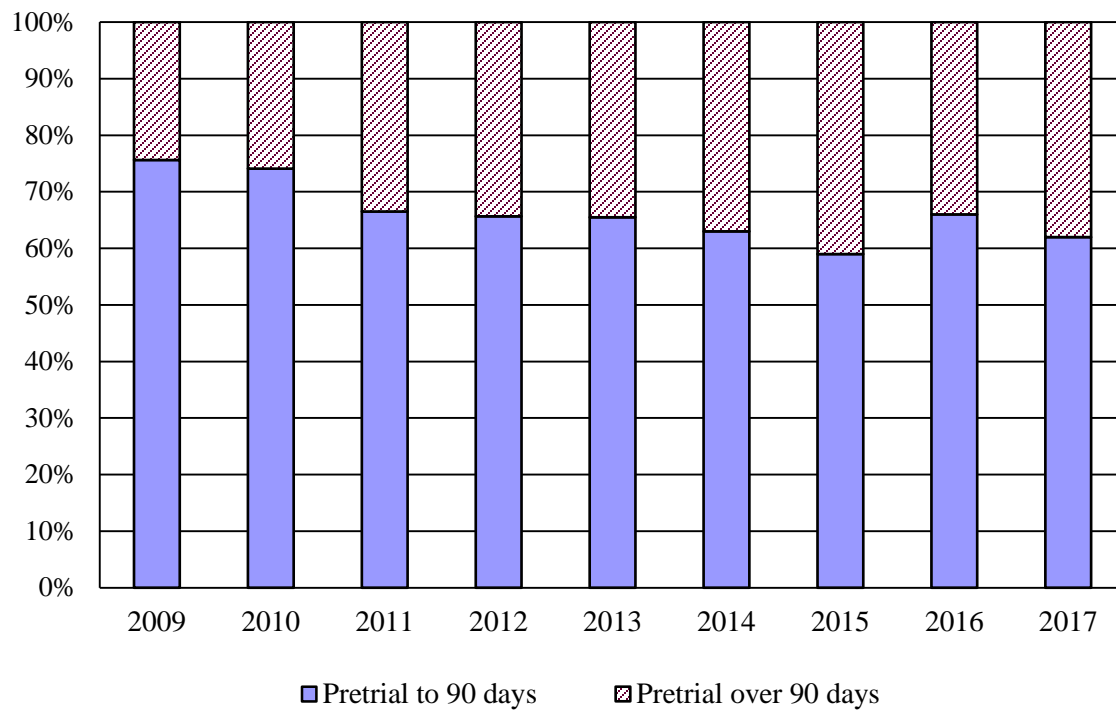
<b><u>County</u></b>	<b><u>2011</u></b>	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>
Allegany	170	150	153	136	134	147
Anne Arundel	874	822	768	764	687	750
Baltimore County	1,393	1,392	1,211	1,260	1,217	1,165
Calvert	234	213	224	249	202	229
Caroline	105	108	97	106	105	96
Carroll	213	210	209	228	233	226
Cecil	247	271	271	257	290	246
Charles	460	416	361	344	351	333
Dorchester	167	171	160	129	127	138
Frederick	441	394	380	360	405	453
Garrett	51	62	64	53	49	42
Harford	425	395	410	414	414	352
Howard	308	308	340	349	304	283
Kent	87	70	65	71	69	75
Montgomery	1,038	953	877	784	759	755
Prince George's	1,181	1,293	1,347	1,200	1,008	950
Queen Anne's	102	86	112	136	123	123
St. Mary's	232	242	280	236	217	198
Somerset	94	99	77	69	50	58
Talbot	104	85	84	74	63	67
Washington	333	383	385	344	296	303
Wicomico	475	446	401	365	387	376
Worcester	155	200	261	261	192	183
<b>Total – Counties</b>	<b>8,889</b>	<b>8,769</b>	<b>8,537</b>	<b>8,189</b>	<b>7,682</b>	<b>7,538</b>
<b><i>Baltimore City*</i></b>	<b><i>3,330</i></b>	<b><i>2,887</i></b>	<b><i>3,105</i></b>	<b><i>3,005</i></b>	<b><i>2,504</i></b>	<b><i>2,040</i></b>

\*Offenders under the jurisdiction of Baltimore City are housed in State-operated facilities, not local facilities.

Source: *Local Jails and Detention Centers Annual Population Statistics Reports*, Fiscal 2011-2016, Department of Public Safety and Correctional Services; Department of Legislative Services

Historically, most inmates held in local jails are awaiting trial. As shown in Exhibit 13.4, the percentage of pretrial inmates who have been detained for more than 90 days has increased since fiscal 2009.

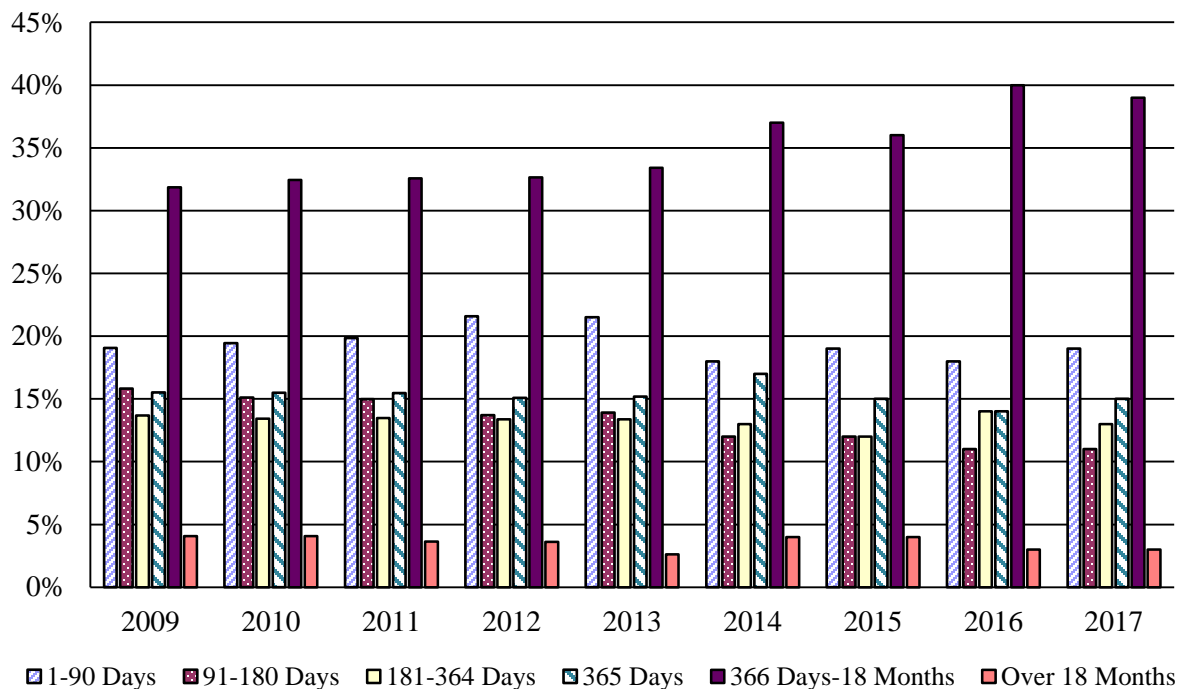
**Exhibit 13.4**  
**Local Correctional Facilities**  
**Pretrial Inmates – Pretrial Detention Up to 90 Days and Over 90 Days**  
**Fiscal 2009-2017**



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

Exhibit 13.5 shows the share of inmates in local correctional facilities by length of sentence from fiscal 2009 through 2017. The most common sentence length received by inmates is between 12 and 18 months, and the share of inmates receiving sentences of between 12 and 18 months has increased since fiscal 2014.

**Exhibit 13.5**  
**Locally Sentenced Inmates**  
**Last Day Population**  
**Fiscal 2008-2017**



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

## Community Adult Rehabilitation Centers

Local jurisdictions are authorized to administer Community Adult Rehabilitation Centers. First built in the 1970s with State construction and operating funds, Community Adult Rehabilitation Centers place eligible offenders in community-based facilities, allowing offenders to go to work or perform community services. This arrangement maintains an offender's community ties while serving a sentence. An offender is eligible

to participate in this program if the offender has fewer than 6 months remaining on the sentence prior to a predetermined parole date or if the total sentence is fewer than 36 months.

These facilities had been established in Baltimore City and Cecil and Montgomery counties. Action taken during the 2010 legislative session altered the statute to eliminate the mandate requiring the use of State funding to support all Community Adult Rehabilitation Center operations. Local jurisdictions continue to maintain the authority to construct and operate these facilities; however, the State has not provided funding since 2011. The Department of Public Safety and Correctional Services maintains a contractual agreement for the use of bed space in Baltimore City. Community Adult Rehabilitation Center services in Baltimore City are provided by Threshold, Inc., which has the capacity to serve 30 inmates.

## **Local Incarceration Alternatives**

In fiscal 1991, the General Assembly directed local jurisdictions to make greater use of alternatives to incarceration. This emphasis was reiterated in the Justice Reinvestment Act (Chapter 515 of 2016), which directed the State Commission on Criminal Sentencing to review alternatives to incarceration in the State and make recommendations on the expansion of such programs.

All local jurisdictions in the State have programs that offer alternatives to incarceration; however, the programs vary by jurisdiction. These programs include substance abuse and mental health treatment programs, community service, work release, anger management, electronic monitoring, and job training. Additionally, most jurisdictions operate pretrial release programs designed to maximize the number of pretrial defendants who are monitored by local public safety agencies, but not incarcerated, before trial. Many of the programs use evidence-based risk assessments to determine which defendants can safely be released into the community pending trial and the appropriate conditions of release, such as electronic monitoring and drug testing, for each defendant.

In 1994, Baltimore City initiated one of the first drug courts in the nation. In 2002, the Maryland Judiciary established the Office of Problem Solving Courts to facilitate the implementation and operation of problem solving courts across the State. These special court dockets, which are managed locally, are specifically designed to divert low level offenders into treatment and other services and to support and monitor the provision of those services. At the end of fiscal 2018, there were a total of 52 problem solving courts statewide in 21 out of 24 local jurisdictions.



## **Chapter 14. Adult Incarceration in State Prisons**

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The Department of Public Safety and Correctional Services has the responsibility for operating 22 State correctional facilities, including the Patuxent Institution and 4 Baltimore City detention facilities (including 1 that houses federal prisoners), whose combined average daily population is more than 21,400 inmates. Approximately 5,500 State correctional officers maintain order in these institutions and ensure inmates' health, safety, welfare, and secure confinement. See Chapter 15 of this handbook for a discussion of Patuxent Institution.

### **Inmate Reception and Classification**

#### **Reception**

The department has two administrative centers and three direct intake facilities to receive recently sentenced offenders, classify them to a security level, and evaluate their programming needs. These facilities include the Maryland Correctional Institution for Women in Jessup; the Maryland Reception, Diagnostic, and Classification Center in Baltimore; the Baltimore Central Booking and Intake Center; Eastern Correctional Institution in Westover; and the Maryland Correctional Training Center in Hagerstown. New inmates entering each administrative center and intake facility go through identification (fingerprinting and photographing), general orientation, medical and psychological screenings, AIDS education, and various addictions and educational assessments and tests.

A case manager interviews the inmate and assembles a confidential case record from interviews, assessments, test results, identification records, and criminal history documents. Case record information is entered in the Division of Correction's automated offender database, the Offender Case Management System. A program to apply diminution credits and calculate release dates is part of the system.

#### **Initial Classification**

Within 15 days of reception, the case manager applies a numerical point system to assess the inmate's potential for violence, escape, and misbehavior and assigns a risk score that is translated to the least restrictive security level necessary to control the inmate's behavior. The case manager's supervisor and the warden or the warden's designee review the risk score recommendation. The reviewers may agree with the recommendation or may recommend an override to a higher or lower security level. A written explanation of the



reasons to deviate from the scored security level must accompany a decision to override. If the Commissioner of Correction or the commissioner's designee determines that emergency housing conditions exist, an inmate may be housed in an institution with a security level different from that assigned to the inmate.

## **Reclassification**

A reclassification hearing occurs at least annually for all inmates, except inmates in minimum security. Inmates within 36 months of the release date or delayed parole release date receive a security review at least once every 6 months. At the security review, 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 assigned to or removed from programs.

## **Security Classifications**

The department uses five security levels in classifying inmates, institutions, and housing units – maximum I and II, medium, minimum, and prerelease. The security level of an institution reflects the physical features and staffing patterns required to control inmate behavior and prevent escape. Physical features include the number and type of perimeter barriers, existence and use of gun towers, use of exterior perimeter patrols, use of various contraband detection devices, and the optimization of the layouts of inmate housing to improve sight lines and allow for situational control.

### **Maximum Security – Level II**

Maximum security level II provides secure housing and intensive supervision to control the behavior of inmates determined to pose the highest safety and security risk. The following facility provides this level of security:

- North Branch Correctional Institution, Cumberland (Allegany County).

### **Maximum Security – Level I**

Maximum security level I provides secure housing to control the behavior of inmates who pose a high risk of violence, are significant escape risks, or are likely to have serious disciplinary problems. Maximum security level I facilities include:

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

### **Medium Security**

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

- Eastern Correctional Institution, Westover (Somerset County);
- Jessup Correctional Institution, Jessup (Anne Arundel County);
- Maryland Correctional Training Center, Hagerstown (Washington County);
- Maryland Correctional Institution, Hagerstown (Washington County);
- Maryland Correctional Institution, Jessup (Anne Arundel County); and
- Roxbury Correctional Institution, Hagerstown (Washington County).

