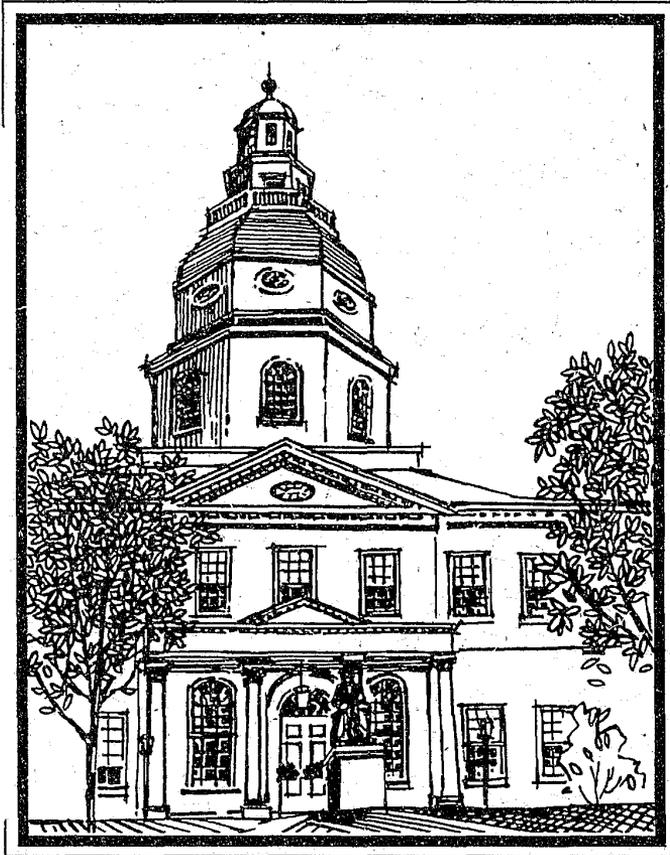


Maryland's Criminal Justice Process

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Maryland General Assembly

1994

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Maryland's Criminal Justice Process

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Volume IX
of the
Legislative Handbook Series
1994

153891

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FOREWORD

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

This handbook attempts to describe the criminal justice process in the State of Maryland from the point of view of the defendant. Following a brief 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. The handbook concludes with a discussion of the policies and efforts shaping the future of criminal justice in the state.

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

This is the ninth of nine volumes of the 1994 Legislative Handbook Series prepared prior to the start of the General Assembly term by the Department of Fiscal Services. The material for this volume was assembled and prepared by Robert C. Bates, Benjamin J. Birge, and Patrick S. Frank, under the general direction of David B. Juppe. Additional review was provided by Warren G. Deschenaux and James L. Stoops. The manuscript was prepared by Tammi L. Greim and Stacy A. Renauld.

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

William S. Ratchford II
Director
Department of Fiscal Services
Maryland General Assembly

Annapolis, Maryland
November 1994

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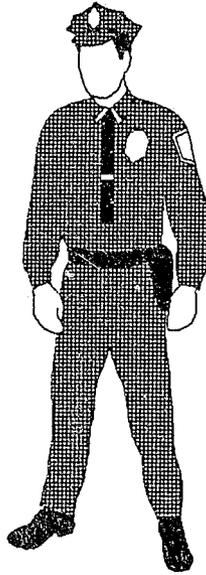
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Section 1

Arrest and Pre-Trial Disposition



No one is above the law and no one is below it; nor do we ask anyone's permission when we ask them to obey it.

Theodore Roosevelt

This section examines the incidence of crime, and an offender's initial contact with the criminal justice system. The chapters that follow discuss some of the underlying causes of crime, crime rate and arrest trends, automated systems which assist law enforcement agencies in the apprehension of offenders, how criminal charges are made, and various aspects of the legal process which precede trial.

CHAPTER 1

INTRODUCTION

BACKGROUND

Issues of crime and punishment have faced society since the dawn of civilization. Offenders throughout history experienced justice that was often swift, but not always fair. The punishment for various crimes was crude and often barbaric. In ancient times, for example, the *Code of Hammurabi* literally dictated the taking of an eye for an eye. Over the years a number of approaches for apprehending, adjudicating, and punishing offenders were developed. Some approaches have been widely used and continue to evolve. Incarceration, for example, has experienced a shift toward more humane confinement, and currently represents one of the primary components of most criminal justice systems.

Many of the legal concepts in use in the United States today were delineated by the founding fathers in the *Constitution* and *Bill of Rights*, based on the common law practices used in England and a desire to safeguard the rights of the individual while ensuring justice. In fact, the U.S. may be the only country which ensures that offenders are innocent until proven guilty, that due process of the law is available to all citizens, that the laws of the land are applied consistently, and that punishment is not cruel and unusual. Over the last 200 years, the criminal justice process has continued to evolve through the enactment of laws and judicial interpretations which reflect the increased sophistication of our society.

HANDBOOK OVERVIEW

The goals of this handbook are twofold. First and foremost, it is intended to provide policymakers with an overview of the criminal justice process in Maryland from the perspective of the offender. Discussion flows through the topical presentation of the arrest process, pre-trial disposition, contact with the courts, sentencing, and punishment under some form of supervision or incarceration. Recent developments pertaining to the death penalty are also included. Although the primary focus is on the adult offender, juvenile justice processes are also discussed.

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

The overall process has been divided into 17 chapters which are categorized under four major sections. Section headings include arrest and pre-trial disposition, the judicial process, punishment and rehabilitation, and future trends and conclusions. A summary of each chapter is provided below.

Chapter 1 – Introduction: Provides an overview of the handbook.

Chapter 2 – Crime Rates and Arrest Trends: This chapter begins with a discussion of the problem of crime and substance abuse, which is one of the predominant underlying factors associated with criminal activity. Data on crime, which is collected by the Maryland State Police and compiled in the *Uniform Crime Reports*, is presented for total offenses, major offense categories, and adult, juvenile, and total arrest trends. The chapter concludes with information on automated technologies, such as the Maryland Automated Fingerprint Identification System, which assist law enforcement agencies in the apprehension of offenders.

Chapter 3 – Arrest Process and Pre-Trial Deposition: The judicial process begins with an arrest, based on a citizen complaint, law enforcement investigation, charges filed by the state's attorney, or a grand jury indictment. The circumstances under which each scenario occurs and the procedures followed in each instance are examined.

Chapter 4 – Pre-Trial Procedure: Following arrest, offenders appear before a court commissioner. The commissioner sets a court date and determines, based on the crime, whether the offender can safely be released on personal recognizance, bail, or pre-trial release supervision. If the offense committed is serious, or if other factors suggest that the offender may not show up for trial, the offender would be denied release and be confined in a local detention center until trial.

Chapter 5 – The District Court: This chapter discusses the jurisdiction of the District Court and recent caseload trends.

Chapter 6 – The Circuit Courts: Jurisdiction and caseload trends are similarly presented within this chapter, in addition to a review of problems resulting from an increase in requests for jury trials. The circuit courts also oversee the operation of the juvenile justice system.

Chapter 7 – Sentencing: The trends in criminal sentencing presented focus on sentencing restrictions in Maryland law as well as on sentencing guidelines, which were designed to promote consistent and equitable sentencing. The history of the death penalty in Maryland, recent interpretations of death penalty statutes, the appeals process, and data on executions and inmates on death row are presented.

Chapter 8 – Post Conviction Process: Discussion focuses on the alternatives available to convicts to seek review of a sentence imposed by the courts. These may include review at the trial court level, appeal to a circuit court, Court of Special Appeals, Court of Appeals, or federal courts. The procedures for review and appeal are outlined, with special emphasis on the Uniform Post Conviction Procedure Act.

Chapter 9 – Victims’ and Witnesses’ Rights: The provisions of Maryland statutes stipulate a number of rights and services for the victims and witnesses of crime. The protections, guidelines for participation in adjudication, and right of individuals to be informed of all aspects of processing the offender are defined.

Chapter 10 – Juvenile Justice Process: An offender’s first contact with the criminal justice system may be with the juvenile justice system. A separate program has been in operation since 1966 for rehabilitating juvenile offenders. The flow of the system is illustrated, from intake to final disposition. The specific procedures involved with juvenile court and classification, statistical information, and information on youth services programs are included in this chapter.

Chapter 11 – Probation and Drinking Driver Monitor Program: The state Division of Parole and Probation is responsible for conducting pre-trial investigations, and supervising offenders sentenced to probation or the Drinking Driver Monitor Program. In addition to caseload trends, information is presented which illustrates the guidelines for supervising drinking drivers and those placed on probation. The chapter concludes with an overview of intermediate sanctions, such as home detention. These sanctions provide judges with more restrictive punishment options, other than traditional incarceration.

Chapter 12 – Adult Incarceration in Local Detention Centers: As discussed in this chapter, local detention centers largely house offenders awaiting trial. Changes in sentencing policy enacted in 1986 provided that inmates with sentences up to 18 months could be incarcerated in local facilities. The impact of this change on the local capital and operating program is reviewed. Population statistics and the use of alternatives to incarceration are also examined.

Chapter 13 – Adult Incarceration in State Prisons: Important aspects of the state prison system are described. After reception, inmates are classified and sent to an institution having an appropriate level of security. While in prison, inmates may earn up to 20 days per month off their sentence for good behavior and participation in programs, such as educational and vocational training. Statistical trends and characteristics of the population are analyzed. Efforts to reduce the size of the inmate population while ensuring the application of justice include alternatives to incarceration (e.g., home detention) and intermediate sanctions (e.g., boot camp) are discussed. The study of recidivism, or the rate of offender return to the criminal justice system, is also presented.

Chapter 14 – Adult Incarceration in Patuxent Institution: This institution was originally established in the 1950s to rehabilitate habitual offenders who met certain criteria. Recent legislation changed the mission to the

remediation of youthful offenders. This chapter examines the evaluation and treatment program of the only correctional institution which has its own conditional release and supervision authority.

Chapter 15 – Parole: Offenders who are incarcerated may be released prior to the expiration of their full sentence in one of two ways, release under the conditions imposed by the Parole Commission or mandatory release after time served minus credits for good time, etc. Topics include the operation of the Parole Commission, caseload statistics, victim and inmate rights, and the procedures followed for revoking parole for those who commit subsequent offenses.

Chapter 16 – The Future: As the crime rate increases, policymakers impose longer and mandatory sentences. Although this results in the need for additional prison and detention center construction, it also has spawned a variety of programs designed to decrease the amount of time offenders spend behind bars. The chapter focuses on the direction of the capital program and efforts which are underway to provide effective punishment alternatives which preclude costly incarceration.

Chapter 17 – Conclusion: The final chapter summarizes the findings of this handbook.

Glossary: A glossary of many of the legal and technical terms is provided to enhance the reader's understanding of the criminal justice process.

CHAPTER 2

CRIME RATES AND ARREST TRENDS

THE PROBLEM

The underlying causes of crime in our society are complex. Although crime rates in the U.S., particularly for violent crime, continue to rise, it is difficult for policymakers to identify effective solutions. A number of theories have been proposed by experts in various fields suggesting that crime rates are the result of a lack of economic opportunities, inadequate education and job training, peer pressure, the breakdown of the family, suburban migration and urban decay, increased gang activity and substance abuse.

Although anecdotal evidence exists to support many of these claims, the data indicates that substance abuse does constitute one of the major contributing factors behind criminal activity, spawning crime that is both directly and indirectly influenced by the abuse of legal and illegal substances. Examples of directly influenced crime include possession or sale of controlled dangerous substances, and driving while intoxicated. Many other offenses, such as murder, robbery, or motor vehicle theft, may be committed to support addictions, or while under the influence of drugs and alcohol.

In the U.S., drug use is common among those who are arrested. The National Institute of Justice surveys drug use among offenders arrested in cities across the country. In 1992, 24 cities participated in a survey which found a percentage of males testing positive for a drug at the time of arrest ranging from 47% to 78%. Between 44% and 85% of females tested positive at arrest. The drug detected most often was cocaine. The Federal Bureau of Justice Statistics found that about three-quarters of inmates surveyed had used drugs, and that one-third were under the influence of drugs when they committed the offense which led to their incarceration. In Maryland, a study by the pre-trial release program in Baltimore City estimated that 70% of those arrested tested drug positive.

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

CRIME RATES

In 1975 Maryland instituted a program to require all local law enforcement agencies to submit standardized crime reports, based on the federal reporting system to ensure consistency. Data for the reports is gathered from each agency's record of complaints, investigations, and arrests. The Maryland State Police compile the information which is published as the *Uniform Crime Reports* (UCR).

The UCR measures the incidence, arrests, and trends for the following eight crimes, referred to as Part I offenses:

- murder and non-negligent manslaughter;
- forcible rape;
- robbery;
- aggravated assault;
- breaking or entering;
- larceny-theft;
- motor vehicle theft; and
- arson.

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

Although UCR 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 is provision made to distinguish degrees of severity for offenses committed, or to assess the actual psychological or economic impact to victims.