### **Minimum Security**

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

- Brockbridge Correctional Facility, Jessup (Anne Arundel County);
- Central Maryland Correctional Facility, Sykesville (Carroll County);
- Dorsey Run Correctional Facility, Jessup (Anne Arundel County);
- Baltimore City Correctional Center;
- Maryland Correctional Training Center/Emergency Housing Unit Building, Hagerstown (Washington County); and
- Eastern Correctional Institution – Annex, Westover (Somerset County).

## **Prerelease Security**

Prerelease 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 prerelease facilities include:

- Eastern Pre-Release Unit, Church Hill (Queen Anne's County);
- Southern Maryland Pre-Release Unit, Charlotte Hall (St. Mary's County); and
- Maryland Correctional Training Center/Harold E. Donald Building, Hagerstown (Washington County).

Exhibit 14.1 reflects the various inmate custody factors based on the level of security.

**Exhibit 14.1**  
**State Correctional Facilities**  
**Inmate Custody Factors**

<b><u>Factors</u></b>	<b><u>Prerelease</u></b>	<b><u>Minimum</u></b>	<b><u>Medium</u></b>	<b><u>Maximum I &amp; II</u></b>
<b>Observation</b>	Minimal but appropriate to the situation	Periodic	Periodic	Periodic
<b>Institutional Day Movement</b>	Observed	Observed	Indirectly controlled and periodically observed	Indirectly observed and supervised
<b>Institutional Night Movement</b>	Observed	Indirectly controlled and periodically observed	Indirectly controlled and periodically observed	Indirectly controlled and periodically observed
<b>Institutional Meal Movement</b>	Observed	Observed	Observed, supervised or may be escorted	Observed, supervised or may be escorted
<b>Access to Jobs and Programs</b>	Inside or outside perimeter, including community-based	Inside or outside perimeter, with supervision	Inside perimeter only	Selected; inside perimeter only
<b>Institutional Visits</b>	Contact and periodically supervised	Contact and supervised	Contact or noncontact and direct observation	Contact or noncontact and direct observation
<b>Special Leaves</b>	May be escorted by on-duty staff or unescorted and accountable to staff, intrastate only	Escorted by on-duty staff, intrastate only	Not eligible	Not eligible
<b>Family Leaves</b>	Unescorted and accountable to staff, intrastate only	Not eligible	Not eligible	Not eligible
<b>Compassionate Leaves</b>	Unescorted and accountable to staff, intrastate only	Not eligible	Not eligible	Not eligible
<b>Transportation</b>	May be escorted by on-duty staff or unescorted and accountable to staff	Escorted by on-duty staff	Strip searched before and after, restrained in handcuffs, black box, waist chain, and leg irons (except for a pregnant inmate's transportation during labor, delivery, or postpartum; or if there is a life-threatening medical condition that requires immediate medical care), and escorted by at least one armed correctional officer or as determined by shift commander	Strip searched before and after, restrained in handcuffs, black box, waist chain, and leg irons (except for a pregnant inmate's transportation during labor, delivery, or postpartum; or if there is a life-threatening medical condition that requires immediate medical care), and escorted by at least two armed officers or as determined by shift commander

Source: Department of Public Safety and Correctional Services

## **Prison Facility Construction, Closures, and Improvements**

An investigation by the U.S. Department of Justice in 2000, and a subsequent Memorandum of Agreement in 2007, resulted in a multi-year commitment to construct a new 60-bed youth detention center in Baltimore City. This facility was completed in September 2017 at a total cost of \$35 million. Currently, the youth detention center can house 50 males and 10 females and has individual cells; a full-size gymnasium; and onsite medical, dental, and behavioral health treatment.

In June 2015, a motion was filed by the American Civil Liberties Union on behalf of Baltimore City detainees to reopen a partial settlement agreement regarding conditions in the Baltimore City Detention Center. As a result, the Baltimore City Detention Center within the Baltimore City Pretrial Complex was closed beginning in 2015, and detainees were relocated to other facilities. In addition, the department was required to implement improvements pertaining to the provision of medical and mental health services and the physical condition of aging detention facilities, including:

- the timely evaluation and provision of medical and mental health services;
- comprehensive medical and mental health treatment plans;
- continuation of existing medical and mental health medications;
- use of electronic patient health records;
- improved coordination between medical and custodial staff to ease transport of offenders; and
- improvements to State facilities, including adequate housekeeping, pest control, temperature-controlled housing, and maintenance programs.

Due to declines in the offender population and the need to shift inmate populations away from aging prison infrastructure, the department has shut down several facilities in recent years. These include the Men's and Women's Detention Centers in Baltimore (July 2015), the Poplar Hill Pre-Release Unit in Quantico (July 2017), and the Jail Industries building in Baltimore (August 2017). In addition, the Maryland Correctional Institution in Hagerstown, the department's oldest corrections facility, was downsized beginning in January 2017, with over 700 inmates transferred to other State prisons.

## Prison and Detention Population and Costs

Average inmate populations for State correctional and detention facilities by region and facility are reflected in Exhibit 14.2. Each facility is identified by classification along with the estimated cost per inmate. Maryland counties receive \$45 per day for each day that a State inmate is housed in a local facility.

**Exhibit 14.2**  
**Average Daily Population by Region**  
**Fiscal 2018**

### Division of Correction – West Region

	<b><u>Security Classification</u></b>	<b><u>Average Population</u></b>	<b><u>Annual Cost Per Inmate</u></b>
Maryland Correctional Institution – Hagerstown	Medium	622	\$43,163
Maryland Correctional Training Center	Medium	2,829	29,992
North Branch Correctional Institution	Maximum	1,176	47,637
Patuxent Institution <sup>1</sup>	Multilevel	1,033	58,394
Roxbury Correctional Institution	Medium	1,769	31,298
Western Correctional Institution	Maximum	1,678	37,003
<b>Total</b>		<b>9,107</b>	

### Division of Correction – East Region

	<b><u>Security Classification</u></b>	<b><u>Average Population</u></b>	<b><u>Annual Cost Per Inmate</u></b>
Baltimore City Correctional Center	Minimum	401	\$30,973
Brockbridge Correctional Facility	Minimum	573	41,665
Central Maryland Correctional Facility	Minimum	488	34,584

<sup>1</sup> Patuxent Institution houses Operation's programmed inmates as well as the division's Central Mental Health Unit.

**Exhibit 14.2 (Continued)**

	<b><u>Security Classification</u></b>	<b><u>Average Population</u></b>	<b><u>Annual Cost Per Inmate</u></b>
Dorsey Run Correctional Facility	Minimum	775	35,567
Eastern Correctional Institution	Medium	2,686	33,914
Eastern Pre-Release Unit	Prerelease	156	35,251
Jessup Correctional Institution	Medium	1,859	42,888
Maryland Correctional Institution – Jessup	Medium	799	40,394
Maryland Correctional Institution for Women	Multilevel	829	49,462
Maryland Reception, Diagnostic and Classification Center	Multilevel	530	54,320
Southern Maryland Pre-Release Unit	Prerelease	156	34,180
<b>Total</b>		<b>9,252</b>	

**Division of Pretrial Detention**

	<b><u>Security Classification</u></b>	<b><u>Average Population</u></b>	<b><u>Annual Cost Per Inmate</u></b>
Central Booking and Intake Facility	Maximum	922	84,311
Chesapeake Detention Facility (Federal prisoners)	Maximum	428	54,483
Metropolitan Transition Center	Multilevel	638	125,175
Youth Detention Center	Multilevel	36	N/A
<b>Total</b>		<b>2,024</b>	

**Population in Nonagency Housing**

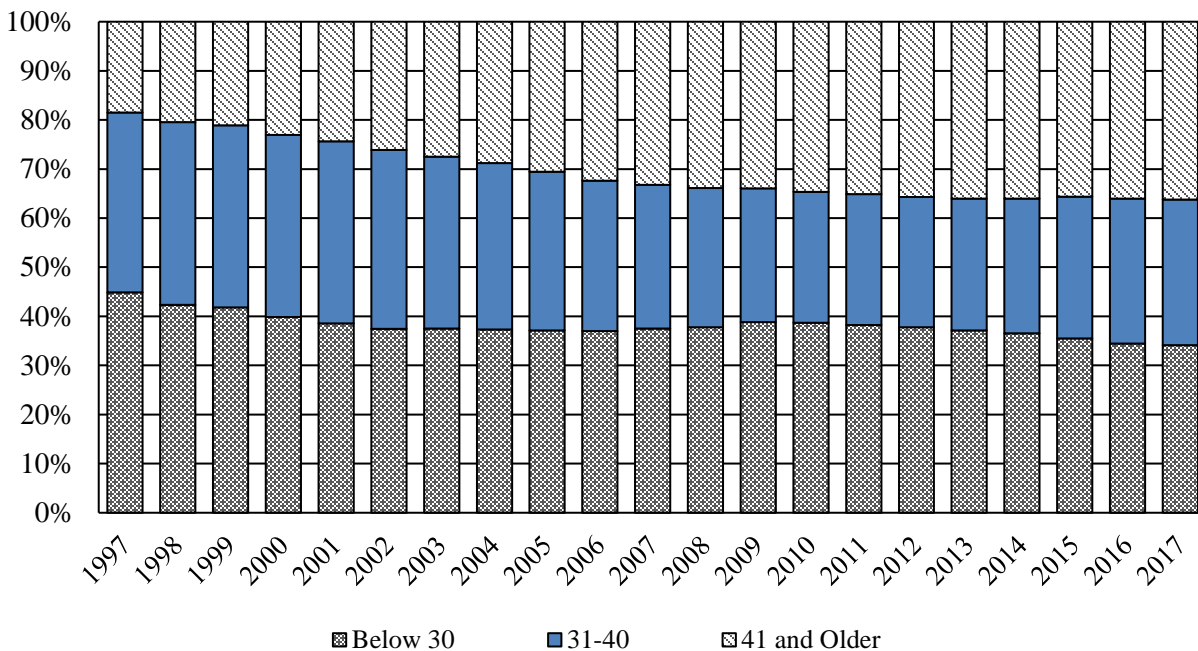
	<b><u>Security Classification</u></b>	<b><u>Average Population</u></b>	<b><u>Annual Cost Per Inmate</u></b>
Other Federal/State Custody	Variable	464	Variable
Local Jail Backup	Multilevel	106	\$45 per day
<b>Total</b>		<b>570</b>	

Source: Department of Public Safety and Correctional Services

## Inmate Characteristics

The average age of the prison population continues to increase. In fiscal 2017, the average inmate age was 37.7 years. During the last 20 years, the 30 and younger age group has constituted the majority of prison inmates. However, since 1997, the under 30 age group has decreased as a percentage of the total, from 45% to 34%. Meanwhile, the number of inmates age 41 and older has doubled, from 18% in 1997 to 36% in 2017. An implication of this trend is that an older prison population will require more healthcare and other age-related services. Exhibit 14.3 shows inmate population grouped by age.

**Exhibit 14.3**  
**Department of Public Safety and Correctional Services**  
**Inmate Population by Age**  
**Fiscal 1997-2017**



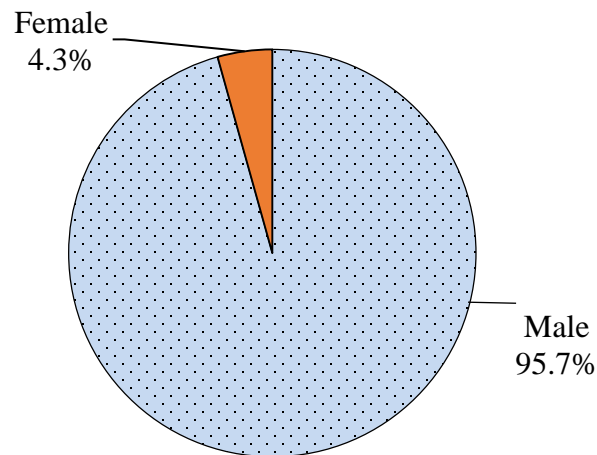
Source: Department of Public Safety and Correctional Services

Exhibits 14.4 and 14.5 contain gender and race data for the inmate population. This data has remained largely the same in recent years. In fiscal 2018, 95.7% of the inmate population was male and 4.3% was female. African Americans composed 70.5% of the inmate population, whites composed 28.0% of the population, and other races combined for a total of 1.5% of the population.



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**Exhibit 14.4**  
**Department of Public Safety and Correctional Services**  
**Inmate Population by Gender**  
**Fiscal 2018**

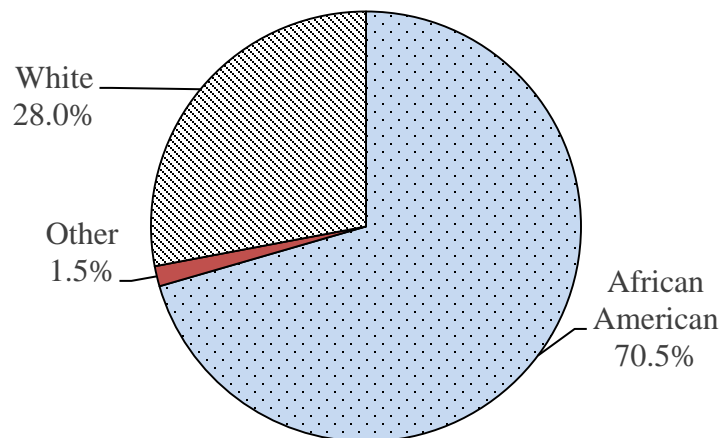


Source: Department of Public Safety and Correctional Services

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**Exhibit 14.5**  
**Department of Public Safety and Correctional Services**  
**Inmate Population by Race**  
**Fiscal 2018**



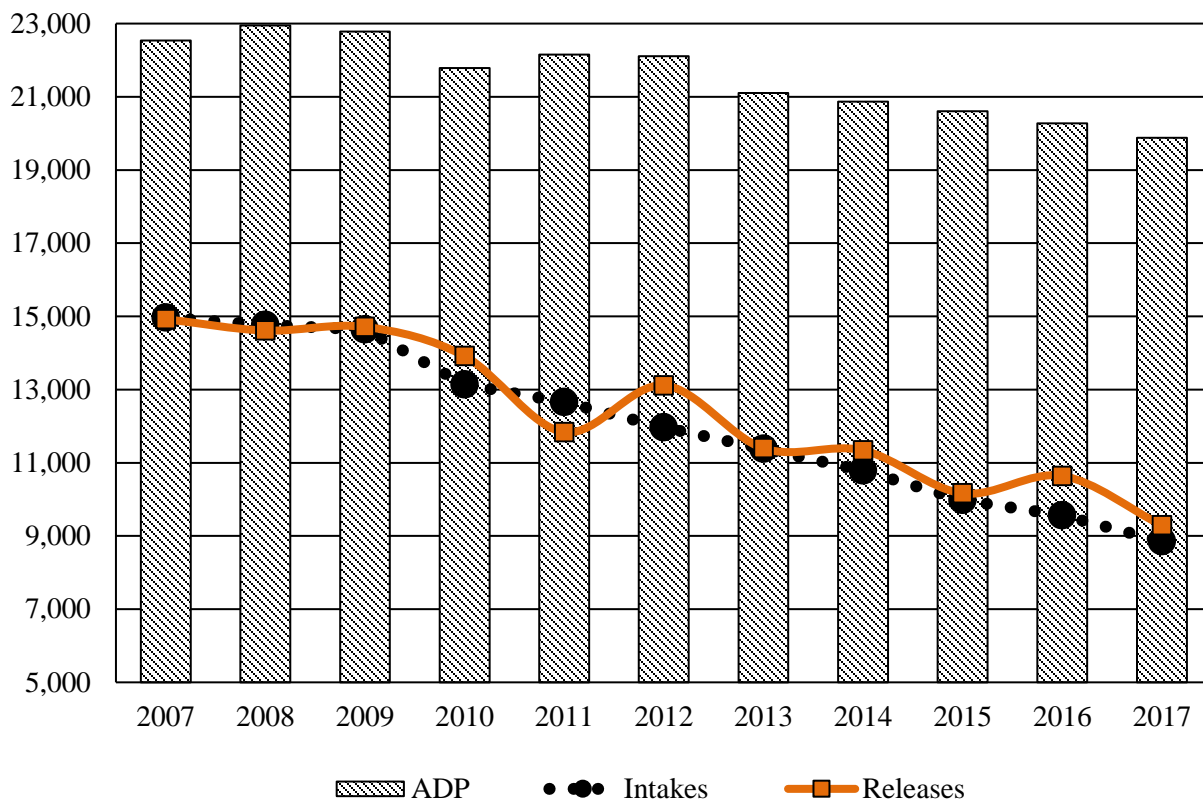
Source: Department of Public Safety and Correctional Services

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## Size of Inmate Population

At the end of the twentieth century, the number of inmates entering the correctional system exceeded the number of inmates released, causing the inmate population to expand significantly between 1980 and 2000. However, more recently, releases have exceeded intakes most years, resulting in a steady decrease in the overall offender population. For the first time since the 1990s, the sentenced prison population (not including those in detention) is under 20,000. Exhibit 14.6 depicts the average daily offender population, including intakes and releases.

**Exhibit 14.6**  
**Department of Public Safety and Correctional Services**  
**Offender Population**  
**Fiscal 2007-2017**



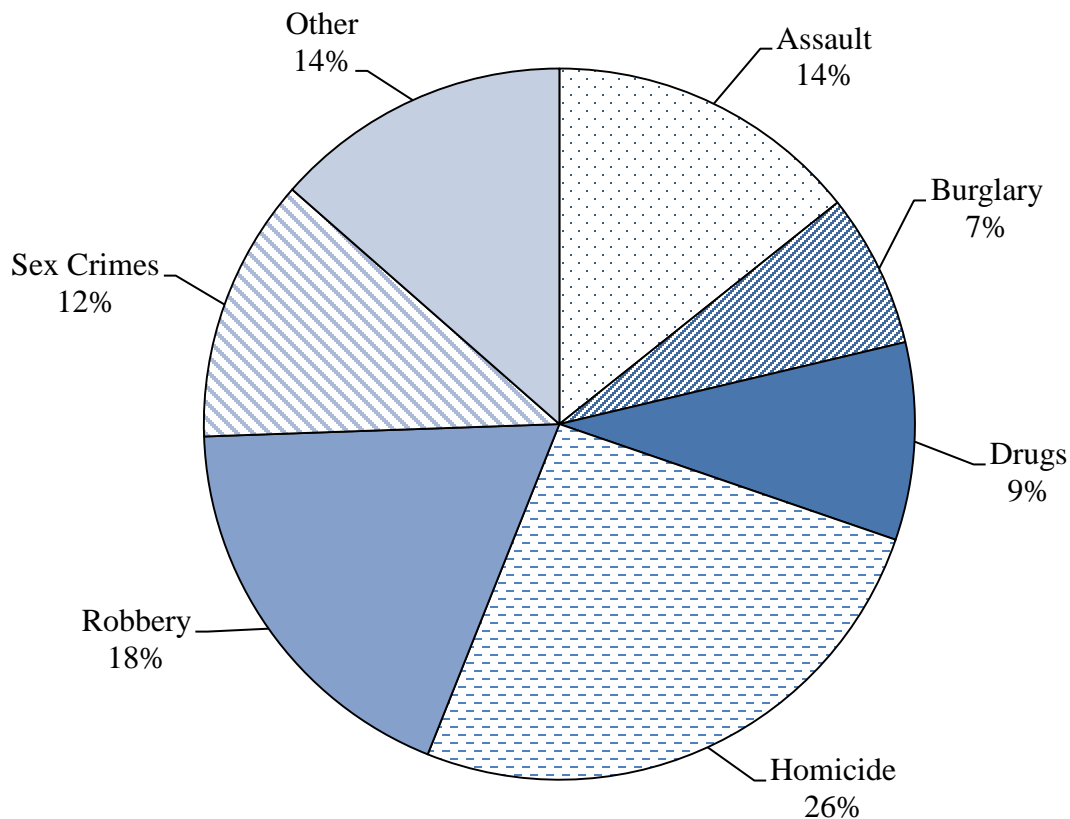
ADP: average daily population

Source: Department of Public Safety and Correctional Services

## Inmate Offense Data

Even as the size of the prison population is in a downward trend, the leading offenses for which the prison population is incarcerated continue to be homicide (26%) and robbery (18%). Exhibit 14.7 illustrates the various categories of offenses as a percentage of the total population of State inmates for fiscal 2018. Overall, over 75% of the sentenced population had a violent crime listed as the most serious offense. In comparison, offenders held for drug offenses accounted for approximately 9%.

**Exhibit 14.7**  
**Offense Distribution for State Inmates**  
**Fiscal 2018**



Source: Department of Public Safety and Correctional Services

One of the reasons for the large percentage of inmates serving time for violent offenses is that those inmates are more likely to receive longer sentences and have fewer avenues for early release than inmates classified as nonviolent offenders. This trend is expected to continue with the implementation of the Justice Reinvestment Act, which will offer additional options for nonviolent offenders to decrease their time in prison and in some cases, avoid incarceration altogether. For example, in addition to reducing maximum criminal penalties and repealing mandatory minimum penalties for many drug offenses, the Justice Reinvestment Act also increases the maximum possible deduction for diminution credits, expands the types of programs for which diminution credits may be earned, and provides additional funding for substance abuse treatments in lieu of incarceration.

### **Central Home Detention Unit**

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

The Division of Parole and Probation oversees the operation of the Central Home Detention Unit. Home detention allows offenders to live in an approved private home and to be supervised by electronic monitoring equipment and intensive 24-hour oversight by correctional officers, community supervision agents, and other staff. The majority of offenders who participate in the Central Home Detention Unit Program are Department of Public Safety and Correctional Services inmates who reside in Baltimore City and adjacent counties, are assigned to prerelease custody status, and are low-risk offenders who have less than 18 months remaining on their sentences. Other participants include pretrial detainees and parolees.

A band around the offender's ankle maintains electronic contact with a verification unit in the home. If the offender breaks contact, the detention unit is alerted that a violation is in progress. Offenders receive random home and work site visits and residence searches. Breath testing and urinalysis are conducted to detect alcohol and illegal drug use.

Offenders and their families must agree to limitations on their personal telephone calls, maintenance of an alcohol-free home, and removal of all firearms. Gainfully employed offenders must contribute to the cost of the electronic monitoring equipment and pay court-ordered obligations such as child support and restitution. Participants may be granted permission or be required to participate in public service details, substance abuse treatment, school, self-help programs, and obtain gainful employment in the community. In fiscal 2017, 621 offenders were enrolled in home detention and 486 (78.3%) successfully completed the program.

## **Inmate Services and Programming**

### **Case Management Plan**

At the beginning of incarceration and at specific intervals throughout incarceration, inmates are evaluated for medical and programming needs. Various assessment and screening tools are used to determine the inmate's needs, including substance abuse problems, educational issues, or any other treatment issues. The inmate and classification team develop a comprehensive case management plan to address the remainder of the inmate's incarceration. The Justice Reinvestment Act requires every case plan to include programming and treatment recommendations, required conduct in accordance with rules and policies, and a payment plan for any restitution (if applicable). A case manager monitors an inmate's compliance with his or her plan to ensure that programming is provided and the inmate is participating.

### **Academic, Vocational, and Library Programs**

A variety of programs are provided to assist inmates in improving their academic and vocational skills. State law mandates education for all inmates entering the correctional system without a high school diploma or its equivalent who have at least 18 months remaining on their sentences. The Department of Labor, Licensing, and Regulation, in conjunction with the department and regional correctional operations, has responsibility for developing, overseeing, modifying, and monitoring the educational programs operating in the Maryland correctional facilities. Research indicates that participation in academic and vocational programs is correlated with a significant reduction in inmate recidivism.

In fiscal 2017, 493 inmates earned certificates of high school equivalency, with a pass rate of 86%. Additionally, 797 inmates completed adult literacy courses, 860 completed occupational courses, and 558 completed basic literacy programs.

In fiscal 2016, the U.S. Department of Education launched a pilot correctional education initiative called the Second Chance program. Using federal Pell Grant funding, the program provides a postsecondary education to incarcerated students prior to their release, with the goal of reducing recidivism and improving the future educational and employment success of participants. The initial State program is offered at Jessup Correctional Institution, a medium-security prison for men, and gives students a chance to earn a Bachelor of Arts degree. The program also offers mentoring and tutoring from incarcerated men at the facility who are leaders and role models there. In addition, it facilitates a smooth transition for inmates who want to finish their degrees after release.

Correctional libraries also play a critical role in the preparation of offenders for release by providing extensive up-to-date information on community resources in the areas of housing, addictions counseling, and training. Every inmate has the opportunity to visit a correctional library on a weekly basis.

### **Religious Services**

The Programs and Services Unit within the Office of the Deputy Secretary for Operations provides worship and study activities for 35 religions as well as nondenominational activities. In fiscal 2017, inmates submitted between 6,000 and 8,000 requests for chaplain assistance per quarter in such matters as obtaining religious literature and devotional items, family relations, spiritual counsel, and working through life developmental crises.

### **Social Work Reentry Programs**

The department's social workers provide a combination of cognitive behavioral group treatment and release planning services to assist offenders and detainees with building pro-social skills and connecting with positive release resources in order to prevent further criminal justice system involvement. Release planning services are available to individuals with a serious medical or mental health diagnosis, a developmental disability, or a lengthy period of incarceration. Social workers collaborate with contractors, other state and local agencies, and community providers to assist with applying for entitlements, obtaining housing, connecting to medical and mental health appointments, and other individualized needs.

### **Transition Programs**

The department released more than 9,288 inmates in fiscal 2017. In cooperation with local government and other State agencies, the department has implemented a comprehensive set of reentry programs and services to support the development of a discharge plan for each offender. The programs and services include partnerships for reentry programming, reentry seminars, aftercare transition, residential substance abuse treatment, institutional-based programs and services, and community-based programs and initiatives. The department conducts an assessment of reentry needs at intake, regardless of the length of sentence. The inmate identification card has been altered to make it an acceptable secondary source of identification in order to help inmates get a Motor Vehicle Administration identification card on release. The department collaborates with the Division of Vital Records and the Social Security Administration to provide inmates with birth certificates and Social Security cards on release.