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

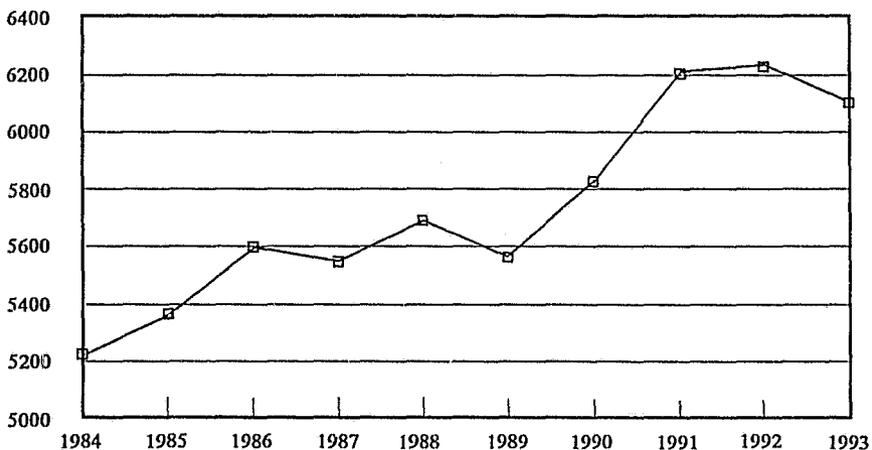
Finally, juvenile crime and arrest statistics, because of their nature, can cause some misunderstanding. Many juvenile offenders are handled informally. As a consequence, inaccurate or incomplete recording of the event or action may result. Procedures for handling juveniles vary between departments more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

Based upon reported offenses, a crime rate is calculated for the number of offenses per 100,000 inhabitants. As seen in Exhibit 2.1, the statewide crime rate for Part I offenses increased moderately during the 1980s, from approximately 5,200 offenses to 5,600 offenses per 100,000 population. Significant growth occurred from calendar years 1989 to 1991, when the rate increased to 6,200 offenses. In calendar year 1992, the rate stabilized before dropping slightly in calendar year 1993.

A portion of the increase in crime rates can be explained by the "War on Drugs" policy which was the focal point of U.S. law enforcement efforts in the late 1980s and early 1990s. In Maryland, the Neall Commission Report of 1989 heightened awareness of the impacts of legal and illegal substance abuse and made several recommendations for addressing the problem. Shortly thereafter, the Governor established a Drug and Alcohol Abuse Commission, created a Drug Enforcement Division within the Maryland State Police, and otherwise emphasized public education, treatment, and enforcement efforts.

Exhibit 2.1

MARYLAND CRIME RATE TRENDS
OFFENSES PER 100,000 OF POPULATION



—□— Part I Offenses

Source: Maryland State Police

Drug Arrests

Although the *Uniform Crime Reports* do not provide information concerning drug offenses, they do provide information concerning arrests. Arrests for the sale and manufacture of drugs have increased from under 10,000 in 1988 to almost 13,000 in 1992. Although arrests for possession have fluctuated, there appears to be a downward trend. Arrests for possession have fallen from almost 21,000 in 1988 to approximately 19,000 in 1992. This shift is reflective of continuing efforts to curtail the sale and distribution of controlled dangerous substances.

OFFENSE TRENDS

Trends in each of the eight reported Part I offense areas are discussed in further detail. Offense trends over the last four years (1989-93) are compared with similar occurrences between 1985-89. Major increases over the last four years were experienced in the categories of rape, robbery, and larceny. The rate of growth for murders and motor vehicle thefts has decreased.

At the time this document was prepared, complete UCR data for calendar year 1993 was not available. Arrest totals for calendar year 1992 are included in the text in order to provide an indication of the magnitude of arrests relative to the number of offenses within each category.

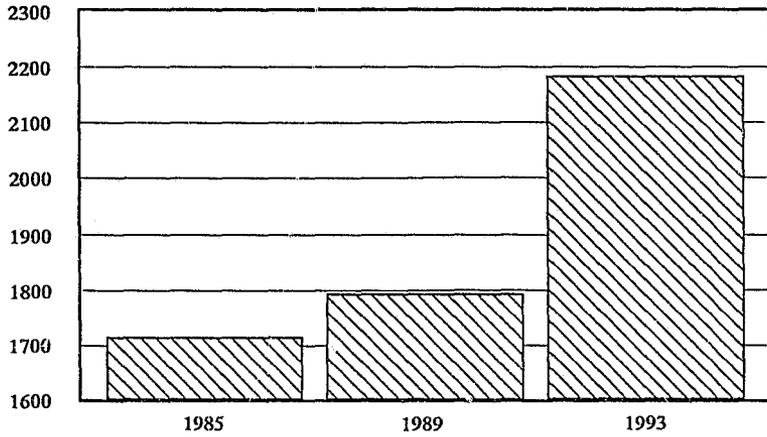
Rape

From 1985-89 the number of rape offenses rose an average of 1.0% annually, from 1,711 to 1,783 reported cases (see Exhibit 2.2 on following page). The last four years have seen an average annual growth of 5.2% to 2,185 offenses. In 1992, 1,014 individuals were arrested for committing rape in Maryland.

Robbery

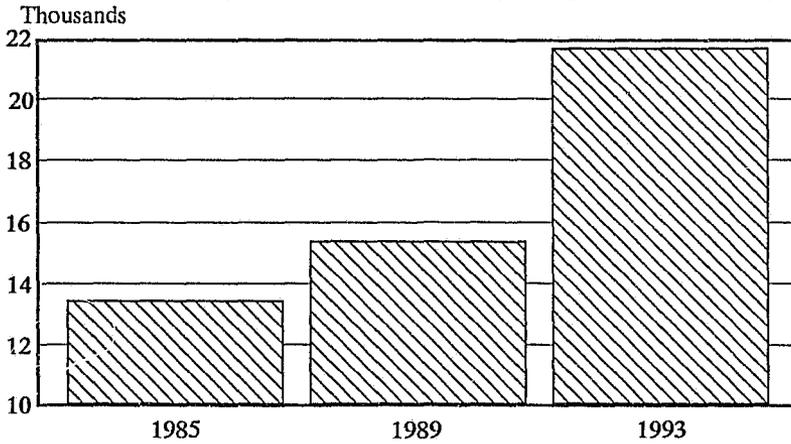
Robbery is defined as the taking, or attempting to take, anything of value by force. The number of robberies jumped from 13,276 in 1985 to 15,584 in 1989; an average annual increase of 4.1% (see Exhibit 2.3 on following page). This category rose by 8.5% annually over the last four years, to 21,580 offenses. In 1992, 4,538 persons were arrested solely for robbery.

Exhibit 2.2
OFFENSE TRENDS
RAPE



Source: Maryland State Police, *Uniform Crime Reports*

Exhibit 2.3
OFFENSE TRENDS
ROBBERY



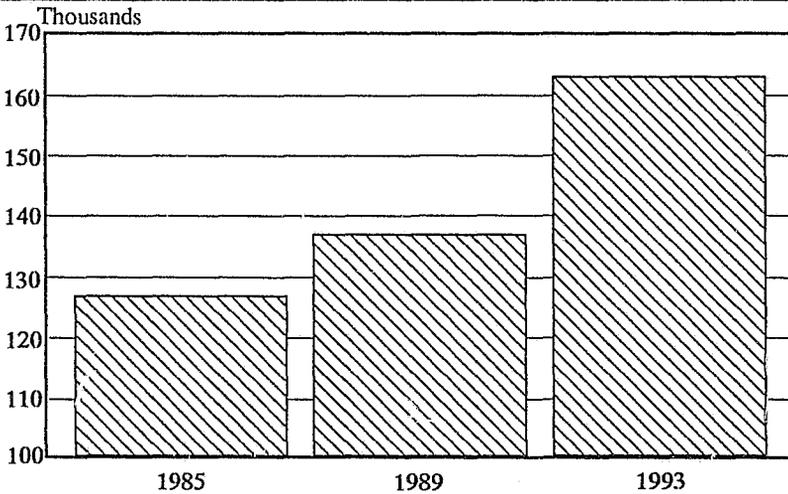
Source: Maryland State Police, *Uniform Crime Reports*

Larceny-Theft

Larceny-theft is the unlawful taking of property from the possession of another person. The number of offenses of larceny-theft reported has increased annually from 2.1% for 1985-89, to 4.5% for the 1989-93 period (see Exhibit 2.4). There were 163,443 reported offenses for larceny in 1993. There were 31,756 arrests for larceny in Maryland during 1992.

Exhibit 2.4

OFFENSE TRENDS
LARCENY-THEFT



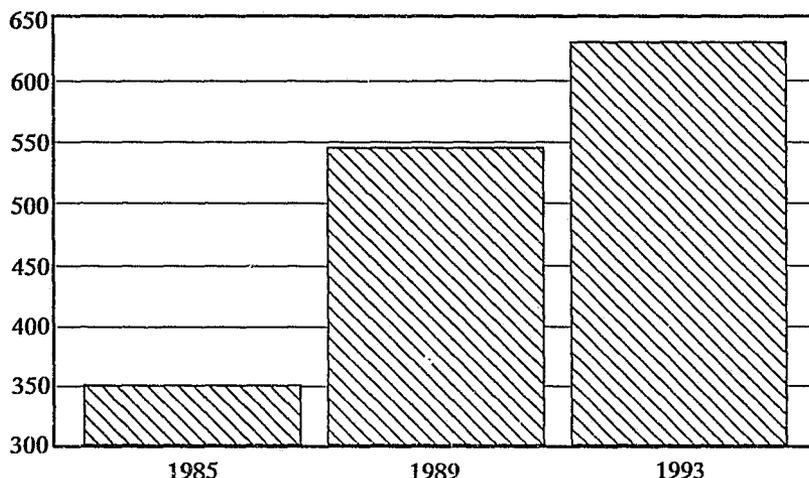
Source: Maryland State Police, *Uniform Crime Reports*

Murder

In 1993, 632 murders were reported to law enforcement agencies in Maryland. This is a rise of nearly 92 murders over the 540 reported in 1989; an annual increase of 4.0% (see Exhibit 2.5). This is significantly lower than the 11.5% annual increase in murders reported for the period 1985-89. A majority of the victims (474 or 80%) were African-American. Many of the murders were linked to other crimes such as the 154 (26%) murders which were linked to drug offenses and the 74 (12%) murders which were linked to robberies. Firearms are the most likely weapon used in murder, representing 72% (413) of the total. Most murders occurred in either Baltimore City (335 or 56%) or Prince George's County (134 or 22%).

Exhibit 2.5

OFFENSE TRENDS
MURDER



Source: Maryland State Police, *Uniform Crime Reports*

Motor Vehicle Theft

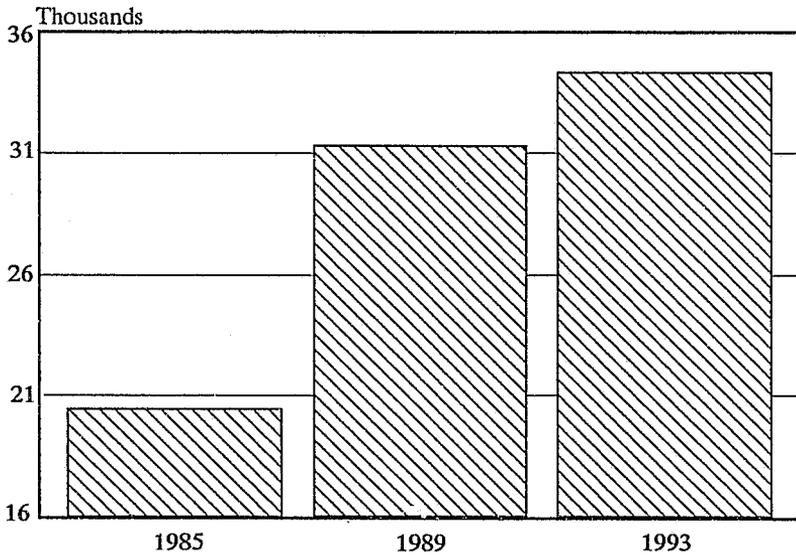
In 1993, 33,926 thefts were reported. This was a 2.1% rate of annual growth since 1989. Between 1985-89, motor vehicle theft offenses had risen 11.4% annually (see Exhibit 2.6 on following page). There were 7,172 persons arrested in Maryland for motor vehicle theft during 1992.

Aggravated Assault

Aggravated assault is the unlawful attack by one person upon another for the purpose of inflicting severe bodily injury. During 1993 there were 25,161 aggravated assaults reported, a 3.2% annual jump since 1989 (see Exhibit 2.7 on following page). Annual growth between 1985-89 was 1.0%. In 1992, 24% (6,071) of the aggravated assaults were committed with the use of a firearm. Arrests for aggravated assault totaled 7,951 in 1992 and 6,965 in 1988.