## **Volunteer Services**

In fiscal 2017, approximately 2,200 volunteers were registered with the department and were involved in over 250 programs statewide. About 70% of donated time supports religious services. Other areas benefiting from volunteer services include inmate self-help groups; education programs; recovery programs; and other areas of interest such as art, writing, sewing, and yoga. One unique volunteer program involves The Girl Scouts of Central Maryland, who 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. Volunteers also sustain the Second Chances Horse Farm in Sykesville, a restorative justice tool that the department hopes to utilize to give the offender population work skills while also teaching compassion through the care of an animal.

Another program delivered by volunteers is the America’s Vet Dog program, offered at four institutions. A handful of inmates are selected to train service dogs for about one year, after which time the service dogs are paired with a veteran in need.

## **Inmate Welfare Fund**

Inmate welfare funds are funds collected from inmates via commissary profits and other commission-generating operations such as vending machines. Inmate welfare funds were previously used for the purchase of goods and services that benefit the general inmate population, including chaplain services, legal services, books, barbershop supplies, and recreation. Overall, inmate welfare funds have decreased, primarily because the department stopped collecting commissions from inmate telephone calls in 2016. With the loss of phone commissions, the department realigned and consolidated the budget for these items and now uses State funds for chaplains, education, and legal services for inmates.

## **Health Care Services**

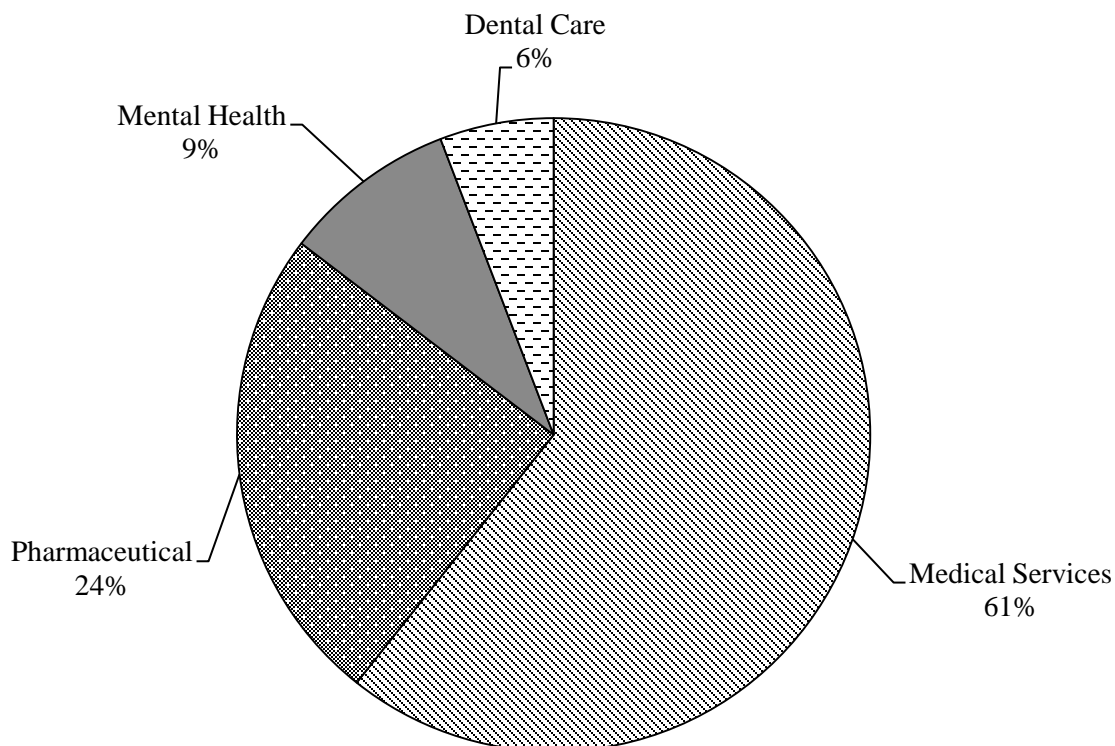
The department provides comprehensive medical, dental, and mental health services for all inmates in State facilities, including pretrial detainees and Patuxent Institution inmates. Services are provided through contractual health care providers that deliver primary, secondary, and chronic-care services through a Managed Care Program for all facilities.

In fiscal 2018, the department spent approximately \$180.0 million on inmate medical care, representing approximately 13% of the department’s total budget of \$1.38 billion. Inmate healthcare spending comprises \$109.6 million for medical services,

\$44.5 million for pharmaceuticals, \$16.0 million for mental health, and \$10.5 million for dental care. Exhibit 14.8 shows each service type and its percentage of the total healthcare budget.

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**Exhibit 14.8**  
**DPSCS Inmate Medical Care by Service**  
**Fiscal 2018**



DPSCS: Department of Public Safety and Correctional Services

Source: Department of Public Safety and Correctional Services

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## Health Care Cost to Inmates

A medical copayment requirement promotes inmate/detainee responsibility for participation in health care. It reduces the misuse of a sick call without restricting access to health care. Inmates who are indigent are exempt from medical copayment. The medical copayment is applied only when an inmate requests a sick call. Inmates who are referred to medical services by staff are not charged nor are there copayment requirements for any other health service.



## **Affordable Care Act**

The Affordable Care Act's Medicaid expansion delivers insurance to single adults who were previously excluded from coverage, including former inmates released from prisons and jails. In fiscal 2016, the State was allowed to start providing automatic Medicaid enrollment for inmates leaving jail or prison. Since former inmates often have higher rates of chronic health conditions, substance use, and mental health disorders, automatic Medicaid enrollment is expected to improve health care outcomes for this population. In addition, it is expected to reduce recidivism and lower State health care costs by decreasing the number of former inmates who would otherwise receive expensive, emergency health care.

## **Hepatitis C**

Hepatitis C, a liver disease, is a common disease in jails and prisons nationwide. Because of the use of infected needles, in part due to the spread of the opioid epidemic, Hepatitis C infections have continued to rise. New drugs to treat the disease have entered the market which have a 90% cure rate. The department provides these drugs at no cost to inmates and in fiscal 2017 treated 286 inmates.

## **HIV/AIDS**

The Office of Inmate Health and Clinical Services works collaboratively with the Maryland Department of Health in providing HIV testing for inmates. Every inmate is advised at intake, health care encounters, and prior to release of the department's intent to test for HIV, unless the inmate specifically requests not to be tested. The department uses an oral testing procedure, swabbing inside the mouth, as an alternative to invasive blood draws to increase the participation of individuals in testing at reception.

In fiscal 2017, 10,246 inmates were tested for HIV infection. Of those tested, 67 inmates were HIV positive. As of July 2016, the total number of inmates in the department with HIV infection was 409. Of that number, 78 have AIDS defined illnesses. The department stages and manages inmates diagnosed with HIV infection through its Managed Care Program.

## **Medical Parole/Compassionate Release**

The department participates in a medical parole program that affords early release for inmates with a serious irreversible terminal illness who no longer present a risk to public safety. Inmates with terminal conditions are recommended by the department to the

Parole Commission for evaluation. In the pretrial facilities, compassionate releases are arranged for offenders who have not yet been adjudicated and who have a terminal illness with less than six months to live. The social work office assists individuals who have special needs and require continuity of care in community health care facilities. The Justice Reinvestment Act expanded eligibility for medical parole and since October 1, 2017, 50 petitions have been filed.

### **Palliative Care Unit**

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

### **Tuberculosis Program**

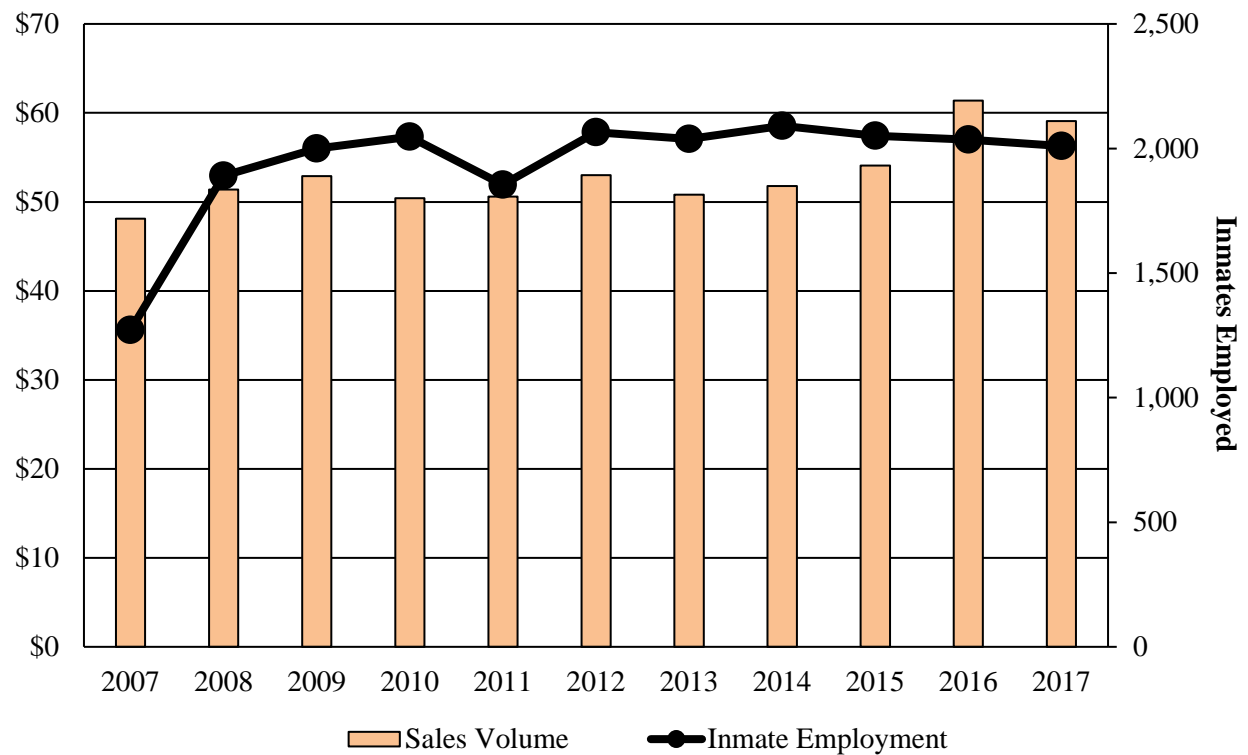
The department provides a tuberculosis prevention and control program that includes screening at the reception/intake process as well as annual clinical testing, education, and, as required, respiratory isolation. In fiscal 2017, no inmates tested positive for active tuberculosis.

### **Maryland Correctional Enterprises**

Maryland Correctional Enterprises employs offenders in a variety of business units located within several State prisons. While working, inmates develop social and technical skills, and studies have shown that inmates in the Maryland Correctional Enterprises program have lower rates of recidivism and improved employment options upon release. Exhibit 14.9 shows Maryland Correctional Enterprises sales and employment trends for the past 10 fiscal years.

Since fiscal 2009, inmate employment has remained relatively steady, at slightly more than 2,000 inmates. Total sales soared in fiscal 2016 to more than \$61 million, which is nearly \$10 million more than the average annual sales for the previous decade. In addition, a portion of the profits have been transferred back to the state of Maryland for six out of the last seven fiscal years.

**Exhibit 14.9**  
**Maryland Correctional Enterprises**  
**Sales and Employment Trends**  
**Fiscal 2007-2017**



Source: Department of Public Safety and Correctional Services

## Victim Services

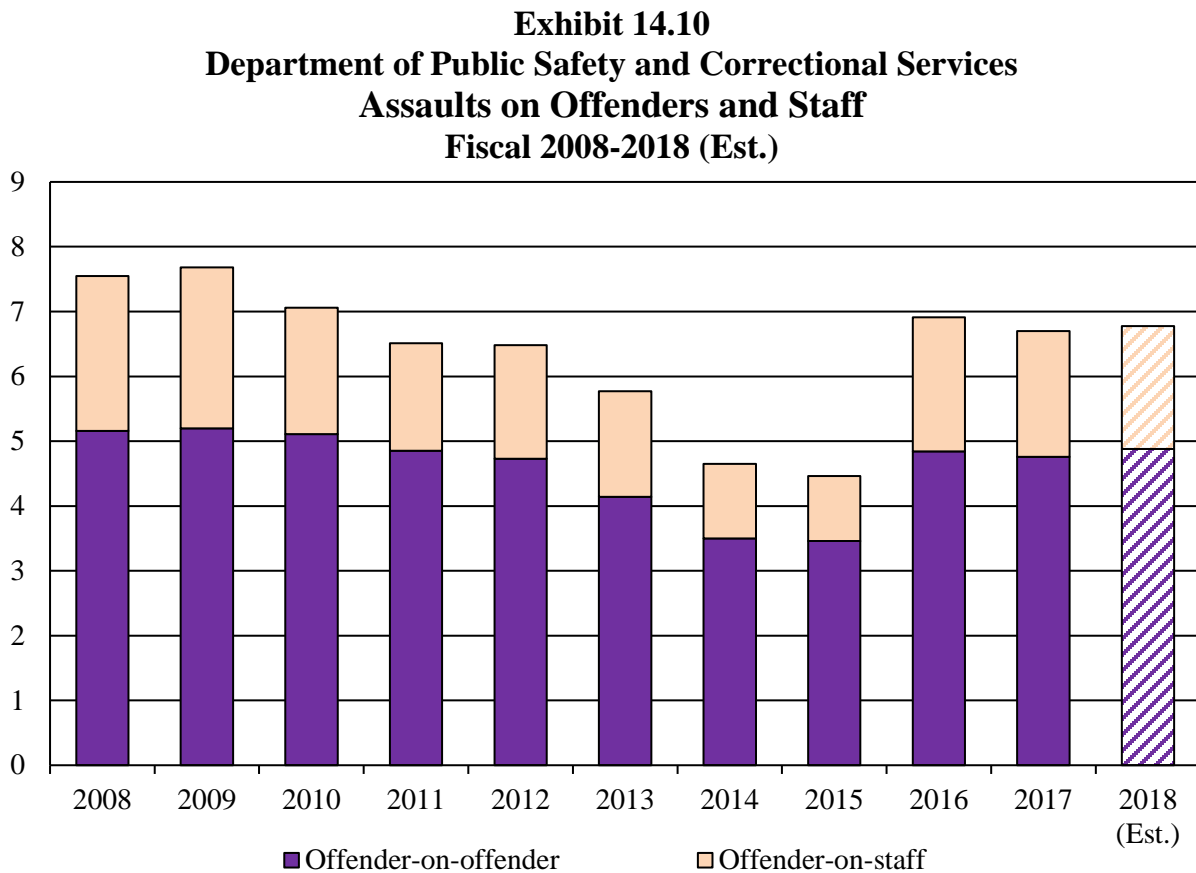
Victims Services Unit staff coordinates responses to victims' requests to be notified when the offender is released or escapes and to have a victim's impact statement read at any hearing to consider temporary leave or provisional release. Deputy Secretary for Operations staff cooperate with the Maryland Parole Commission to provide open parole hearings, should victims request them, and to carry out procedures to comply with the State's sex offender notification and registration requirements. See Chapter 12 of this handbook for a discussion of victims' rights.