Exhibit 2.6

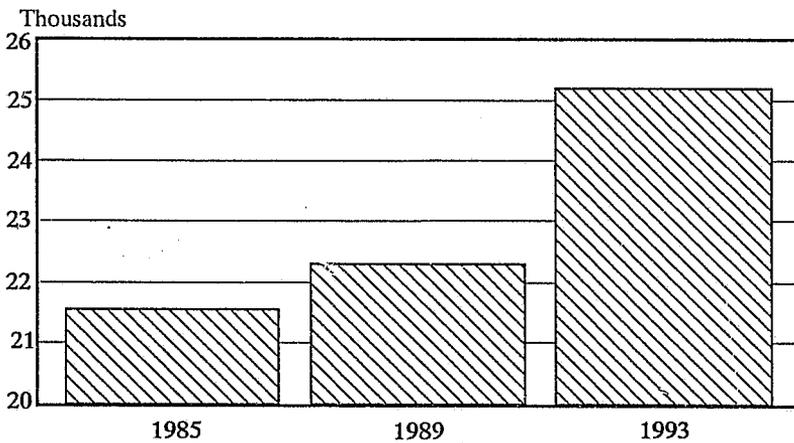
OFFENSE TRENDS/MOTOR VEHICLE THEFT



Source: Maryland State Police, *Uniform Crime Reports*

Exhibit 2.7

OFFENSE TRENDS/AGGRAVATED ASSAULT



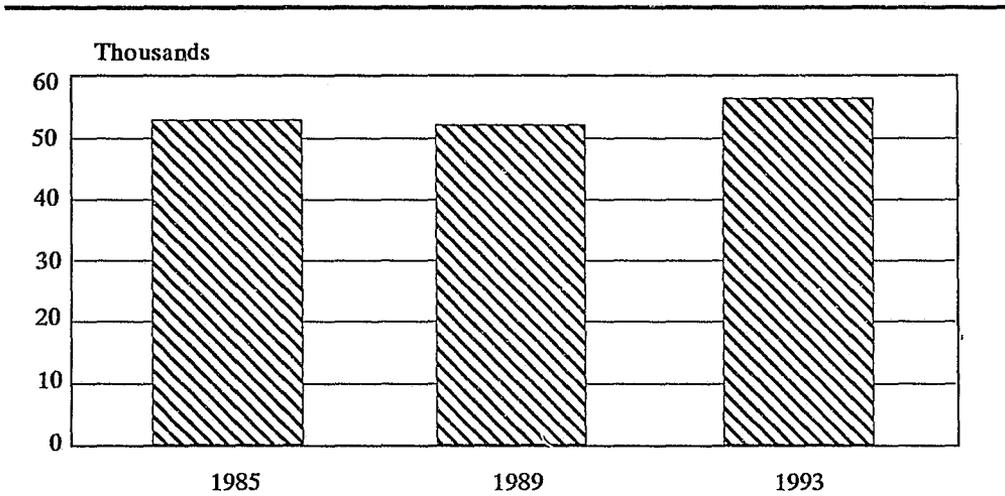
Source: Maryland State Police, *Uniform Crime Reports*

Burglary

Burglary, defined as the unlawful entry of a property to commit a felony or theft, has remained relatively stable over the last ten years. Reported offenses decreased slightly between 1985-89; from 53,168 to 52,698 cases (see Exhibit 2.8). By 1993, offense rates for burglary rose 1.6% annually, to 56,237 cases. Over 70% of offenses involved forcible entry, and 65% of the offenses were committed in a residence. The average dollar value loss each of the past five years has been over \$1,100. In 1992, 10,891 individuals were arrested for burglary.

Exhibit 2.8

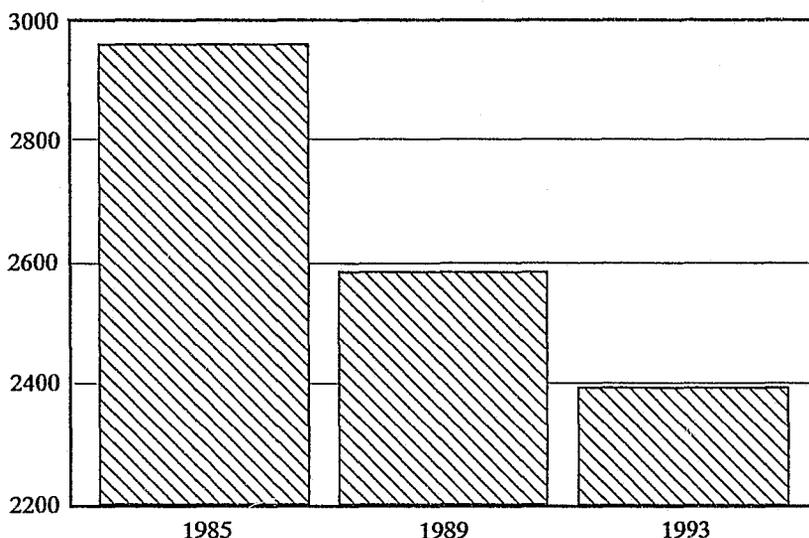
OFFENSE TRENDS
BURGLARY



Source: Maryland State Police, *Uniform Crime Reports*

Arson

In 1993, there were 2,396 incidents of arson, down 1.8% annually from 2,581 arsons reported in 1989 (see Exhibit 2.9 on following page). The number of arsons reported between 1985-89 declined 3.4% annually; from 2,960 to 2,581 offenses. In 1992, 48% of all incidents of arson targeted structures, and of these structures, 56% were residences. Reflecting the difficulty of identifying the perpetrators, there were 590 persons arrested for arson in 1992.

Exhibit 2.9OFFENSE TRENDS
ARSON

Source: Maryland State Police, *Uniform Crime Reports*

ARRESTS

Each state, county, and municipal law enforcement agency is required to submit monthly reports for the number of persons arrested for crimes which have occurred within their 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 driving while intoxicated (DWI), are not reported. In 1992 there were 269,144 arrests. A total of 270,801 arrests for Part I and Part II criminal offenses were reported during calendar year 1993, representing a .6% increase. The arrest rate per 100,000 population for 1992 was 5,439. This figure decreased slightly in 1993 to 5,454 arrests per 100,000 population.

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

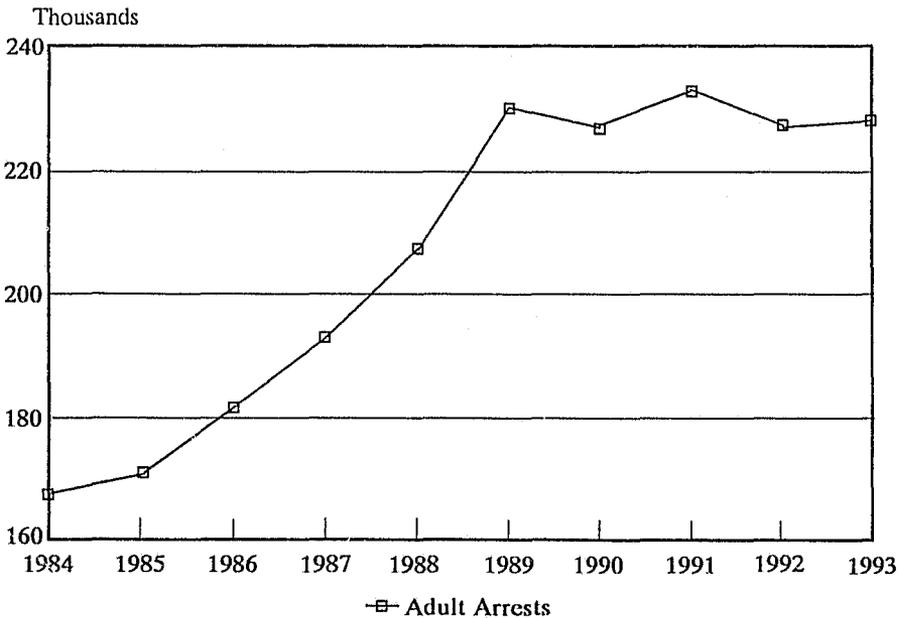
Arrest figures do not indicate the number of individuals arrested or summoned since, as stated above, one person may be arrested several times during the month. However, arrest information is useful in measuring the extent of law enforcement activities in a given geographic area as well as providing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

During calendar year 1993, 24% of all reported arrests were for Part I offenses. The majority of arrests were for larceny, which accounted for 60% of the total for Part I offenses. Approximately one-half of all Part II offenses were comprised of arrests made under the categories of drug abuse, disorderly conduct, driving under the influence, and other assaults.

Aggregate Arrest Trends

Between 1984 and 1989 total adult arrests rose 37%, from 167,000 to 229,000 arrests per year; or 8% per year (see Exhibit 2.10). Rising crime, increased law enforcement activities and “War on Drugs” policies all contributed to this trend. Since 1989, the number of arrests has remained at a relatively constant level of 228,000 arrests.

Exhibit 2.10
ADULT ARREST TRENDS



Source: Maryland State Police

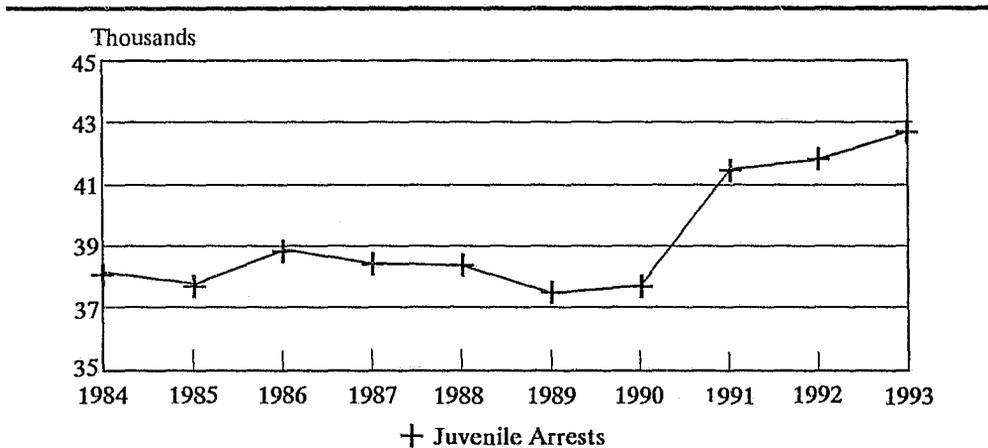
There are two reasons that explain why adult arrest activity has currently stabilized. First, the economic downturn of the late 1980s and early 1990s impacted state and county law enforcement expenditure levels reducing enforcement activities. Second, the rapid growth in the number of offender arrests overwhelmed the understaffed and underfunded criminal justice system. For example, despite substantial state and local capital construction of prison and detention center beds over the last five years, a number of jurisdictions and state facilities continue to experience overcrowded conditions and operate under court orders and consent decrees.

Juvenile arrest trends over the last ten years exhibited a nearly opposite pattern in comparison to adult arrests. Between 1984 and 1990 these arrests remained at a level of approximately 38,000. As Exhibit 2.11 shows, arrests increased to approximately 41,000 in 1991 and are currently approaching 43,000.

This increase is at least in part due to historical underreporting of arrests rather than actual growth in arrests. In 1991, the Department of Juvenile Services established an automated system for tracking juvenile offenses. Improved reporting is reflected in the surge in arrests for that year.

Exhibit 2.11

JUVENILE ARREST TRENDS



Source: Maryland State Police

MANAGEMENT INFORMATION SYSTEMS

Although the rate of crime and number of arrests continue to rise, the advent of automated technologies has assisted law enforcement efforts in the apprehension and tracking of offenders as well as the management of supervised and incarcerated caseloads.

Maryland Automated Fingerprint Information System

The state has a central fingerprint file with an automated index of fingerprint characteristics. When an offender is arrested or charged with a crime, the offender is fingerprinted. A unique coding number is given to that offender and his or her fingerprints. As the offender moves through the courts and probation or incarceration, the Criminal Justice Information System tracks the offender. In this way a criminal history is retained for each individual arrested or charged.

The implementation of the Maryland Automated Fingerprint Information System (MAFIS) improved the efficiency of fingerprint searches and increased the number of fingerprints which can be searched. MAFIS records a fingerprint in digital form by scanning the fingerprint and identifying unique characteristics. The characteristics are so detailed that the computer can distinguish a single fingerprint from thousands of others. The system can also record and identify latent fingerprints found at the scene of a crime. This provides a method for comparing latent prints collected at the scene of a crime with a central repository of computer fingerprints.

In the future, the system may be expanded to include mug shots and motor vehicle identification. A separate file could be developed for motor vehicle identification. This system would positively identify an individual applying for a driver's license. At the federal level, the Federal Bureau of Investigation (FBI) also maintains a repository of fingerprint records. It is anticipated that the FBI will eventually automate its fingerprint information system. Subsequent integration of state data would create a national system for fingerprint identification.

Strategic Plan for Management Information Systems

In 1993 the Department of Public Safety and Correctional Services developed an information technology and telecommunications plan to address the need for an integrated, automated information system within the department. This fingerprint based system will maintain information on each offender as he or she moves through the criminal justice system. The department's current system is composed of separate systems for each agency. As an offender moves through the system, duplicate files are created and maintained.