## Violence, Drug Abuse, and Rule Violations

### Offender Assaults

In fiscal 2017, incidents of offender-on-offender and offender-on-staff violence increased. Two factors are believed to have contributed to this trend. First, correctional officer vacancies continue to grow. Second, the closure of several detention centers has resulted in the transfer of detainee populations to alternate facilities. As a result, detainees with different security classifications have been housed together and in some cases, in dormitory-style housing.

Exhibit 14.10 displays assault rates per 100 offenders from fiscal 2008 to 2018. From fiscal 2015 to 2018, offender-on-offender assaults grew by 40%, while offender-on-staff assaults doubled.



Source: Department of Public Safety and Correctional Services

## **Inmate Drug Testing and Contraband**

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

In fiscal 2018, the department deployed Cellsense anti-contraband technology in its facilities that can detect the smallest items, from razor blades and tattoo needles to cellphones. In addition, the department is pursuing drone sensing technology to detect and stop drones that attempt to deliver contraband into jails and prisons.

## **Employee Drug Testing**

The Department of Public Safety and Correctional Services Regional Operations has approximately 7,615 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, the officer may recommend a penalty such as a reprimand, restriction of privileges, revocation of good conduct time, a term of disciplinary segregation, or reclassification to greater security. The Internal Investigation Unit of the Department of Public Safety and Correctional Services may also pursue criminal charges for serious violations.

The Inmate Hearing Unit is responsible for all inmate disciplinary hearings in the State correctional and detention facilities, including the Patuxent Institution. The primary duty of the hearing officer is to provide inmates due process hearings that include the right to a fair and impartial hearing, written notice, a written decision, and appeal rights. During fiscal 2017, the staff heard 12,541 cases.

## **Inmate Grievance Procedures**

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

A decision by an administrative law judge of the Office of Administrative Hearings is reviewed by the Secretary of Public Safety and Correctional Services for affirmation, reversal, or modification. The Secretary's decision may be appealed to the appropriate circuit court within a 30-day period.



## **Chapter 15. Incarceration at the Patuxent Institution**

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The Patuxent Institution is a treatment-oriented maximum security correctional facility within the Department of Public Safety and Correctional Services. It is the only State institution for sentenced criminals that is not part of the Division of Correction. Centrally located in Jessup, Maryland between Baltimore and Washington, D.C., Patuxent has 465 employees (379 of which are correctional officers) and has a 1,113 bed capacity (1004 men and 109 women). In fiscal 2017, the average daily population was 856 offenders within the institution's treatment programs.

The primary purpose of the institution is to provide programs and services to youthful offenders, mentally ill inmates, and other eligible persons. In addition, the institution houses inmates from the department's general population who participate in specialized programs of the institution or for whom the other departmental facilities do not have adequate housing.

### **History**

The Patuxent Institution began operating in 1955, with a mandate to provide evaluation and treatment of a special group of criminal offenders known as "defective delinquents." These individuals were involuntarily committed under an indeterminate sentence due to their persistent antisocial and criminal behavior.

In 1977, public concern over the designation "defective delinquent" and the practice of indeterminate sentences led to the statutory repeal of the designation and the practice. The eligible person remediation program, with a focus on habitual criminals, was created to provide specialized treatment services to offenders accepted into it. In 1990, Patuxent's mandate was expanded to include female offenders.

Incidents involving inmates on early release from the institution led to a statutory change in its mission in 1994 from rehabilitating eligible persons to one of remediating youthful eligible persons. The remediation model focuses on educational and vocational programs and substance abuse treatment rather than the psychological programs emphasized by the rehabilitation model. This statutory change also established the Youthful Offenders Program to address the increasing number of young offenders, including juvenile offenders that are convicted as adults in the criminal courts. The focus on youthful offenders was also due to recognition that crimes were more likely to be committed by offenders in that age group. In addition, treatment models dealing with issues such as social skills, anger management, and relapse prevention were created to broaden and enhance traditional group therapy.



In 2002, the scope of the purpose of the institution was expanded to include other eligible persons and mentally ill inmates.

## Patuxent Institution Programs and Centers

There are currently four categories of inmates at the institution's facility: (1) "eligible persons"; (2) youthful offenders; (3) mentally ill inmates; and (4) inmates from the department's general population. Overall, Patuxent programs, clinical and otherwise, are segmented into eight units. Exhibit 15.1 shows the units, along with the total capacity for each.

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### Exhibit 15.1 Patuxent Programs and Total Capacity Fiscal 2017

#### **Male Programs**

Eligible Persons	164
Patuxent Youth Program	100
Correctional Mental Health	192
Mental Health Transition	32
Mental Health Step-Down	32
Parole Violator Program	24
Patuxent Assessment Unit	64
DOC Transient	396
<b>Total Capacity</b>	<b>1,004</b>

#### **Female Programs**

Eligible Persons/Youth	37
DOC Housing	72
<b>Total Capacity</b>	<b>109</b>

DOC: Division of Correction

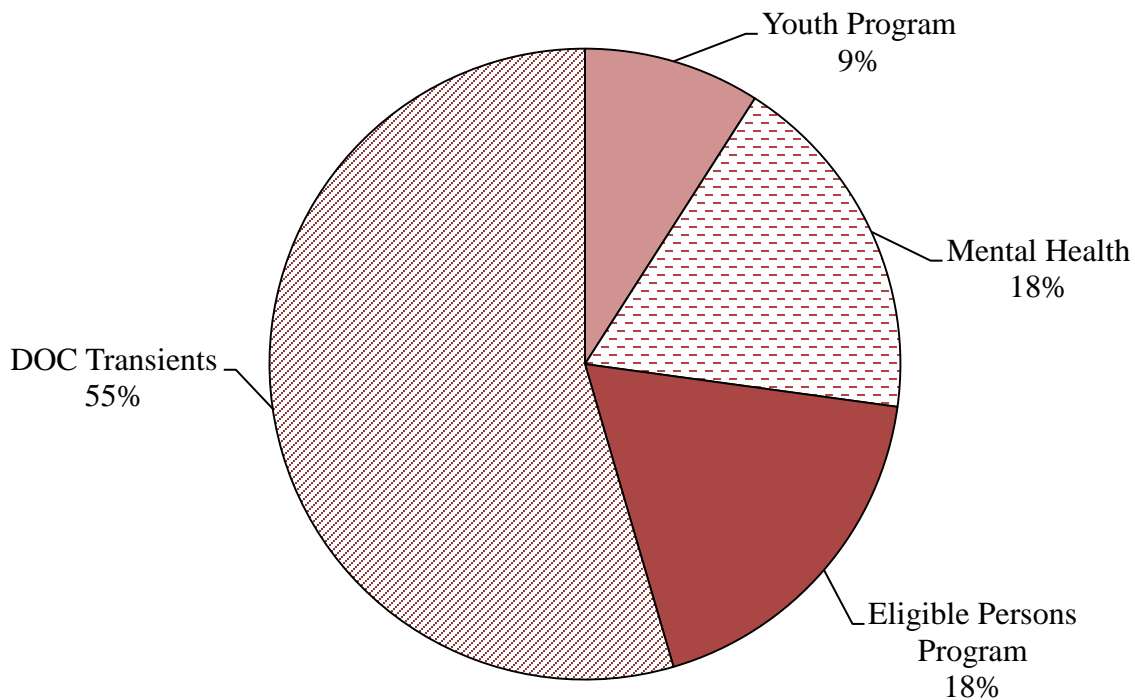
Source: Department of Public Safety and Correctional Services, Patuxent Institution

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## Statutory Programs

The Patuxent Institution operates two statutorily mandated programs, the Eligible Persons Program and the Patuxent Youth Program. As the prevalence of offenders with mental health issues has increased among the department's general population, the institution's role in providing mental health services has expanded. The facility's role in addressing the mental health needs of the entire State inmate population is evidenced in Exhibit 15.2, which allocates the fiscal 2017 average daily population among the institution's programs by percentage. In fiscal 2017, offenders from the Division of Correction general inmate population represented over half of the facility's average daily population.

**Exhibit 15.2**  
**Patuxent Average Daily Population by Program**  
**Fiscal 2017**



DOC: Division of Correction

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

### **Eligible Persons Program**

The institution's Eligible Persons Program is a remediation program for general population inmates with at least three years remaining on a sentence. In general, inmates may apply for admission on their own or be admitted by recommendation of the sentencing court, the director of Patuxent Institution, or the State's Attorney. However, inmates convicted of first-degree murder, first-degree rape, or a first-degree sex offense<sup>1</sup> are not eligible unless the sentencing judge recommends evaluation for admission. Inmates serving multiple life sentences or life sentences for murder with aggravating circumstances are excluded. In addition, offenders must meet the following conditions:

- have an emotional imbalance or intellectual impairment;
- be likely to respond favorably to Patuxent programs and services; and
- be more amenable to remediation through Patuxent programs and services rather than incarceration.

All inmates considered for admission must be evaluated and approved by an institution evaluation team, which consists of a minimum of three professional employees of the institution, including a social worker or behavioral scientist, a psychologist, and a psychiatrist. The six-month evaluation process involves extensive psychiatric and psychological testing and a thorough review of the inmate's social, physical, and mental status.

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

### **Patuxent Youth Program**

Eligibility criteria and evaluation for admission to the youth program are similar to those of the eligible person remediation program discussed above. However, in addition, the inmate must be under the age of 21 at the time of sentencing and must be referred for evaluation by the trial court at the time of sentencing. Offenders must also have received a sentence of at least three years and must be deemed amenable to treatment at Patuxent. Inmates in this program must remain at the institution until expiration of the sentence,

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<sup>1</sup> Chapters 161 and 162 of 2017 reclassified sexual offense in the first degree and sexual offense in the second degree as first-degree rape and second-degree rape, respectively.

parole, a release into mandatory supervision, or transfer to a facility that houses general population inmates.

Overall, 96 offenders were evaluated for the Eligible Persons and Patuxent Youth Programs in fiscal 2017. Of that total, 62 offenders were admitted, and 34 were found ineligible. Fifty-three percent of the enrollees were between the ages of 20 and 29, and males were 76% of enrollees admitted.

### **Correctional Mental Health Center – Jessup**

The Correctional Mental Health Center, housed at Patuxent, is the inpatient mental health unit for the department. Opened in 1992, the center was established to provide a centralized treatment environment tailored to the needs of inmates with serious mental illness. The center has a capacity of 192 beds and includes an acute unit and a sub-acute unit to treat and stabilize Division of Correction inmates suffering from serious psychiatric disorders. An inmate with a chronic mental illness, however, could spend his or her entire sentence at the center.

Key center services include treatment planning, crisis management, group psychotherapy, and recreational activities, all of which are overseen by therapists. Additionally, there are community meetings between inmates, nursing, and correctional staff on an as-needed basis. In fiscal 2017, the center maintained a 96% capacity rate, or an average daily population of 184 offenders.

### **Mental Health Transition**

The mental health transition program began operating in fiscal 2000 to provide comprehensive aftercare for mentally ill offenders who return to the community through mandatory release or parole. Overall, 32 beds for inpatient and outpatient services are available, and treatment options include individual as well as group therapies. Stabilized inmates who are within 12 months of release and who want to participate in their own aftercare planning are referred to this program. This program works closely with community-based mental health providers to increase the likelihood of successful treatment.