The strategic plan involves developing a number of small integrated information systems. A major component of the new system will be the Offender Based Management Information System, to track information on arrests, community supervision, and incarceration. Additional systems for monitoring outstanding statewide warrants, and managing the health management, food service, and commissary operations will also be developed. Most of the new system will be operational by Fiscal Year 1998.

CHAPTER 3

ARREST PROCESS

The judicial process is set into motion when a person commits a crime that is observed by or reported to the police or other law enforcement officers. If a law enforcement officer witnesses or is present at the site of the criminal activity, an on-view arrest may be made on the spot. Otherwise, the law enforcement agency makes a decision whether or not to investigate or further pursue the case. An arrest can be made when the police have collected enough evidence to have probable cause that a crime has been committed and that a particular individual has committed the crime. With probable cause, a law enforcement agency can obtain an arrest warrant and charge an individual with a crime.

The arrest process begins in one of four ways:

- a citizen complaint;
- a law enforcement investigation;
- charges filed by the state's attorney; or
- a grand jury indictment.

Most arrests are initiated by the police from direct observation, citizen reporting or after extensive investigation and intelligence work.

The arrest process usually begins with a citizen applying for issuance of charging documents and a District Court commissioner issuing a statement of charges if probable cause is found, or a police officer appears before a judicial officer to file a statement of charges against an individual. The judicial officer may be a judge, but most likely will be a District Court commissioner. The commissioner is a judicial official who is available 24 hours a day, seven days a week. The commissioner and the local police thus are the focal point in the arrest process. For citizen complaints, it is almost always the commissioner who assists the citizen in preparing an application for a charging document and, if probable cause is found, issues charges against an individual.

Ordinarily an arrest occurs when a warrant is issued by a judge or District Court commissioner. The exception to this rule applies to law enforcement officers when:

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

SUMMONS OR ARREST WARRANT

Except in on-view arrest cases, the statement of charges prepared by either the District Court commissioner or the police does not get the defendant into court. The commissioner, after receiving a statement of charges from the police or approving an application for a statement of charges issues a warrant for arrest of the defendant. A summons rather than a warrant is issued for less serious offenses, and even in serious offenses where there is no great likelihood that the defendant will not appear for trial. The difference between a warrant and a summons is that a warrant directs the local police to bring the defendant before the court while a summons directs the defendant to appear before the court. Hence, a warrant is always served on the defendant by the local police or other law enforcement officials while a summons may be mailed to the defendant rather than served personally. A copy of the charging document (the statement of charges) always accompanies the warrant or summons.

ARREST

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

For all on-view arrests a statement of charges or, in serious traffic cases a statement of probable cause, is prepared by the arresting officer. This statement provides the basis for determining whether there is probable cause to charge the person.

The defendant will then be brought before the commissioner by the arresting officer, or a booking officer in the larger jurisdictions. The commissioner will determine if there is probable cause, and, if so, set bail or release the defendant pending disposition. An arrest in a serious traffic case is also considered an on-view arrest, but occurs in less than 50% of all serious traffic cases.

APPLICATION FOR A STATEMENT OF CHARGES

An application for a statement of charges is normally prepared by the police for felonies when the crime was not committed in the view of the arresting officer and the defendant is not in police custody, but a police officer has probable cause to believe that a crime was committed. In these instances the police have determined, based on an investigation, that there is probable cause to arrest a person for a felony offense. A citizen or a merchant must make application for a statement of charges before a commissioner in order to obtain a warrant or summons for an arrest. A citizen or merchant makes application for a statement of charges against all suspects, for either misdemeanor or felony offenses. A bad

check charge is one example of an application for statement of charges frequently filed by merchants. In reviewing the application for a statement of charges, the commissioner will determine if there is probable cause that a crime was committed.

Both the application for statement of charges and the statement of charges itself note the nature and background of the offense alleged and the section of the criminal code alleged to be violated.

CHARGING DOCUMENT

A defendant must be tried on a charging document. A charging document is a written accusation alleging that the defendant has committed a criminal offense. Serious felony cases are usually charged by information by the local prosecutor or result from grand jury indictment initiated by the state's attorney, the Attorney General or the State Prosecutor. The choice between charging by grand jury indictment or by information is the option of the state's attorney.

A defendant may be charged on a charging document filed in the District Court for an offense within its jurisdiction. These cases move to the circuit courts when the defendant requests a jury trial, appeals the case from the District Court or is charged with a crime not within the jurisdiction of the District Court. The state's attorney also may file a charging document or application of charges for a case for trial directly in a circuit court.

CHARGING BY INFORMATION OF THE STATE'S ATTORNEY

A charging document filed in a court by a state's attorney is called an "information." Charging by information is not much different from the statement of charges procedure discussed above, except the charges are brought before a circuit court or the District Court by the state's attorney. A defendant may be tried in a circuit court by information if the offense is:

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

Most charges by information are serious felonies. The defendant has a right to a preliminary hearing before the District Court before the charges are moved to a circuit court.

INDICTMENT BY GRAND JURY

A state's attorney may seek to have the accused charged by grand jury indictment. The state's attorney will seek a grand jury indictment for any of five reasons:

- the grand jury will determine if there is probable cause to indict the defendant so no preliminary hearing is necessary or required;
- a grand jury may subpoena evidence and witnesses difficult for the prosecutor to obtain by any other method. A grand jury is useful in that it can compel testimony from hostile witnesses. All witnesses must testify under oath without an attorney present. In addition, the proceedings of a grand jury are secret so the confidentiality of evidence obtained by a grand jury will not be disclosed;
- traditionally, arrest warrants issued by a grand jury could be kept secret until the defendant was actually arrested or served, while other warrants could not. This has been changed, and now the courts can seal any charging document until the defendant has been arrested or served. Charging documents are typically sealed when there is a strong possibility the defendant may flee; and
- another traditional reason for selecting a grand jury indictment is to avoid disclosure of witnesses and evidence in the case. This is particularly important in cases where the lives of witnesses, informants, or undercover agents are at stake. Charging by information is subject to the rules of discovery while charging by indictment is not. Under the rules of discovery a defendant's attorney may obtain documents or other tangible items that the prosecutor intends to present during the trial. The defendant can also obtain a list of witnesses that the prosecutor plans to call.

Any of these reasons would help the defendant but might compromise the prosecutor's sources for use in other pending litigation. Subject to the constitutional rights of the defendant, the courts may now exclude from discovery the identity of informants or other information that could put other persons at risk of substantial harm if the information is disclosed.

A grand jury consists of 23 members, with an affirmative vote of 12 required to indict. The frequency of meeting and the term length varies by jurisdiction. In Baltimore City, for example, grand juries usually meet five days a week for four months. The pool of jurors is selected at random from the list of registered voters. In this respect, the selection of grand jurors is no different from the selection of petit jurors for a trial jury. Members of the grand jury are interviewed and the foreman is selected by the circuit court jury commissioner.

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

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

CHAPTER 4

PRE-TRIAL PROCEDURE

APPEARANCE BEFORE DISTRICT COURT COMMISSIONER

The District Court Commissioner advises arrested persons of their constitutional rights, determines conditions of pre-trial release for most offenses, sets bond or commits persons to detention if they are unable to post bond. The commissioner determines if there is probable cause for the issuance of charging documents, warrants or criminal summons, and updates the personal history file on the defendant after arrest.

Right to Preliminary Hearing

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

Right to Counsel

The police advise the defendant of the right to counsel at the time of arrest (the *Miranda warning*). A defendant also will be advised of the right to counsel by the commissioner. Notice of this right is included on the charging document. The commissioner then will inquire if the defendant can afford to hire counsel. If the defendant indicates that he or she cannot afford counsel, the commissioner will refer the defendant to the clerk of the District Court for assistance in applying for representation by a public defender. The commissioner also will inform the defendant that counsel is to be obtained before the court date, that the court may determine that he or she has adequate time to obtain counsel, and can rule that the defendant has waived the right to counsel and will be tried without counsel present for the defendant.

A police officer, but not necessarily the arresting officer, will appear with the defendant before the commissioner. The officer assigned to bring the defendant before the commissioner, if not the arresting officer, is usually a

booking officer. A court date will be assigned based on the arresting officer's work schedule provided to the commissioner, or the defendant will be advised that he or she will be notified by mail of the court date.

PRE-TRIAL RELEASE/DETENTION

Generally, a defendant will be released by the commissioner before trial unless a judicial officer determines that such a release will not reasonably ensure the appearance of the defendant as required. If the defendant is not released he or she is entitled to a hearing on denial of pre-trial release. If the defendant is eligible for pre-trial release but a judicial officer determines that release on the defendant's own recognizance will not ensure the defendant's appearance, one or more conditions may be imposed on release:

- releasing the defendant to the custody of a third party who agrees to assist in ensuring the defendant's future appearance;
- placing the defendant under supervision of a pre-trial services unit;
- restricting the defendant's travel;
- requiring the defendant to post bail; and
- other conditions deemed reasonably necessary.

A defendant with a prior conviction for a violent crime is ineligible for personal recognizance release. A defendant is ineligible for any pre-trial release if the current charge is for an offense for which life imprisonment or death is authorized, or the defendant is allegedly a drug kingpin.

Pre-Trial Release

Seven jurisdictions have pre-trial services units (Baltimore City and Baltimore, Anne Arundel, Frederick, Montgomery, Prince George's and Wicomico counties). An eighth jurisdiction - Dorchester County - was authorized to create a pre-trial release program during the 1994 session.

In these jurisdictions, the pre-trial services unit provides verified factual information to assist the District Court in setting conditions for release as an alternative to incarceration. The investigation by the pre-trial services unit includes a community background check of the defendant, community stability of the defendant, and additional factors concerning the criminal history that are not available to the District Court Commissioner.

A pre-trial release plan can be designed by the pre-trial services unit so that the defendant can be released under supervision of the unit. The plan provides an option for the release of some offenders who are unable to make bail or who ordinarily would be confined until trial. When the court rules that the defendant may not be placed in a pre-trial release program because there is a high risk of continued criminal activity pending trial without substantial supervision,

defendants are confined to local detention centers. A pre-trial services unit may be able to provide close supervision of the defendant pending trial. Supervision may include residential placement, house arrest with or without electronic monitoring, health care treatment for alcohol and drug abuse, and frequent urine tests to ensure that the defendant remains drug and alcohol free. These measures and frequent contact, both announced and unannounced, with the defendant by the pre-trial services unit reduce the risk to the public of the defendant remaining free before trial. The alternatives offered by the pre-trial services unit provide some measure of supervision or restraint pending trial, but are less expensive than confinement in the local detention center.

Release on Own Recognizance

Defendants without a prior record or who are charged with a misdemeanor or less serious felony offense generally are not required to post bail but instead are released on their own recognizance. Where the defendant represents a threat to the community or is not likely to appear in court on the court date, no release on own recognizance will be permitted, and the defendant will be held in the local detention center until trial or until bail is posted.

The commissioner has on-line access to the Criminal Justice Information System (CJIS) network and District Court computer system to review the defendant's prior criminal history and to determine if there are detainers against the defendant. A detainer is a warrant for arrest in a different jurisdiction.

When determining bail, the commissioner relies upon:

- information provided in the statement of probable cause or the statement of charges;
- the RAP sheet provided by the officer;
- the seriousness of the current offense; and
- the police officer's comments.

Other factors that the commissioner may consider are the stability of employment, permanent residence, family history, demeanor, financial resources, reputation, and character of the defendant.

Release on Bail

A defendant will be required to post bail if there is a risk he or she will fail to appear in court but otherwise does not pose a threat to society. Bail is set to ensure the presence of the defendant in court and not as punishment. Once the commissioner sets bail, the defendant must post bail immediately or be taken to the detention center until someone posts bail. Bail may be satisfied by posting a cash bond or other collateral. A bail bondsman may post bail for the defendant for a fee – usually 10% of the bond required. Bail bondsmen are licensed and regulated in each District Court circuit by bail bond commissioners appointed by

the judges of that circuit. Each of the circuit courts also has authority to regulate bail bondsmen within the jurisdiction and to appoint a bail bond commissioner. Bail bond commissioners maintain a list of licensed bail bondsmen which is distributed to all the District Court commissioners and the clerks of the court within the jurisdiction. The list of bail bondsmen includes information identifying each bail bondsman, the limit on the amount of one bond, and the aggregate limit on all bonds that each bail bondsman is authorized to write.

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

Confinement Awaiting Trial

In Maryland, offenders arrested and booked who are not released on recognizance or bail are held in local detention centers. There is one detention center within each of the state's 23 counties. The counties are responsible for funding and operating the centers, although the state does provide capital and operating assistance. The state assumed operation of the Baltimore City Jail on July 1, 1991. Renamed the Baltimore City Detention Center, it was placed within the Division of Pre-Trial Detention and Services of the Department of Public Safety and Correctional Services. The legislation enacting the takeover also stipulated that the state construct and operate a booking facility. Once completed in 1995, the facility will centralize the process of booking offenders in Baltimore City. Under current practice, those arrested are booked and detained in one of the city's police precincts.

Most persons confined to local detention centers are awaiting trial and are not serving sentences (see Exhibit 4.1). For the year ending May 31, 1994, there were an average of 9,634 persons in local detention centers. Of that number, 5,355 were awaiting trial or sentencing. This number includes persons held without bail, those who cannot make bail, and those found guilty but not yet sentenced.

Exhibit 4.1

LOCAL DETENTION CENTERS
 AVERAGE DAILY POPULATION AND PRE-TRIAL DETAINEES
 AVERAGE FOR 12 MONTHS ENDING MAY 31, 1994

<u>Jurisdiction</u>	<u>Average Daily Population</u>	<u>Pre-Trial Detainees</u>	<u>Pre-Trial as a % of ADP</u>
Allegany	99	54	54.0%
Anne Arundel	565	287	50.8
Baltimore	1,081	907	83.8
Baltimore City	2,942	1,579	53.7
Calvert	117	36	30.7
Caroline	42	21	49.1
Carroll	106	50	47.2
Cecil	170	53	31.5
Charles	227	106	46.8
Dorchester	116	44	37.7
Frederick	303	143	47.3
Garrett	39	15	38.9
Harford	266	98	36.7
Howard	202	114	56.6
Kent	49	20	41.5
Montgomery	784	285	36.4
Prince George's	1,210	839	69.3
Queen Anne's	72	21	29.6
Somerset	87	38	43.9
St. Mary's	133	45	34.2
Talbot	82	28	34.5
Washington	235	111	47.1
Wicomico	497	350	70.3
Worcester	210	111	53.2
Statewide	9,633	5,355	55.6%

Source: Department of Public Safety and Correctional Services

Review of Commissioner's Pre-Trial Confinement or Bail Order

A defendant who is denied release on bail, or who remains in custody unable to post bail for 24 hours, is entitled to bail review no later than the next session of the District Court. It is after confinement pending trial that the opportunity to consider other pre-trial release options takes place based on additional information on the defendant that was not available at the time bail was set by the commissioner.

Plea Bargaining

In order to speed up the judicial process, the state's attorney and the defendant can make an agreement called a plea bargain, where the defendant agrees to plead guilty in exchange for being charged with a less serious offense. For example, a person charged with second degree murder, which carries a maximum sentence of 30 years, may agree to plead guilty to a charge of manslaughter, which carries a maximum sentence of 10 years. A person charged with multiple counts may also have some counts dismissed in exchange for a guilty plea on others. A plea bargain can also be used to encourage a defendant to testify against a co-defendant or other person in exchange for prosecution for a lesser offense or dropping of all charges.

Although statistics on the actual frequency of plea bargaining are not readily available, there are several reasons why the state's attorney may agree to a plea bargain. If the state's attorney feels that the state would not be able to win a conviction in a trial, a plea bargain can be used to make sure the defendant does not escape punishment altogether. A plea bargain is also used to dispose of less serious cases in order to allow more resources to be dedicated to prosecution of serious offenses. Plea bargains also reduce the amount of time and resources that must be expended by law enforcement agencies, prosecutors, public defenders, the courts, and the correctional system, for prosecution, trial, and punishment of offenders.

Defendants usually accept plea bargain offers in order to reduce or eliminate prosecutions, incarcerations or fines. In addition, plea bargains may be used to escape mandatory minimum sentence provisions such as the requirement that repeat violent offenders serve longer sentences. By pleading guilty to a non-violent offense, the defendant can avoid prosecution for a violent offense and the minimum sentence rules.

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

Section 2

Judicial Process



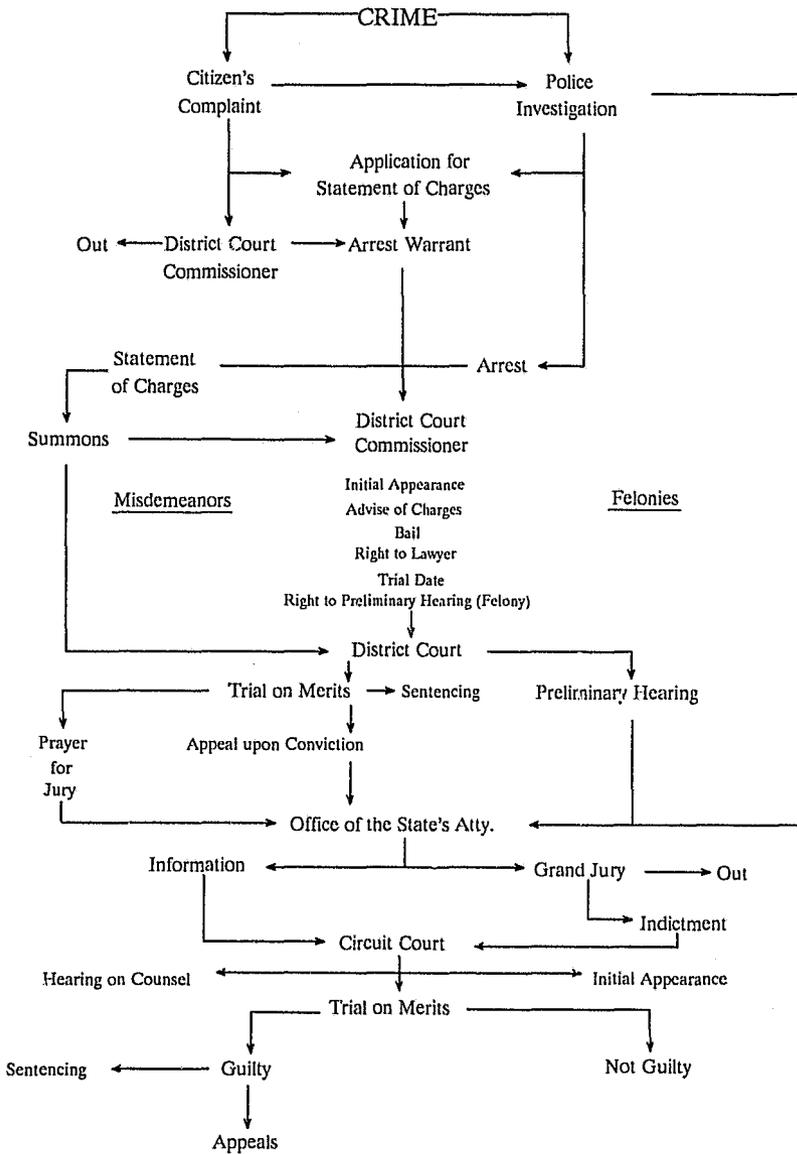
Laws are a dead letter without courts to expound and define their true meaning and operation.

Alexander Hamilton

The system of courts in Maryland is reviewed under this section. These chapters focus on the offender's contact with trial courts, sentencing, and post conviction procedures. The section concludes with discussion of victims' and witnesses' rights and the juvenile justice process. The complexities of the system are illustrated in Exhibit 5.1.

Exhibit 5.1

**MARYLAND
CRIMINAL COURT SYSTEM**



Prepared by: Department of Fiscal Services

CHAPTER 5

THE DISTRICT COURT

JURISDICTION

Exclusive Jurisdiction

The original intent of the District Court system is that it would have exclusive jurisdiction over misdemeanors, while the circuit courts would have jurisdiction over felony criminal cases. There are numerous exceptions to this plan. Furthermore, Maryland law does not clearly distinguish misdemeanors from felonies. The common law definition of a misdemeanor is any crime for which the maximum sentence does not exceed 90 days of confinement. Maryland law, however, is replete with examples of crimes defined as misdemeanors which carry maximum sentences exceeding the traditional three month limitation. For example, removing a dead body (grave desecration) without authority is defined as a misdemeanor that carries a 5-15 year prison sentence. One distinction between felonies and misdemeanors remains: convicted felons lose the right to vote and hold public office, while those convicted of a misdemeanor do not.

The District Court has exclusive original jurisdiction over the following criminal cases:

- violations of the vehicle laws and the State Boat Act unless the violation is a felony or the defendant is under the age of 16;
- misdemeanor violations of statutory or common law, regardless of the amount of money or value of the property involved;
- misdemeanor theft, including possession of stolen property, passing bad checks, and credit card offenses;
- misdemeanor violation of a county, municipal or other ordinance;
- misdemeanor violation of a state, county or municipal rule or regulation; and
- forgery or counterfeiting of financial documents, whether a misdemeanor or felony.

Although the District Court is granted exclusive jurisdiction in these cases, any case that carries a possible penalty in excess of 90 days imprisonment or more entitles the defendant to elect a jury trial. Since jury trials are not available in the District Court, these cases would be transferred to a circuit court.

Concurrent Jurisdiction

The District Court has concurrent jurisdiction with the juvenile courts in criminal cases arising under the compulsory public school attendance laws.

The District Court has concurrent jurisdiction with the circuit courts in felony cases involving theft, passing bad checks, or credit card fraud.

The District Court has concurrent jurisdiction with the circuit courts in felony cases and cases in which the maximum penalty is three years or more in prison or a fine of more than \$2,500.

The District Court has concurrent jurisdiction with the circuit courts in misdemeanors, common law cases, violations of municipal or other local laws, and some cases where the crime is not defined as a felony offense, so long as the defendant does not have a right to and ask for a jury trial. As a practical matter, nearly all serious felonies are tried in circuit courts because either the defendant requests a jury trial, is charged by information by the state's attorney or is bound over for action of the grand jury that results in an indictment.

Cases Transferred to the Circuit Courts

If the maximum permitted sentence falls between 91 days and three years, the state's attorney can choose to file charges in the District Court or the circuit courts, although if the state's attorney files in the District Court and the defendant has a right to and chooses a jury trial, the case will transfer to the circuit court. Only circuit courts have jury trials.

A case may be filed in the District Court but transferred to a circuit court because it is not within the jurisdiction of the District Court or the case may be transferred to a circuit court because the defendant requests a jury trial. After the preliminary hearing or waiver of the hearing, the state's attorney has 30 days in which to file a charging document to transfer the case to a circuit court.

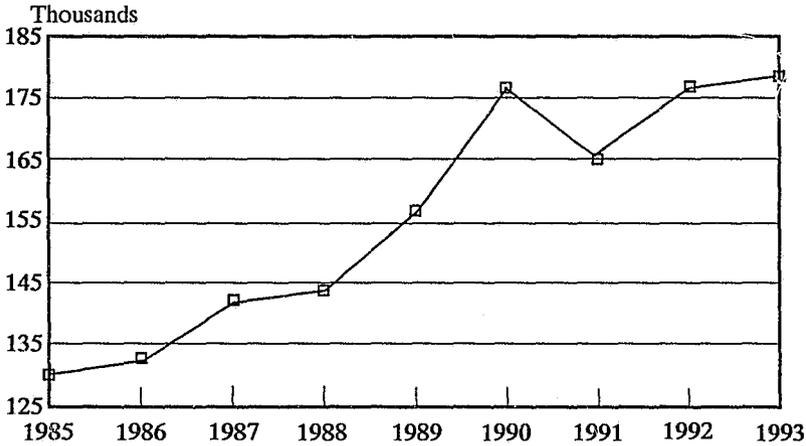
CASELOAD

Exhibit 5.2 shows how the number of criminal cases in the District Court has risen dramatically in the period from fiscal years 1986 through 1993. In 1986 there were 132,222 cases and in 1993 there were 178,543, a 35% increase.

The exhibit reflects the impact in 1990 of a program instituted to reduce the number of cases transferred from the District Court to the circuit courts by providing same day jury trials for defendants requesting a jury trial.

Exhibit 5.2

**DISTRICT COURT CRIMINAL CASELOAD
FISCAL YEARS 1985 THROUGH 1993**



Source: *Annual Reports of the Maryland Judiciary*, 1990 through 1993

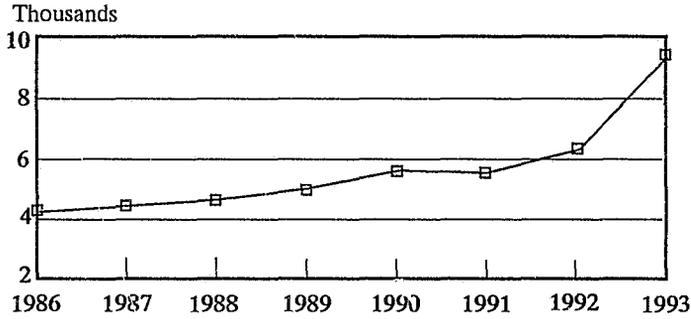
Cases that are not prosecuted, *not pros* cases, account for between 20% and 25% of the cases terminated in the District Court. Cases that had prosecution suspended, *stet* cases, made up about 15% of the District Court caseload until 1990, then jumped to around 20% where it has remained stable. Again, this phenomenon is probably due to the reduced number of cases sent to the circuit courts. As more cases are tried in the District Court, some cases are set aside by the state's attorneys for later prosecution.