### **Mental Health Step-down Unit**

The step-down program was created to address the needs of mentally ill inmates who do not need acute care but are unable to function in a general prison population. These inmates may have substance abuse problems or other life skill deficiencies. In this

program, offenders are placed in a structured environment to assist with the development of life skills that will enable them to return to another institution within the department. In total, 32 beds are available for this program.

### **Parole Violator Program**

The Parole Violator Program was implemented in fiscal 2010 and is a voluntary, six-month treatment program for male inmates who are mandatory or technical parole violators. The program serves violating offenders throughout the entire department. Overall, treatment is behavior-based and emphasizes skill development to prevent relapse and prepare inmates for a smooth transition back into society. In fiscal 2017, 52 offenders completed this program.

### **Patuxent Assessment Unit**

The Patuxent Assessment Unit, which began in February of 2011, is a 64-bed unit which thoroughly evaluates offenders newly-committed to the department who have mental health issues or difficulty adjusting to incarceration. The goal is to place such offenders into appropriate programs and institutions from the onset of their incarceration. Programming and housing recommendations are made after a 30-day evaluation period. During fiscal 2017, a total of 187 evaluations were completed.

### **General Population Inmates**

General population inmates (also referred to as Division of Correction transients) are housed at Patuxent for one of six reasons: (1) to receive mental health treatment; (2) to alleviate crowding at other facilities throughout the State correctional system; (3) to participate in a program designed for inmates who are awaiting placement in either the eligible person or youth program; (4) to undergo assessment or evaluation; (5) to work in the Maryland Correctional Enterprise's Sign Shop; or (6) to participate in the Parole Violator Program. While not all of these inmates receive the treatment services provided through the Eligible Persons or Patuxent Youth programs, every inmate is provided with educational services. In fiscal 2017, the institution had an average daily population of 554 general population inmates, accounting for over half of Patuxent's total population at any given time.

## **Other Programs and Services**

### **Education**

Since fiscal 2009, educational services have been provided by the Department of Labor, Licensing, and Regulation. Overall, 873 students received educational services during fiscal 2017, and 36 students earned a GED/high school diploma.

### **Maryland Correctional Enterprises**

Maryland Correctional Enterprises produces goods and services for sale and uses State inmates as employees to produce those goods. This inmate employment program is designed to improve future employability of an inmate, reduce prison idleness and to enhance safety and security. Since fiscal 2008, the organization has provided structured employment and training activities for offenders at Patuxent via its on-campus sign and engraving shops. The shops produce signage, decals, and special artwork for State agencies including the Maryland State Police, Baltimore Orioles, and the Maryland Transit Administration. In fiscal 2017, the shops averaged nearly \$1 million in revenue and employed 36 male and 21 female offenders.

### **Recreation, Religious, and Volunteer Services**

Overall, 80% of Patuxent offenders participated in volunteer activities and over 400 community volunteers were in active service at the institution during fiscal 2017. The institution offers several self-help groups, training, and religious programs each year. Self-help groups include Alcoholics Anonymous and Narcotics Anonymous, and other activities offer training to deal with issues such as alternatives to violence and mediation techniques. For female offenders, yoga classes are offered, and during fiscal 2017, female offenders made over 80 quilts for donation to charity. In addition, there are 13 faith communities on campus, and barber/cosmetology schools offer inmates skill training for potential future employment.

### **Patuxent Administration**

The institution has a wide variety of tasks to complete in order to deliver effective service to offenders with many needs. The Institutional Board governs release and parole issues, while several teams accomplish institution goals in terms of administrative and clinical tasks.

## **Treatment Teams**

The Patuxent Institution contains four treatment teams. The Eligible Persons remediation, Patuxent Youth Program, reentry, and female programs have a treatment team for each unit, which consists of staff from a variety of disciplines including social work, psychology, and psychiatry. An individualized treatment plan is developed for each eligible person or youthful offender, and each plan is reviewed annually by the director or the associate director.

The Institutional Board of Review evaluates each treatment plan using a four-level grading system that uses communications and learning theory to promote socially acceptable behavior. As each inmate successfully completes the requirements of the inmate's treatment plan, the inmate will progress to a higher level and receive additional privileges and responsibilities. While the system assigns a minimum time commitment to each level, no maximum time is assigned. An inmate may stay at a level as long as required for progress and promotion or until it is clear that the inmate does not benefit from the current level. Failure to complete requirements of a treatment plan may result in demotion to a lower level or removal from a program.

## **Patuxent Institutional Board of Review**

The Patuxent Institution is the only State correctional facility with its own conditional release authority. Established in 1977, the Institutional Board of Review is composed of nine members, including the director of the institution, two associate directors, the warden, and five members of the general public appointed by the Governor, at least one of whom must be a member of a victims' rights organization.

The board reviews the progress and treatment plan of each offender in the Eligible Persons remediation program and the youth program at least once each year. The board may grant, deny, or revoke offender eligibility for these programs. The board also may recommend that a sentencing court release an offender from the remainder of their sentence. In addition, the agreement of seven of the nine board members is required before an eligible person may be approved for any conditional release discussed below.

In fiscal 2017, the board heard 256 cases. Ninety-three percent of the cases involved annual reviews of offender progress in the Eligible Persons and Patuxent Youth programs. In total, the board issued 19 certificates of completion to inmates.

### **Conditional Release**

Inmates who have completed the level system and who are therapeutically ready may be recommended to the board for participation in the institution's program of conditional release. The program comprises gradual, hierarchical steps to facilitate a return to community life. The program allows additional evaluation of an inmate as the structure of prison life is reduced.

A pre-status clinical conference is held to review the inmate's criminal and institutional record, as well as an assessment of the risk of future criminal behavior. If the treatment team decides to recommend conditional release, then an appearance is scheduled before the board. The board secretary also notifies the victim or victim's representative of the opportunity to comment on conditional release. See Chapter 12 of this handbook for further discussion of victims' rights.

The categories of conditional release are work release and work release with delayed parole recommendation. The board closely monitors the activities of the offenders who are granted conditional release including their employment, education, and travel. Inmates granted conditional release are required to abide by a number of special conditions including approval of itineraries; drug and alcohol testing; and home, job site, and telephone checks. In addition, the board can revoke any type of conditional release. If an offender is believed to have violated the Terms of Condition or a Parole Contract with the board, a revocation hearing is held. In fiscal 2017, there was one preliminary parole revocation hearing.

### **Additional Parole Recommendations**

The Board of Review has limits on the authority to grant parole. For a sentence other than life imprisonment, the board may approve parole for offenses committed on or before March 20, 1989. While the board may make recommendations concerning parole for nonlife sentences for offenses committed after that date, final approval by the Secretary of Public Safety and Correctional Services is required.

An eligible person serving a life sentence may not be released on parole by the board until the inmate has served the same minimum time required for parole eligibility for general population inmates (25 years for a person sentenced to life imprisonment for first-degree murder instead of life imprisonment without the possibility of parole and 15 years for other life sentences, less diminution of confinement credits). 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.

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

Unlike the Maryland Parole Commission, the board may release an inmate with a mandatory minimum sentence before the mandatory minimum has been served, provided the requirements described above are met. In practice, however, the board does not grant release prior to an inmate meeting the mandatory minimum sentence.

### **Risk Assessment Team**

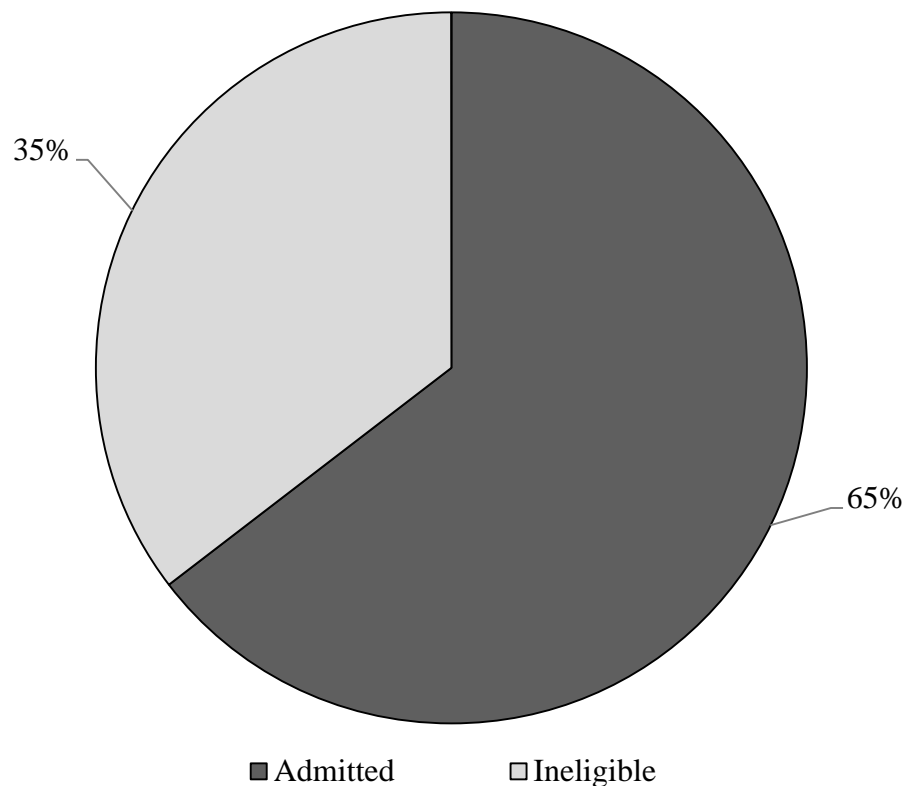
At the end of fiscal 2017, the Risk Assessment Team completed its tenth full year of service. The team provides the Maryland Parole Commission and the Governor's Office of Legal Counsel with detailed risk assessments of those offenders who have life sentences and are being considered for parole, commutation, or clemency. All risk assessments are conducted by licensed psychologists with the goal of understanding an inmate's risk for violence and recidivism.

## Patuxent Statistics and Fiscal Information

Exhibit 15.3 shows the percentage of offenders admitted to the institution for the Eligible Persons and Patuxent Youth Program in fiscal 2017. For all programs at the institution, 71% of those admitted were African-American, 90% were male, and 10% were female.

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**Exhibit 15.3**  
**Patuxent Admission Rates**  
**Fiscal 2017**

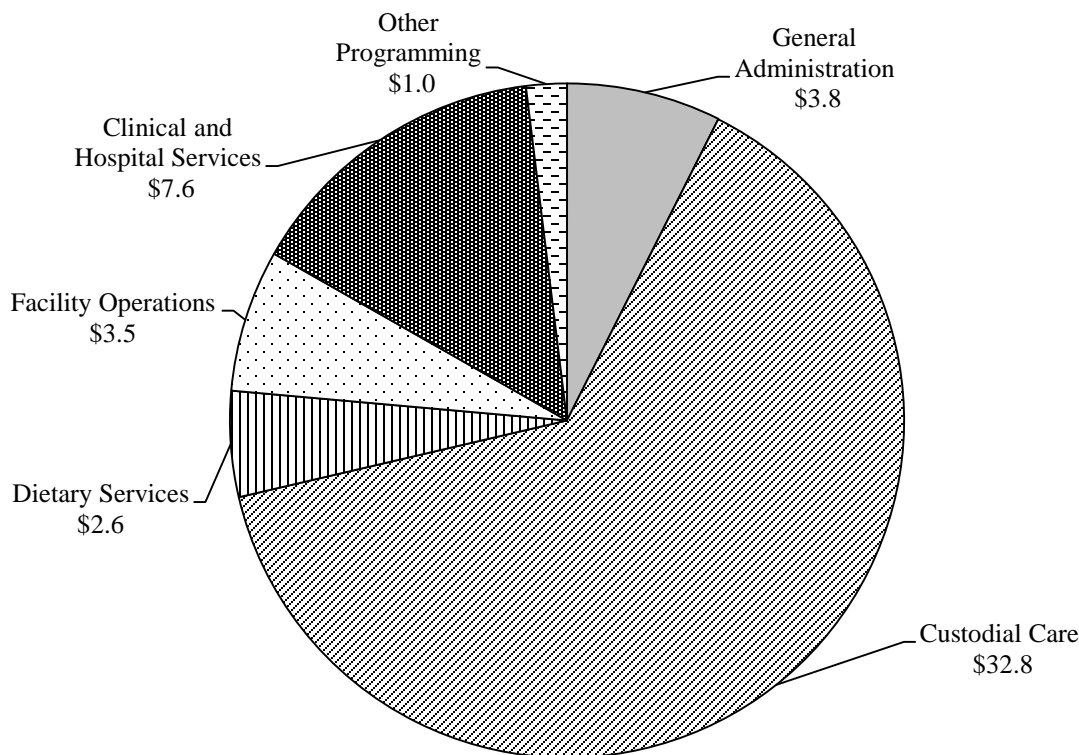


Source: Department of Public Safety and Correctional Services, Patuxent Institution

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Exhibit 15.4 shows the Patuxent Institution's fiscal 2017 budget, by category. Custodial care represented approximately 64% of the institution's \$51.3 million budget in fiscal 2017.

**Exhibit 15.4**  
**Patuxent Budget by Activity**  
**Fiscal 2017**  
**(in Millions)**



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

The average annual cost per inmate at Patuxent was estimated to be \$58,394 in fiscal 2017. This is higher than the other maximum security prisons in the State, where costs per inmate range from \$29,992 at the Maryland Correctional and Training Center to \$47,637 at North Branch Correctional Institution. The higher cost of incarceration at Patuxent reflects the unique mission of the facility and the fact that the institution offers services not directly provided by other departmental facilities, such as diagnostic services, intensive mental health services, conditional release decision making, and conditional release supervision.

## **Chapter 16. Release from Incarceration**

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An inmate may be released from imprisonment under one of the following circumstances: (1) expiration of sentence; (2) mandatory supervision; (3) parole; (4) administrative release; or (5) gubernatorial pardon or commutation of sentence. This chapter will discuss each of these mechanisms.

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

### **Case Plan**

The Justice Reinvestment Act (Chapter 515 of 2016) made numerous changes to State law relating to sentencing, corrections, parole, and the supervision of offenders. These provisions took effect on October 1, 2017. Several of the provisions apply to inmates sentenced on or after that date.

Among other things, the Justice Reinvestment Act required the Division of Parole and Probation in the Department of Public Safety and Correctional Services to conduct a risk and needs assessment of each inmate sentenced to the division's jurisdiction and develop a case plan to guide the inmate's rehabilitation, which must include:

- programming and treatment recommendations based on the results of the risk and needs assessment;
- specifications for the conduct that the inmate will be required to conform to in accordance with the rules and policies of the division; and
- a plan for the payment of restitution, if restitution has been ordered.

### **Expiration of Sentence**

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

## **Release on Mandatory Supervision**

Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits, discussed below, and applies only to an inmate in a State correctional facility sentenced to a term of confinement exceeding 18 months. An inmate in a State correctional facility serving a term of 18 months or less and an inmate in a local detention center may also earn credits, but those inmates are not subject to mandatory supervision on release. There is no discretion involved in release on mandatory supervision.

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

State law establishes the types of diminution credits that an inmate may be allowed. These are commonly called “good time” credits, although there are a variety of other credits in addition to good conduct credits that may be allowed to inmates serving time in State correctional facilities based on participation in work, educational programs, and special projects. The purpose of these credits is to encourage good inmate behavior and promote an interest in activities that will occupy an inmate’s time while confined and prove useful after release.

Under the Justice Reinvestment Act, an inmate serving a sentence in a State correctional facility for a crime of violence, volume drug dealing, or being a drug kingpin is awarded good conduct credits at the rate of 5 days per month. Other inmates are awarded good conduct credits at the rate of 10 days per month. Inmates serving sentences for drug distribution prior to October 1, 2017, are only eligible to earn good conduct credits at the rate of 5 days per month.

With respect to the maximum days of diminution credits an inmate may earn in a month, an inmate who is serving a sentence for drug distribution prior to October 1, 2017, or an inmate serving a sentence for a crime of violence, a sexual offense requiring registration, volume drug dealing, or being a drug kingpin may earn a maximum of 20 days total diminution credits per month. Other inmates may earn a maximum of 30 days total diminution credits per month.

The Justice Reinvestment Act also increased the total deduction for diminution credits for an individual serving a sentence in a local correctional facility for a crime other

than a crime of violence, volume drug dealing, or being a drug kingpin from 5 to 10 days per month. This change applies prospectively to inmates who are sentenced on or after October 1, 2017.

An inmate serving a sentence in a State or local correctional facility for any of the following offenses is prohibited from earning diminution credits: (1) first- or second-degree rape (or the former offenses of sexual offense in the first degree and sexual offense in the second degree) against a victim under 16 years of age and (2) third degree sexual offense committed against a victim under the age of 16 by a person previously convicted of that offense. A person imprisoned for a violation of lifetime sexual offender supervision is also not entitled to diminution credits.

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

If an inmate is sentenced to imprisonment for a crime of violence committed between June 1, 2002, and October 1, 2003, or any crime after October 1, 2003, while on mandatory supervision, and the mandatory supervision is then revoked, the inmate will automatically lose all diminution credits awarded before the inmate's release on mandatory supervision, and the inmate is not eligible for any new diminution credits on that term of confinement. However, in general, when an inmate on mandatory supervision has committed a "technical violation" of the inmate's mandatory supervision, the revocation of credits is limited to:

- not more than 15 days for a first technical violation;
- not more than 30 days for a second technical violation;
- not more than 45 days for a third technical violation; and
- up to all remaining days for a fourth or subsequent technical violation.

Technical violation means a violation of a condition of mandatory supervision that does not involve an arrest or a summons issued by a District Court Commissioner on a statement of charges filed by a law enforcement officer, a violation of a criminal prohibition other than a minor traffic offense, a violation of a no-contact or stay-away order, or absconding (willfully evading supervision).

An inmate convicted of a crime of violence committed on or after October 1, 2009, is not eligible for release on mandatory supervision before the inmate is eligible for parole.

## **Parole**

### **In General**

Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review. For a discussion of the Patuxent Board of Review see Chapter 15 of this handbook.

The commission is composed of 10 commissioners who are appointed for six-year terms by the Secretary of Public Safety and Correctional Services, with the advice and consent of the Senate. The Secretary, with the approval of the Governor, also appoints the chairperson of the commission. In addition to the commissioners, there are 10 hearing officers.

### **Parole Eligibility**

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

- An inmate may be released on parole at any time in order to undergo drug or alcohol treatment, mental health treatment, or to participate in a residential program of treatment in the best interest of the inmate's expected or newborn child if it is determined that the inmate is amenable to treatment. An inmate may not be released on parole for these purposes if the inmate is serving a sentence for (1) a crime of violence; (2) child abuse; or (3) certain drug offenses.
- An inmate serving a term of incarceration that includes a mandatory minimum sentence that a statute provides is not subject to parole (*e.g.*, use of a handgun in a felony or crime of violence, subsequent violent offenders with enhanced sentences, subsequent felony drug offenders with enhanced sentences) is not eligible for parole until the inmate has served that mandatory minimum sentence. Diminution credits, discussed above, may not be applied towards this minimum requirement.

- A sentence for a violent crime does not become parole-eligible until the inmate has served one-half of the sentence. However, in general, a sentence for a conviction for a third crime of violence or a conviction for a second crime of violence committed on or after October 1, 2018, is not eligible for parole.
- A sentence for a third or subsequent conviction of a felony drug violation committed on or after October 1, 2017, does not become parole-eligible until the inmate has served one-half of the sentence.
- Offenders sentenced to life imprisonment must serve a minimum of 15 years, less diminution credits, before becoming eligible for parole and may be paroled only with approval of the Governor.
- Offenders sentenced to life imprisonment for first degree murder, instead of a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole and may generally be paroled only with approval of the Governor. However, if the Maryland Parole Commission or the Patuxent Board of Review decides to grant parole to an inmate who has served 25 years without application of diminution credits and the Secretary of Public Safety and Correctional Services approves the decision, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. If the Governor does not disapprove the decision to grant parole within that timeframe, the decision to grant parole becomes effective.
- Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole or pardons the individual.
- Offenders who are age 60 or older who have served at least 15 years of a sentence for a crime of violence other than a sexual offense may apply for and be granted geriatric parole.
- Inmates who are so chronically debilitated or incapacitated by a medical or mental condition, disease, or syndrome as to be physically incapable of presenting a danger to society may be released on medical parole.



## **Parole Hearings**

If an inmate is eligible for a parole hearing, the parole commission is required to give timely notice to the inmate before the hearing. Generally, a parole hearing is held before a single hearing officer or a parole commissioner acting as a hearing officer. However, if the inmate is serving a sentence for homicide, is serving a sentence of life imprisonment, or if a victim requested that the hearing be opened to public attendance, a parole hearing is held before a panel of at least two commissioners. See Chapter 12 of this handbook for a discussion of victims' rights.

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

The inmate and the department have five days after receipt of the hearing officer's written decision to file with the commission a written exception to the hearing officer's recommendations. If an exception is not filed, the recommendation of the hearing officer is adopted. If an exception is filed, the parole commission or a panel of at least two commissioners assigned by the chairperson of the commission may schedule an appeal hearing. The appeal hearing is on the record, and the decision of the commission or panel is final.

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

The commission also reviews cases and makes recommendations to the Governor concerning parole of an inmate serving a sentence of life imprisonment. In addition, the commission reviews cases concerning pardons, commutations, or other clemency at the request of the Governor.

An inmate has a right to see any document in the inmate's file except diagnostic opinions, information obtained on a promise of confidentiality, or other privileged

information. On request, the commission has the responsibility to provide the substance of any information withheld from the inmate with an explanation as to the legal basis for that exclusion.

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

- the circumstances surrounding the crime;
- the physical, mental, and moral qualifications of the inmate;
- a report on a drug or alcohol evaluation that has been conducted on the inmate, including any recommendation concerning the inmate's amenability for treatment and the availability of an appropriate treatment program;
- the likelihood that the inmate will commit additional crimes if released;
- whether release of the inmate is compatible with the welfare of society;
- the progress of the inmate during confinement, including academic progress in mandatory education programs;
- any recommendation made by the trial judge at the time of sentencing;
- the inmate's compliance with the case plan that was developed for the inmate by the Division of Parole and Probation after sentencing; and
- an updated victim impact statement or recommendation and any information or testimony presented to the commission by the victim or the victim's designated representative. See Chapter 12 of this handbook for a discussion of victims' rights.

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

If the commission grants parole, the individual must have a verified and approved home plan and generally must have employment. Conditions of parole include required reporting to a parole agent, working regularly, getting permission from a parole agent before changing a job or home or leaving the State, and no involvement with drugs or weapons. Other terms may be imposed, if appropriate, in an individual case.

For offenders who meet certain criteria, the commission may negotiate a Mutual Agreement Program contract. The contract sets out an individualized program of goals, such as education or job training that must be met according to a detailed timetable. Offenders who are able to meet the contract requirements are guaranteed a future parole release date. If the contract is canceled before the release date or if the offender fails to meet the contract requirements, the offender's parole status reverts to the normal parole hearing schedule.

## **Supervision After Release on Parole**

An inmate released on parole, supervised probation (see Chapter 10 of this handbook for a discussion of probation), administrative release, or under mandatory supervision is assigned to a community supervision agent within the Department of Public Safety and Correctional Services.

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

As of June 2017, 534 community supervision agents were responsible for the supervision of 40,374 offenders. In 2017, the division supervised a total of 90,487 offenders under probation supervision; 26,394 offenders under the Drinking Driving Monitor Program; 7,025 offenders under mandatory release supervision; and 8,082 offenders under parole supervision. Approximately 50 agents function as full-time investigators, conducting presentence, preparole, and other types of investigations for the Maryland Parole Commission, the courts, and other criminal justice agencies.

Chapters 554 and 555 of 2011 created the Swift and Certain Sanctions Pilot Program, under which the Department of Public Safety and Correctional Services was required to develop a pilot program in two counties with a system of graduated administrative sanctions for violations of conditions of parole by releasees from the department. Following an initial expansion in 2014, the program was expanded statewide under the Justice Reinvestment Act. The Act required the Division of Parole and Probation to establish a program to implement the use of graduated administrative sanctions in

response to technical violations. The sanctions are to be based on a matrix providing for suitable responses to common technical violations by offenders, and may not include the use of incarceration or involuntary detention. The division is required to provide notice to both the court and the Maryland Parole Commission regarding a technical violation and any graduated sanction imposed as a result. Unless doing so would present a risk to a victim, a witness, or to the general public, the court and the commission may impose incarceration for technical violations as follows:

- not more than 15 days for a first technical violation;
- not more than 30 days for a second technical violation; and
- not more than 45 days for a third technical violation.

Additionally, the court may also depart from these incarceration limits if the court commits the offender to the Maryland Department of Health for substance abuse treatment.

## **Revocation of Parole**

Any violation of a condition of release may result in revocation of parole. A violation is classified as either a “technical” violation that is not a crime (*e.g.*, failure to attend a required meeting or failing to be employed) or a commission of a new crime. If a violation is alleged, the Maryland Parole Commission or the Department of Public Safety and Correctional Services (if this power is delegated to the department in a particular case) must decide whether to issue a subpoena or a retake warrant for purposes of a parole revocation hearing. A subpoena is requested from the parole commission if the parole agent believes that the offender is not a public safety threat and that the offender will not flee. Otherwise, a parole agent must request a retake warrant, which subjects the individual to arrest, and submit a written report to the commission on the alleged violation.

The commission may concur with a no action recommendation<sup>1</sup>, authorize a subpoena, or issue a retake warrant. The commission may, in its discretion, consult with the parole agent or other responsible person if additional information concerning the offender is necessary. The decision whether to issue a subpoena or warrant is within the sole discretion of the commission.

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<sup>1</sup> A “no action” recommendation is generally made when an offender has been arrested for a new crime, but the charge has not been adjudicated at the time of the report and the offender is not considered a threat to the community. This recommendation is also made when, despite the violation, the offender is making a significant effort to address his/her behavior. This could include entering a treatment program, making restitution, or other pro-social behavior.

A person on parole or mandatory supervision who is arrested on a retake warrant may not be released on bail. An alleged violator taken into custody on a retake warrant as a result of a technical violation is entitled to a preliminary hearing before a hearing officer. The right to a preliminary hearing may be waived by the alleged violator. The hearing officer may (1) determine that there is probable cause to hold the parolee for a revocation hearing or (2) withdraw the retake warrant and substitute a subpoena requiring the violator to appear before the commission at a certain time and date for a revocation hearing.