Exhibit 5.3 shows the substantial increase in the number of domestic violence cases in the District Court. The increase was especially dramatic in 1993 when the number of cases rose nearly 48%, due to 1992 changes in the law which expanded the eligibility and types of relief available for victims. The number of cases increased in every county except Allegany and Garrett, doubling in several counties including Anne Arundel and Prince George's, and increasing nearly fourfold in Talbot.

There has been a marked decrease in the last two years in the number of motor vehicle cases handled by the District Court. Motor vehicle tickets issued reached a high of 1,058,060 in Fiscal Year 1991, but have been declining since then. Exhibit 5.4 shows the decrease in the number of motor vehicle cases. Just under two-thirds of all motor vehicle violators pay the traffic tickets rather than appear in court.

Exhibit 5.3

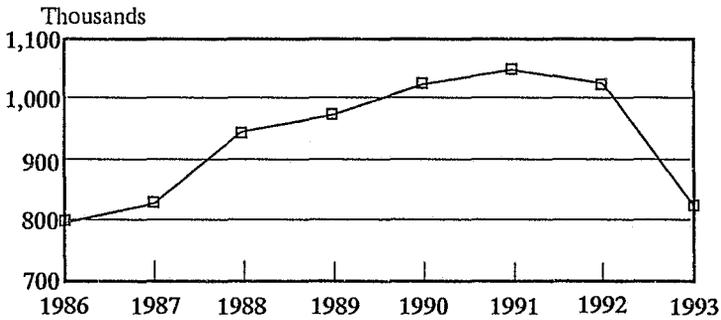
DISTRICT COURT DOMESTIC VIOLENCE CASES
FISCAL YEARS 1986 THROUGH 1993



Source: *Annual Reports of the Maryland Judiciary*, 1990 through 1993

Exhibit 5.4

DISTRICT COURT MOTOR VEHICLE CASES
FISCAL YEARS 1986 THROUGH 1993



Source: *Annual Reports of the Maryland Judiciary*, 1990 through 1993

CHAPTER 6

THE CIRCUIT COURTS

JURISDICTION

Exclusive Jurisdiction

The circuit courts are the highest common law and equity courts of record exercising original jurisdiction. They have exclusive jurisdiction over most serious felony cases. These cases generally involve a maximum sentence of over three years confinement. Unless a statute specifically provides for trial in the District Court, these cases must begin in a circuit court.

The circuit courts are the only trial courts that provide for trial by jury. The right to trial by jury is guaranteed under the Sixth and Fourteenth Amendments of the U.S. Constitution for all but the most petty offenses. In Maryland the right to trial by jury is guaranteed in any crime with a potential sentence of over 90 days. A District Court may be divested of jurisdiction in a misdemeanor or felony case with a maximum sentence of over 90 days if the defendant requests a jury trial.

Appellate Jurisdiction

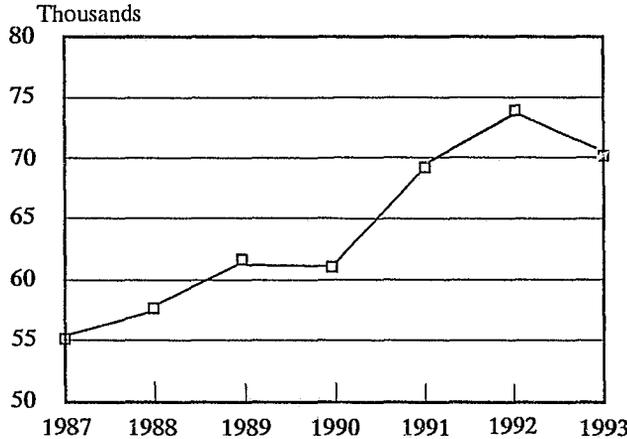
The circuit courts can exercise appellate jurisdiction over convictions in both the District Court and the circuit courts. See Chapter 8 on the post conviction process.

CASELOADS

Exhibit 6.1 depicts the circuit court criminal caseloads from Fiscal Year 1987 through Fiscal Year 1993. The statistics dip in Fiscal Year 1990, reflecting the expedited trials given in circuit courts for jury trial requests filed in the District Court. Excluding this unusual decline, caseloads had been rising at a steady rate until 1993.

Exhibit 6.1

**CIRCUIT COURT CRIMINAL CASELOAD
FISCAL YEARS 1987 THROUGH 1993**



Source: *Annual Reports of the Maryland Judiciary*, 1990 through 1993

Cases bound over, or forwarded, to the circuit courts have stayed relatively stable. In Fiscal Year 1991, a total of 16,243 cases were bound over to the circuit courts. In Fiscal Year 1993 there were 16,205 cases bound over, a decrease of only 0.2%. These are felony cases that were filed with the District Court but are not within the jurisdiction of the District Court. These cases typically involve serious on-view criminal arrests where the offense carries a prison sentence in excess of three years.

JURY TRIALS

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

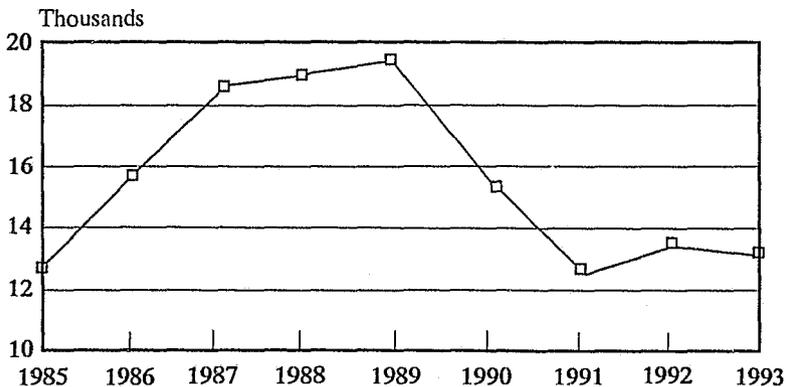
- to obtain a postponement, often so the defendant can obtain counsel or complete payment of counsel fees;
- to remove the case from an individual judge who is unknown to defense counsel or whose sentences are thought to be unduly severe;
- to delay the anticipated incarcerations of defendants released on bail or on their own recognizance;
- in traffic cases, to delay the anticipated loss of driving privileges;

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

In an effort to eliminate some of the manipulation of the courts through jury trial requests, a program in three of the larger jurisdictions (Anne Arundel, Baltimore, and Montgomery counties) gives a defendant a jury trial in a circuit court on the same day that the jury request is made. This has reduced the number of jury trial requests in these jurisdictions every year since the program was implemented in 1990 (see Exhibit 6.2). Between Fiscal Year 1992 and Fiscal Year 1993, jury trial requests were down in all three jurisdictions: a 51% decrease in Anne Arundel County, an 18% decrease in Baltimore County, and a 16% decrease in Montgomery County. Of the two remaining large jurisdictions, Baltimore City had a 25% increase in the number of jury trials, and Prince George's County had a 16% decrease.

Exhibit 6.2

DISTRICT COURT JURY REQUESTS
FISCAL YEARS 1985 THROUGH 1993



Source: *Annual Reports of the Maryland Judiciary*, 1990 through 1993

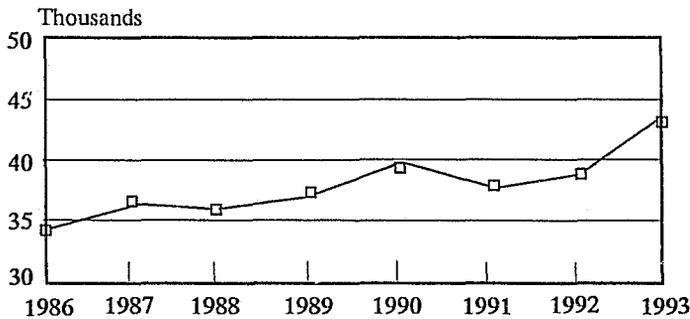
JUVENILE DISPOSITION

Persons under the age of 18 who commit illegal acts are generally handled by the juvenile justice system. Juveniles 14 years of age and over face adult sentencing if convicted of a first degree murder, rape, or sexual offense. Effective October 1994, youths over 16 years of age who are charged with one of 20 additional crimes (e.g., kidnapping, firearms offenses, carjacking) will also be charged as adults. The terminology used in the juvenile system is different than the criminal system. For example, juveniles are adjudicated instead of convicted, and they have dispositions instead of sentences. Elements of the juvenile system are fully discussed in Chapter 10.

The circuit courts also oversee the operation of the juvenile justice system, except in Montgomery County, where this function is handled by the District Court. Exhibit 6.3 shows that the number of juvenile cases increased steadily between 1986 and 1990, with a steeper increase since Fiscal Year 1991.

Exhibit 6.3

CIRCUIT COURT JUVENILE CASES
ORIGINAL AND REOPENED
FISCAL YEARS 1986 THROUGH 1993



Note: Includes Montgomery County District Court
Source: *Annual Reports of the Maryland Judiciary*, 1990 through 1993

In juvenile cases, the hearing usually is held before a master or a judge. If heard by a master, the master then makes recommendations to a circuit court judge who reviews the master's recommendation. The juvenile may be committed to the Department of Juvenile Services, the Department of Health and Mental Hygiene, a local department of social services, or a licensed agency. The judge has the authority to commit a child to a particular type of facility. The length of the

commitment, however, is dependent on the youth's progress towards rehabilitation in a program at a facility. The kinds of facilities and programs under the Department of Juvenile Services are discussed in more detail in Chapter 10.

When the department believes that a youth is demonstrating satisfactory progress towards rehabilitation, a recommendation for placement in a less restrictive program or removal from the system is given to the judge who committed the child. The decision for the release of the youth is then made by the judge.

CHAPTER 7

SENTENCING

TRENDS IN CRIMINAL SENTENCING

Sentencing Restrictions in Maryland Law

In large part, Maryland law states a maximum sentence for offenses but does not identify a minimum sentence, leaving sentencing to the discretion of a judge. There is an array of offenses, however, for which specific minimum and maximum penalties are identified. These include offenses such as assault with intent to murder, assault with intent to rape or commit a sexual offense, embezzling a will or deed, and incest. Many serious offenses such as first and second degree rape and second degree murder do not specify a minimum sentence but only specify a maximum sentence. Aggravating circumstances such as the use of a handgun in an offense or prior convictions for violent crimes, carry with them specific sentence lengths. It should be noted that even for those offenses in which a minimum sentence is specified, judges have some discretion in imposing a penalty of less than the statutory minimum sentence.

Certain offenses also have prescribed sentences without parole. Offenders who are sentenced for certain drug offenses, first degree murder or subsequent violent offenses may be sentenced to serve without parole.

Not all criminal violations are described in statutory law. Some offenses are common law crimes. Common law refers to the law of England and the American colonies, and is based primarily upon judicial precedent. Common law offenses include the following: assault, battery, burglary, hindering a police officer, resisting arrest, rioting, and misconduct in office. Theoretically, the maximum sentence under common law is life imprisonment; however, certain statutes and case law have served to limit the maximum possible terms to less than life for most offenses.

Sentencing Guidelines

Maryland was one of the first states to initiate a sentencing guideline system. The sentencing guidelines have been in effect statewide since 1983. Maryland's guidelines were designed by judges for judges, although the Sentencing Guidelines Advisory Board includes representatives from the legislature, executive branch, and all parts of the criminal justice system. Among the goals of the guidelines are increased sentencing equity, articulated sentencing policy, provision of information to new or rotating judges, and promotion of understanding of the sentencing process.

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

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

The guidelines are based upon two types of scores – an offense score and an offender score. In drug and property offenses, the offense score is determined by the seriousness of the offense. In offenses against persons, the offense score is determined by the seriousness of the offense, the injury to the victim (physical or mental), weapon used, and any special vulnerability of the victim (under 10 years old, more than 60 years old, physically or mentally disabled). The offender score is determined by whether or not the offender was in the criminal justice system at the time the offense was committed (i.e., on parole, probation, incarceration on work release), juvenile record, prior criminal (adult) record, and prior adult parole or probation violations.

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

The sentencing guidelines are not mandatory and judges may, at their discretion, impose a sentence outside of the guidelines. Judges who wish to sentence outside the guidelines, however, are required to submit an explanation as to why the sentence imposed is more appropriate, reasonable or equitable than a sentence within the guidelines. Sentences less than those required by the guidelines may reflect in part the limited sentencing options available to judges in Maryland as well as the overcrowded prison situation.

In 1986, the Administrative Office of the Courts, which administers the sentencing guidelines, published a preliminary analysis of the guidelines. In that report, compliance with the guidelines was rated at 70% for single count cases and 58% for multiple count cases.

Based upon this information, certain factors were modified by the Maryland Sentencing Guidelines Advisory Board. The Administrative Office of the Courts now believes that the compliance rate is 70-80% within the guidelines. The reasons for the enhanced compliance, however, are unknown. One reason could be that as sentencing guidelines become more established, judges feel more comfortable about sentencing within the guidelines. Also, better compliance may result in more plea bargaining within the sentencing guideline system. Another reason could be that the guidelines are revised every three years to reflect the actual sentences imposed by judges. For example, in 1987, the offense factor for seriousness of the crime was changed for a number of crimes, including attempted first and second degree rape, murder, and assault with intent to murder. The matrices for the actual sentences imposed for drug offenses and offenses against persons and property were also modified.

DEATH PENALTY

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

Recent Interpretation of the Death Penalty Statutes

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

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

In response to this Supreme Court ruling, the then existing death penalty statutes were invalidated. Under the ruling the court or the jury was required to consider aggravating circumstances such as whether the victim was a law enforcement officer, an abducted child, or a hostage, or whether the murder was committed under a contract by the defendant. The court also was required to

weigh these aggravating circumstances against mitigating circumstances, such as no previous act of violence, duress, youthful age, or substantial impairment as a result of mental incapacity or intoxication. The court or the jury must unanimously find aggravating circumstances for a person to be given the death penalty.

In Maryland, a person tried for murder is tried in a circuit court by either a jury or a judge. The state is represented in the circuit court by the state's attorney. If the defendant is convicted of first degree murder and the state has given notice it seeks the death penalty, a separate sentencing proceeding is held before the original jury or a new jury if the defendant plead guilty or was convicted by a judge. The jury must consider the aggravating and mitigating circumstances of the crime in order to determine if the death penalty is warranted.

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

If the death penalty sentence is upheld, the defendant usually will file a petition for *writ of certiorari* in the Supreme Court of the United States in order to stay the sentence. A *writ of certiorari* is a request for an appeal. The defendant then may file a post conviction petition in the circuit court. In this petition, the defendant argues that some constitutional violations have occurred. A principal claim raised at the post conviction hearing is that the attorneys at trial, sentencing, and direct appeal did not render effective assistance. Thus, different attorneys are required for post conviction petitions than those originally appointed or retained. If this challenge is unsuccessful, a request is made for the case to be heard by the Court of Appeals. Whether the Court of Appeals does or does not hear the case, the defendant again can seek a petition for *writ of certiorari* in the U.S. Supreme Court. A defendant can file no more than two petitions for post conviction relief.

After the petition(s) for post conviction relief and all appeal opportunities have been exhausted, the defendant usually files a *writ of habeas corpus* in the federal court system. A federal *writ of habeas corpus* is a request to release the defendant from unlawful imprisonment. The purpose of the writ is not to determine the defendant's guilt or innocence, but rather to raise the constitutional issue of whether the defendant is restrained of liberty without due process.

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

The appeal process can be very lengthy. Usually the sentence is executed only if a court refuses to issue a stay of execution or the defendant decides not to pursue appeals. John F. Thanos was executed on May 17, 1994, after he declined to pursue any further appeals. His was the first execution in Maryland in 33 years. As of July 1, 1994, there were 13 people sentenced to death in Maryland.

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

Another type of appeal that may be filed is for the defendant to claim incompetence at the time of execution despite his or her sanity at the time of the crime and competence to stand trial. In *Ford v. Wainwright*, 1986, the Supreme Court reaffirmed that an insane person may not be executed, and that a person is entitled to a judicial determination on the issue of competency at the time of execution. The final means by which to avoid the death sentence is for the Governor to commute the sentence.

CHAPTER 8

POST CONVICTION PROCESS

A convict has a number of alternatives for seeking review of a sentence imposed by the court based on which court tried the case initially (District Court or circuit court) and the length of the sentence. The options include review at the trial court level, appeal to a circuit court (if the trial was in the District Court), appeal to the Court of Special Appeals, and review by the state's highest court, the Court of Appeals. Some cases also can be brought to the federal courts through *habeas corpus* petitions. The review and appeals can be a continuous process of motions, new motions, and appeals, some which require the presence of counsel and some which do not. In fact, a convict may raise many of the same issues again and again, alone or with new counsel, when the issue raised is the ineffectiveness of the original trial counsel.

MOTION FOR A NEW TRIAL

After the verdict, a defendant has ten days to file a motion for a new trial. The decision to grant a new trial is at the discretion of the trial court. Grounds for granting a new trial include:

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

In addition to the ten day rule, a motion for a new trial in a circuit court can be granted for newly discovered evidence within one year after imposition of a sentence or after receipt of a mandate from the Court of Special Appeals or Court of Appeals. The one year rule applies to a motion for retrial in the District Court if an appeal was not taken to a circuit court.

CIRCUIT COURT TRIAL *DE NOVO*

A defendant tried and convicted in the District Court in a criminal case has an absolute right to appeal and have the case tried *de novo* in a circuit court. A *de novo* trial is a completely new trial. In essence, the first trial in the District Court is treated as if it never took place. A defendant also has a right to trial by jury in a *de novo* proceeding. Since the defendant has a right to a jury trial in a circuit court, the practical effect of this appeal allows the defendant to get a jury trial after conviction in the District Court, even if the maximum sentence is less than 90 days.

POST CONVICTION REVIEW BY THE CIRCUIT COURT

There are two procedures available for a convict to challenge the sentence imposed. The first is a statutory right of appeal based on unconstitutionality, illegality or error, and is available to all persons convicted and sentenced to parole, probation, incarceration, or death. The second, the Uniform Post Conviction Procedure Act, is for convicts sentenced to two years or more of incarceration.

COLLATERAL REVIEW BEFORE A JUDGE OF A CIRCUIT COURT

Any person convicted of a crime in either the District Court or a circuit court has a right to institute a proceeding in a circuit court to set aside or correct a sentence. This right extends to a sentence of probation, not just confinement. The purpose of this provision is to allow a collateral attack on the basis that:

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

A person may not file more than two petitions arising out of each trial as long as the alleged error is not finally litigated or waived in the proceedings, or in any other proceeding that the petitioner has taken to secure relief from conviction. A defendant is entitled to assistance of counsel and a hearing on the first petition. The court shall determine if assistance of counsel or a hearing should be granted on a subsequent petition. Usually counsel will be provided by the public defender or court appointed counsel. This means that the right to a hearing and counsel is guaranteed once. The court has the discretion to decide whether to allow a second hearing and whether counsel will be provided at state expense for the second hearing.

An allegation of error is litigated finally when an appellate court of the state has rendered a decision on the merits, either upon direct appeal or upon any consideration of an application for leave to appeal. An issue also is finally litigated if disposed of by petition for a *writ of habeas corpus* or *coram nobis* unless that disposition was clearly erroneous. In other words, collateral attack is precluded under the Uniform Post Conviction Procedure Act if the defendant is successful in getting the Court of Special Appeals or the Court of Appeals to review his or her case.

This post conviction procedure is sometimes referred to as collateral attack or a sideways attack on the judgment, avoiding direct appeal. More specifically, a collateral attack on a judgment is an attack made for a purpose other than

impeaching or overturning the judgment. A suit under the Uniform Post Conviction Procedure Act is therefore a collateral attack to set aside or correct a sentence because of an error, not an allegation that the conviction itself is incorrect. Although the action is brought in a circuit court, it is not a part of the normal appeals procedure because the court cannot reverse or throw out the judgment, only alter the sentence. If the convict's attack on the sentence is successful, the defendant may get the sentence reduced or adjusted or get a new trial, but the conviction will not be overturned.

One other provision concerning collateral review under the Uniform Post Conviction Procedure Act is important. A defendant who intelligently and knowingly fails to make a charge of error before the trial, during the trial, or on direct appeal is deemed to have waived the right to an allegation of error or collateral attack under the Act. This provision may apply more to the defendant's counsel, most likely a public defender, rather than directly to the defendant. If the defendant raised the issue with counsel and counsel failed to raise the issue in court, the defendant could later bring this up as an error in the collateral review process. Convicts may use the collateral attack procedure to get a new trial by claiming that counsel during the original trial was ineffective. This last provision on direct appeal means if the defendant had the chance to bring up the error on direct appeal (i.e., the particular error was not indicated in the appellant brief) and failed to do so, the convict cannot later bring the issue up at a post conviction collateral review hearing. Also changes in court rules or changes resulting from court decisions usually are not retroactive unless the court ruling indicates otherwise. This means that a defendant cannot seek collateral review simply because the rules have changed.

REVIEW OF CRIMINAL SENTENCE BY THREE JUDGE PANEL

Every person convicted of a crime by a trial court and sentenced to serve a total of more than two years' imprisonment, with or without suspension, is entitled to have the sentence reviewed by a panel of three or more trial judges of the judicial circuit in which the sentencing court is located. The Maryland Rules provide that the sentencing judge may sit with the review panel, in an advisory capacity only, if requested by a majority of the panel. The defendant is entitled to only one such hearing; if the convict, however, can find grounds that the sentence received did not follow the rules of procedure, the convict may request a second hearing. Technically, this is not a right of review, but revision of a sentence that was made in error (see revisory powers, below).

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

The three judge panel may increase, decrease, or suspend the sentence. The panel must hold a hearing before increasing the sentence or to order serving of a suspended sentence. A sentence for life or a term of years may not be increased to a death sentence. If the panel holds a hearing, the defendant, the state's attorney or assistant state's attorney, and defendant's counsel are entitled to be present. The motion for sentence review must be filed within 30 days after sentencing and the panel has 30 days after the motion to render a decision.

A motion for sentence review can lead to a stiffer sentence for the defendant; however, this is not without some limitation. Due process requires that while a state need not provide sentence review, it may not impose a harsher sentence vindictively on those who exercise the right. Increased sentence on retrial can be imposed only if the record shows, and the court finds, that a more severe punishment is justified by the convict's conduct after the original sentencing.

An example where an inmate would seek post conviction review under this statute would be an allegation that the defendant's counsel was ineffective or deficient in representing the inmate during the trial, and this resulted in the inmate's receiving a longer sentence than the inmate might otherwise have received.

***EN BANC* HEARING BY A CIRCUIT COURT**

The Maryland Constitution provides for reservation of points or questions for consideration by a court *en banc*. In any trial conducted by less than the whole number of the circuit court judges of that judicial circuit, either the state or the defendant can make a motion for an *en banc* consideration of the ruling. An *en banc* hearing is conducted before a three judge panel of the circuit court. The constitutional provision excludes questions not raised in a circuit court trial where the case is considered on appeal from the District Court. The provision also excludes criminal cases that are not felonies except where the confinement is in the Penitentiary.

An *en banc* hearing was originally designed to provide an inexpensive form of appellate review without incurring great expenditures of time and money traveling to Annapolis where the appellate court sat. The constitution and statutes of Maryland historically, but incorrectly, refer to this as an "in banc" hearing. With the advent of modern transportation and the Court of Special Appeals, *en banc* review is rare because it precludes any further appeal of the conviction. A review of sentence by a three judge panel is not an *en banc* appeal, and is thus still appealable to the appellate courts.

The notice for the *en banc* hearing must be filed within ten days after an entry of judgment or ten days after a motion for a new trial is denied. A hearing must be held as soon as practicable unless both parties notify the clerk of the court that the requirement for a hearing is waived. It is likely that a motion for

an *en banc* hearing would follow a denial of a motion for a new trial. Any party who seeks and obtains review under the rule has no further right of appeal; this does not preclude, however, the opposing party from bringing an appeal before the Court of Special Appeals.

A defendant who seeks *en banc* review would be excluded from bringing an appeal before the Court of Special Appeals. This is important to the defendant, as he or she could be precluded from further action on appeal. The only recourse would be to show that counsel was ineffective in a post conviction act proceeding, and counsel should have known that *en banc* review would be futile and would preclude a defendant from seeking further appellate review. For this reason, *en banc* review is rarely sought by a defendant.

REVISORY POWERS OF THE DISTRICT AND CIRCUIT COURTS

A court may modify, reduce, correct or vacate a sentence at any time up to 90 days from the date of sentencing; a court can never increase a sentence, however, except to correct an evident mistake before the convict leaves the courtroom after the sentencing proceeding.

A court may correct an illegal sentence at any time. A court also has revisory power and control over the sentence in cases of fraud, mistake or irregularity at any time.

A circuit court has revisory power and control over judgment to set aside an unjust or improper verdict and grant a new trial, on motion filed within 90 days after imposition of the sentence. The District Court has the same revisory power under the Maryland Rules, but only if an appeal was not perfected. The circuit courts have revisory powers over a sentence whether or not an appeal was filed.

MARYLAND APPELLATE COURT REVIEW

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

A defendant who is tried in District Court and appeals to a circuit court may not appeal to the Court of Special Appeals. A defendant originally convicted in a circuit court may appeal to the Court of Special Appeals, and request further review of the state's highest court, the Court of Appeals. In death penalty sentences, direct appeal is to the Court of Appeals. The state is represented by the Criminal Appeals Division of the attorney general's office rather than the local state's attorney in all appellate cases.

Statutory law now precludes the use of *habeas corpus* as a remedy to correct errors that formerly was available on appeal to the Court of Special Appeals or the Court of Appeals. The rationale for this provision is that the Uniform Post Conviction Procedure Act provides adequate procedures at the trial level for taking testimony, receiving evidence, and making factual findings concerning the allegations of error.