This second alternative allows an individual to be released pending the parole revocation hearing. Release pending the hearing may include additional conditions to structure the individual's behavior.

If the hearing officer determines that there is probable cause to believe that there was a technical violation or the individual waives the right to a preliminary hearing, and in all cases where the alleged violation is for a crime, a commissioner holds a hearing. If possible, the hearing will take place within 60 days after arrest on the retake warrant. The individual is entitled to counsel and, if the commission is notified five days in advance of the revocation hearing and if the commission agrees, may produce witnesses. The commission may issue subpoenas to compel the appearance of witnesses.

If the commission finds by a preponderance of the evidence<sup>2</sup> that the individual has committed a violation, it may continue the individual on release, subject to any new conditions that it may impose, or revoke parole. If parole is revoked, the commission may order the violator to serve the remainder of the original term of incarceration. The commission may also set a date for a hearing to reconsider parole.

The commission may in its discretion grant the violator whose parole is revoked credit for time spent on parole before the violation. This is known as "street time." However, a violator on parole or mandatory supervision release for a violent crime committed on or after October 1, 1994, whose release is revoked due to the commission of a new violent crime may not receive credit for street time. Uncredited time spent on parole is added to the expiration date of the original sentence.

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

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<sup>2</sup> This is the same standard of proof applicable in most civil cases and means that there must only be more evidence than not that the violation occurred. It is a lesser standard than the criminal standard of proof "beyond a reasonable doubt."

## **Earned Compliance Credits**

The Department of Public Safety and Correctional Services has established a program to administer earned compliance credits, which create a reduction in the period of active supervision for a “supervised individual.” With certain exceptions, a “supervised individual” means an individual placed on probation by a court or serving a period of parole or mandatory release supervision after release from a correctional facility. An “earned compliance credit” is a 20-day reduction from the period of active supervision of a supervised individual for every month that the supervised individual:

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

A supervised individual whose period of active supervision has been completely reduced as a result of earned compliance credits must remain on “abatement” until the expiration of the individual’s sentence, unless the individual consents to continued active supervision or violates a condition of probation, parole, or mandatory release supervision including failure to pay a required payment of restitution. If a supervised individual violates a condition of probation while on abatement, a court may order the person to be returned to active supervision. The term “abatement” means an end to active supervision of a supervised individual without effect on the legal expiration date of the case or the supervised individual’s obligation to obey all laws, report as instructed, and obtain written permission from the department before relocating residence outside the State. In 2016, the Justice Reinvestment Act expanded this program to include individuals convicted of certain violations involving controlled dangerous substances.

## **Administrative Release**

In 2016, the General Assembly added administrative release as an additional method of releasing individuals convicted of certain offenses involving controlled dangerous substances and paraphernalia, theft offenses, and fraud offenses. Within 60 days of receiving an individual for commitment after sentencing, a correctional facility is required to evaluate an inmate's eligibility for administrative release and develop a case plan under which an eligible inmate may be administratively released. In general, to qualify for administrative release, an inmate must have completed at least one-fourth of the inmate's sentence before becoming eligible for release and also meet the following criteria:

- the inmate has been sentenced to a term of incarceration of at least six months in a State or local correctional facility;
- the inmate has never been convicted of a violent crime or a sexual offense for which registration is required;
- the inmate does not have two or more convictions for certain offenses involving controlled dangerous substances; and
- if the inmate is serving a sentence that includes a mandatory minimum period of confinement, the inmate has completed the mandatory minimum portion of the sentence.

The correctional facility to which an inmate is committed is required to periodically evaluate an eligible inmate's case plan and send progress reports and compliance reports to the Maryland Parole Commission. The commission must notify the victims of an eligible inmate of the date that the inmate is eligible for administrative release and a victim's right to request a public hearing regarding the inmate's release and submit written testimony concerning the crime and impact of the crime on the victim.

## **Pardon or Commutation by Governor**

An inmate or other offender may apply to the Governor for clemency. Article II, Section 20 of the Maryland Constitution authorizes the Governor to grant reprieves<sup>3</sup> and pardons (including, by implication, commutation of a sentence) if the Governor gives notice in at least one newspaper of the application for clemency. The only limitation on

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

this power is that the Governor may not grant a pardon or reprieve in cases of impeachment or in cases in which the constitution otherwise limits the power.

Also, statutory law authorizes the Governor to pardon a person, or reduce or commute a sentence, subject to the same constitutional notice requirements.

A pardon is evidenced by a written executive order signed by the Governor. It absolves the individual from the guilt of a criminal act and exempts the individual from any penalties imposed by law for that act. It is presumed that the conviction was lawful and proper unless the pardon states that the grantee has been conclusively shown to have been convicted in error. The Governor may issue a conditional pardon that requires the grantee to do or refrain from doing something as a condition for granting the pardon. The Governor may also issue a partial pardon.

A commutation of sentence is a remission of part of the punishment – a substitution of a lesser penalty for the one originally imposed. For example, the Governor may commute a sentence required by statute to be without the possibility of parole to allow for the possibility of parole. However, most commutations are “Christmas commutations” where the Governor commutes the sentence of an individual due to be released shortly after the holidays to allow the individual to spend the holidays with his or her family.

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

Few inmates are released early from incarceration by executive clemency. In calendar 2014 through 2017, the Governor issued 58 pardons. During the same period, the Governor issued 8 commutations.

## **Certificates of Rehabilitation and Completion**

In 2016, legislation was enacted requiring the Department of Public Safety and Correctional Services to issue a certificate of rehabilitation when an individual supervised by the Division of Parole and Probation under parole, probation, or mandatory release completes all conditions of supervision. The certificate is not available to an individual who was convicted of a crime of violence or a sexual offense for which registration is required. A victim of crime has the right to object to the issuance of a certificate of rehabilitation.



In general, a licensing board in the State may not deny an occupational license or certificate to an applicant who has received a certificate of rehabilitation if the basis for denial is solely based on the individual's conviction. However, a licensing board may deny an occupational license or certificate to an individual who has been issued a certificate of rehabilitation if the licensing board determines that (1) there is a direct relationship between the individual's previous conviction and the specific occupational license or certificate sought or (2) the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of another or the general public. The prohibition on denying occupational licenses or certificates does not apply to those occupational licenses or certificates issued by the Court of Appeals.

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

## Glossary

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

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

**Administrative *per se* offense** – the administrative offense of driving or attempting to drive with an alcohol concentration of 0.08 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath or refusing to submit to a test for alcohol concentration which subjects the driver to a suspension of the driver's license by the Motor Vehicle Administration.

**Affirmative defense** – a defense (*e.g.*, self-defense or insanity) in which the defendant introduces evidence which, if found to be credible, will negate civil or criminal liability, even if it is proven that the defendant committed the alleged acts.

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

**Aggravated assault** – a term used for national crime reporting purposes only (*see* Uniform Crime Reports). In Maryland, it includes first degree assault (a felony), as well as the misdemeanor of second degree assault if it involves severe or aggravated bodily injury. Aggravated assault is not technically a crime in Maryland.

**Alternatives to incarceration** – programs that divert criminal offenders from State or local correctional facilities. Examples are public and private home detention (both pretrial and postconviction), the Drinking Driver Monitor Program, and drug court.

**Appeal** – a petition to a higher court to review the decision of a lower court. An appeal may either be *de novo* (meaning a new trial), where the decision of the lower court is irrelevant to the new proceeding, or on the record, where the decision of the lower court is reviewed on the record for legal errors. The term also applies to a review by a court of a final order of an administrative agency.

**Automated enforcement** – the issuance of a citation for certain civil motor vehicle offenses by an automatic traffic enforcement system rather than by a police officer. The system is a device with one or more motor vehicle sensors working in conjunction with a traffic control signal or radar detector to produce images of a motor vehicle entering an intersection against a red signal indication or exceeding the speed limit.

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

**Bench trial** – a trial in which there is no jury and a judge determines all questions of fact as well as law.

**Burden of proof** – the responsibility of a party in a trial to introduce evidence to persuade the judge or jury in order to win a verdict in that party's favor.

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

**Case management** – a coordinated program designed to ensure the receipt of services needed to facilitate successful reentry into society for inmates incarcerated in a State correctional facility..

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

**Challenge for cause** – a request that a prospective juror be dismissed because there is a specific and forceful reason to believe the person cannot be fair, unbiased, or capable of serving as a juror.

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

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

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

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

**Commitment** – the action of a judicial officer ordering that a person subject to judicial proceedings be placed in the legal custody of the Department of Juvenile Services, the Maryland Department of Health, the Department of Public Safety and Correctional Services, or a local correctional facility for a specific reason authorized by law; also, the result of the action and admission to the program.

**Common law** – law found in prior court decisions, conventions, and traditions as compared to statutory law. The common law of England, as well as English statutes in effect on July 4, 1776, was adopted in Maryland through the Maryland Declaration of Rights, subject to modification or repeal by statute.

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

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

**Court of Appeals** – highest State appellate court, having seven members. Generally hears cases by way of writ of *certiorari*.

**Court of Special Appeals** – intermediate State appellate court, having 15 members who generally sit in panels of 3. Hears appeals on the record from the circuit courts, and considers requests for leave to appeal the denial of certain victims' rights and probation revocations.

**Court trial** – *see* Bench trial.

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

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

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

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

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

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

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

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

**Diminution of confinement credits** – credits earned by criminal inmates that reduce the period of confinement. Often referred to colloquially as “good time credits.”

**Discovery** – the process by which the State makes required disclosures of material and information about a criminal case to the defendant before trial. The defendant must also provide certain information to the State.

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

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

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

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

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

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

**Grand jury** – a group of 23 citizens of the State who are selected to determine whether probable cause exists that a criminal offense has been committed by a certain person and, if so, may issue an indictment charging the person with the offense. Grand juries also investigate and report on conditions at correctional facilities and may also report on other matters of public interest.

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

**Impaired, Driving while** – an alcohol-related motor vehicle offense that is less serious than driving while under the influence. It also applies to motor vehicle offenses involving one or more drugs, a combination of alcohol and one or more drugs, or a controlled dangerous substance.

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

**Incarceration** – confinement of an individual in a local or State correctional facility. This includes individuals who are sentenced or detained prior to trial.

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

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

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

**Information** – a charging document filed in a court by a State’s Attorney.

**Intake, Criminal** – the arrival and classification of individuals who have been recently sentenced by the court to imprisonment or returned to imprisonment for violation of parole.

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

**Jury, Grand** – *see* Grand jury.

**Jury (Petit)** – a group selected to determine issues of fact in a criminal or civil trial. Unless the parties agree otherwise, a jury in a criminal case consists of 12 persons (plus alternates) and a verdict must be unanimous.

**Larceny** – at common law, the unlawful taking of property from the possession of another person. Under Maryland law, the crime of theft includes larceny and other related crimes.

**Magistrate, Juvenile** – a person appointed by a circuit court and approved by the Chief Judge of the Court of Appeals to hear juvenile cases and make recommendations to the juvenile court.

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

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

**Maryland Rules** – the rules adopted by the Court of Appeals that govern the operation of the Judicial Branch and court procedures.

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

**Nolle prosequi** – termination or dismissal of part or all of a charging document or charge by a State’s Attorney that is made on the record and explained in open court.

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

**Parole** – a discretionary, conditional release from imprisonment granted by the Maryland Parole Commission.

**Peremptory challenge** – the right to have a juror dismissed before trial without stating a reason.

**Petition** – document filed in a juvenile court containing allegations that provide a basis for the court’s assuming jurisdiction over a child (*e.g.*, that the child is delinquent). Also, a formal writing requesting a court to take some action in a matter (*e.g.*, petition for a writ of *certiorari* or a writ of *habeas corpus*).

**Petit jury** – *see* Jury (Petit).

**Preliminary hearing** – hearing requested by a defendant charged with a felony and held before a District Court judge to determine if there is probable cause that a criminal offense has been committed and that the defendant participated in the commission of the offense.

**Pretrial detention** – confinement of a defendant prior to trial because the defendant is unable to post bail or a judge or District Court commissioner determines that the defendant is a risk to public safety or is unlikely to appear in court for trial.

**Prima facie** – Latin for “at first sight.” A *prima facie* case presents enough evidence for the plaintiff to win the case excluding any defenses or additional evidence presented by the defendant.

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

**Probation, Adult** – a disposition under which a court, in lieu of or in addition to the sentence provided by law, prescribes terms and rules for a defendant while not incarcerated.

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



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

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

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

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

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

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

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

**Stet** – a disposition by a State's Attorney to indefinitely postpone trial of a charge against a person accused of committing a criminal offense. Charges may be rescheduled for trial at the request of either party within a year of the stet order. After one year, the charges may be rescheduled only by court order for good cause.

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

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

**Under the influence *per se*** – the criminal offense of driving or attempting to drive with an alcohol concentration of 0.08 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath.

**Uniform Crime Reports** – reports prepared annually by states that track crime rate and arrest data on a statewide basis. *Crime in Maryland, Uniform Crime Report* is prepared by the Maryland State Police and uses definitions consistent with FBI definitions. Data provided by each state report is submitted to the FBI and other national databases.

***Voir dire*** – French for “speak the truth.” The process through which potential jurors are questioned by either the judge or a lawyer to determine their suitability for jury service.

**Warrant, Arrest** – a written order by a judicial officer directing a law enforcement officer to take a person into custody.

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