Court of Special Appeals

The 13 member Court of Special Appeals typically sits in panels of three to hear cases, although the court in exceptional cases may elect to sit *en banc*. The court's review is on the record, which means that only those issues addressed in the trial will be considered. It is not a replay of the criminal trial. The types of cases heard by the Court of Special Appeals include:

- First appeal of right – All persons convicted of a crime in a circuit court are entitled to a direct appeal to the Court of Special Appeals for a review of their trials. This first direct appeal is also known as the first appeal of right because the first review by the Court of Special Appeals is guaranteed as a matter of right. The first appeal must be taken within 30 days after final judgment of a circuit court or 30 days after a motion for new trial is denied or withdrawn.
- Application for leave to appeal to the Court of Special Appeals – A defendant who does not have a right of appeal to the Court of Special Appeals may still ask the court to review his or her case. Such a request is called an application for leave to appeal because granting a hearing by the Court of Special Appeals is discretionary. This situation would arise if the defendant had pleaded guilty in a circuit court; an appeal from the order of a post sentence review panel of circuit court judges under the Uniform Post Conviction Sentence Review Act, where the review panel has increased the sentence; the defendant used either a panel of judges or *en banc* review; or is appealing a circuit court's order revoking probation.
- The hearing itself – Only members of the bar have the privilege of arguing before the Court of Special Appeals. The defendant will not be permitted to attend the hearing. The court will appoint an attorney if the defendant filed the appeal *pro se*, without assistance of counsel.
- Reconsideration option – A party may file a motion for reconsideration within 30 days after filing of the opinion of the court or before issuance of the decision by the Court of Special Appeals. At least one judge who concurred in the opinion or order must agree to the reconsideration.

Court of Appeals

The Court of Appeals is the highest court in Maryland. Its criminal jurisdiction is generally discretionary, meaning the court may select which cases it will hear. The court has exclusive jurisdiction over appeals where the death penalty has been imposed. Criminal cases are brought before the Court of Appeals in one of the following ways:

- *Writ of certiorari* – Any party, including the state, may file a petition for a *writ of certiorari* which means an application for the Court of Appeals to review the case. The petition may be filed while the case is still pending, within 15 days of issuance of the Court of Special Appeals' mandate. If the appeal is from a circuit court, it must be filed within 30 days of the judgment or withdrawal or denial of the motion for a new trial. *Certiorari* review is discretionary with the Court of Appeals; therefore, the court may deny the petition. Usually the Court of Appeals will limit the review to points of law that were not fully addressed in the lower court, were overlooked, or misinterpreted. *Writs of certiorari* will not be issued where the Court of Special Appeals has ruled on a motion for leave to appeal: (1) in a post conviction proceeding; (2) from a refusal to issue a *writ of habeas corpus* sought to determine the right to or the appropriate amount of bail; or (3) from a plea of guilty in a circuit court;
- The Court of Appeals may decide on its own initiative or motion to take the case from the docket of the Court of Special Appeals; and
- Direct appeal – The Court of Appeals has exclusive appellate jurisdiction over a criminal case in which the death penalty is imposed. When a sentence of death is imposed there is an automatic appeal to the Court of Appeals of both the determination of guilt and the sentence. The Court of Appeals reviews the sentence on the record.

Federal Appellate Review

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

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

CHAPTER 9

VICTIMS' AND WITNESSES' RIGHTS

Maryland law explicitly provides for rights for crime victims and witnesses. In addition, an amendment to the Maryland Constitution before the voters in the November 1994 election would add a provision to the Maryland Declaration of Rights requiring the state to treat crime victims with "dignity, respect, and sensitivity during all phases of the criminal justice process." Maryland statutes provide that a crime victim or witness should:

- be informed by appropriate criminal justice agencies of these guidelines;
- be treated with dignity, respect, courtesy, and sensitivity;
- receive crisis intervention assistance, if needed, or be informed by the appropriate criminal justice agency where crisis intervention assistance, emergency medical treatment, creditor intercession services or other social services and counseling may be obtained;
- be notified in advance of dates and times of trial court proceedings in the case and, on written request, of post sentencing proceedings, and be notified if the court proceedings to which they have been summoned will not proceed as scheduled;
- be advised of the protection available, and, on request, be protected by criminal justice agencies, to the extent reasonable, practicable, and, in the agency's discretion, necessary, from harm or threats of harm arising out of the crime victim's or witness's cooperation with law enforcement and prosecution efforts;
- during any phase of the investigative proceedings or court proceedings, be provided, to the extent practicable, a waiting area that is separate from a suspect and the family and friends of a suspect;
- be informed by the appropriate criminal justice agency of financial assistance, criminal injuries' compensation, and any other social services available as a result of being a crime victim and receive assistance or information on how to apply for services;
- be advised of and, on request, be provided with employer intercession services, when appropriate, by the state's attorney's office or other available resource to seek employer cooperation in minimizing an employee's loss of pay or other benefits resulting from participation in the criminal justice process;
- on written request, be kept reasonably informed by the police or the state's attorney of the apprehension of a suspect, closing of the case, and an office to contact for information about the case;

- be advised of the right to have stolen or other property promptly returned and, on written request, have the property promptly returned by law enforcement agencies when means can be employed to otherwise satisfy evidentiary requirements for prosecution unless there is a compelling law enforcement reason for retaining it;
- for a crime of violence, on written request, be kept informed by pretrial release personnel, the state's attorney or Attorney General, as appropriate, of any proceeding that affects the crime victim's interests, including bail hearing, dismissal, *nol pros*, or *stefing* of charges, trial, disposition, whether at hearing, trial, or appellate level;
- on request of the state's attorney and in the discretion of the judge, be permitted to address the judge or jury or have a victim impact statement read by the judge or jury at sentencing before the imposition of the sentence or at any hearing to consider altering the sentence;
- be informed, in appropriate cases by the state's attorney, of the right to request restitution and, on request, be provided assistance in the preparation of the request and advice as to the collection of the payment of any restitution awarded;
- be entitled to a speedy disposition of the case in which the individual is involved as a crime victim or witness in order to minimize the length of time the individual must endure responsibilities and stress in connection with the matter;
- on written request to the parole authority, be informed any time there is to be a hearing on provisional release from custody and any time the offender is to receive such a release;
- on written request to the Patuxent Institution, Division of Correction or Parole Commission, as appropriate, have a victim impact statement read at any hearing to consider temporary leave status or a provisional release; and
- on written request to the agency that has custody of the offender after sentencing, be informed by the agency any time the offender escapes or receives a mandatory supervision release.

Juvenile offenders are treated differently from adult offenders, therefore, not all of these rights are available to persons victimized by juveniles.

Other provisions that protect rights of victims or witnesses:

- There is a presumption that the victim or victim's representative has a right to be present at trial. At the request of the state's attorney and at the discretion of the judge, the victim or victim's representative may address the sentencing judge or jury in a death or serious bodily injury case before sentencing. The victim or representative has an absolute right not to address the judge or jury.

- Prior to sentencing, either on its own motion or by request of the state's attorney, a circuit court may order the Division of Parole and Probation of the Department of Public Safety and Correctional Services to complete a pre-sentence investigation. The report will include a victim impact statement if the case is a felony or misdemeanor involving death or serious injury. This provision was declared unconstitutional by the Supreme Court as it applied in death penalty cases in *Booth v. Maryland*, but upheld in *South Carolina v. Gathers*.
- The state's attorney is required to notify the victim or designated family member of any subsequent proceeding in the case.
- A judge may prohibit release of the addresses or phone numbers of victims or witnesses.
- Victims of a crime of violence or designated family members may make a written request every two years to be notified by the Maryland Parole Commission 90 days prior to the offender's parole hearing. After notification the victim has a right to submit an updated victim impact statement and meet with a commission member. In addition, upon written request to the parole authority, the victim of a violent crime may request that the parole hearing be open to the public.
- If the victim or surviving family member submits a request in writing to the Maryland Parole Commission, the commission will notify the person if the convict is being considered for commutation, pardon or remission of the sentence.
- If the victim has requested notification, the commission will notify the victim that a convict has violated parole conditions and the punishment imposed for the violation.
- A "Son of Sam" provision prohibits a defendant from profiting from crime by writing a book or contracting to reenact the crime for press or media. Instead, these funds go to settle claims of the victim of the crime or to the Maryland Victims of Crime Fund. This provision is of questionable constitutionality and has been unenforceable.

In addition to these rights, the courts are generally required to order restitution to victims when requested by the victim. The court must now state why restitution was not ordered if it was requested. The Division of Parole and Probation is the agency required to collect restitution and may assess a 2% fee on the defendant for this service. The restitution judgment is recorded, and will constitute a lien on any real property owned by the defendant. Delinquent accounts may be turned over to the Central Collection Unit of the Department of Budget and Fiscal Planning for further action, such as interception of lottery prizes, income tax refunds, and other measures. The department adds a 17% collection fee to the unpaid amount.

NOLO CONTENDERE PLEA OR PROBATION BEFORE JUDGMENT

The General Assembly enacted expansion of a victim's restitution not only to include those cases where a defendant is convicted, but also cases where the court accepts a *nolo contendere* plea or a defendant accepts probation before judgment. Also, the definition of victim was expanded to include:

- the Department of Health and Mental Hygiene, Criminal Injuries Compensation Board, or any other governmental entity that compensates expenses or makes payments to victims; and
- a third party payer such as an insurance company that makes payments to the victim or victim's family.

THE PATUXENT INSTITUTION

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

The Patuxent Institution's Board of Review must include a member of a victims' rights organization. Also, the Board of Review must give the victim or victim's representative an opportunity to comment in writing on any action before the board. The Board of Review must promptly notify the victim of any change in the inmate's work release, leave, or parole status, regardless of whether or not the underlying conviction was for a violent crime. These provisions were enacted in 1989 as a part of the recommended changes to Patuxent Institution proposed by the *Report of the Special Joint Committee on the Patuxent Institution*.

CHAPTER 10

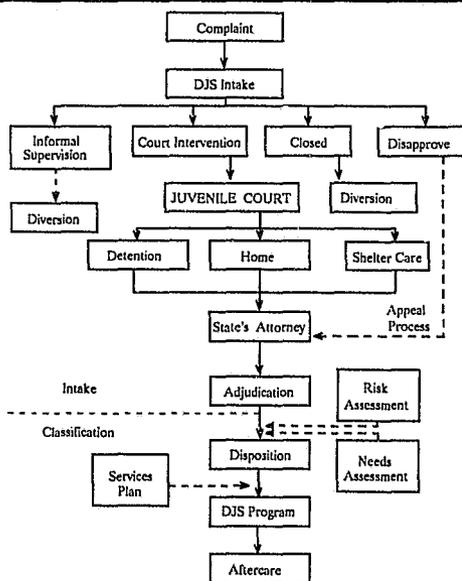
JUVENILE JUSTICE PROCESS

The juvenile justice system in Maryland is separate from the adult corrections system. Unlike the adult system, the juvenile system has the goal of rehabilitating juvenile offenders without the determination of guilt or fixed sentences.

Maryland has had a separate program for juveniles since 1966. Juvenile programs are currently administered through the Department of Juvenile Services. The mission of the department is to provide services for children in the least restrictive setting possible while also protecting the interests of public safety. Throughout the juvenile justice process, the department operates programs using in-house personnel and contractual private vendors. The department also supports community programs which prevent juvenile crime before the state becomes involved. Exhibit 10.1 shows how cases flow through the juvenile justice system.

Exhibit 10.1

CASE FLOW THROUGH JUVENILE JUSTICE SYSTEM



Source: Department of Juvenile Services

INTAKE

The first point of contact a youth has with the state's juvenile justice system is at intake. Intake occurs when a complaint is filed and an initial determination regarding the child's case is made. Cases reported by police made up over 91% of the intake cases brought to the department in Fiscal Year 1993.

An intake officer reviews the alleged act and makes a determination as to which actions should be taken. Information is gathered by the intake officer during an intake hearing involving the child, the child's parent or guardian, the victim (if any), and the police (if necessary). An intake officer has four options as to how to dispose of the case:

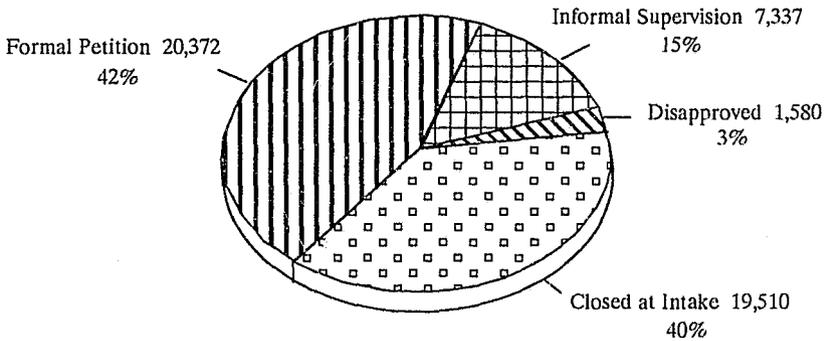
- Close = When it is determined that further action by the court or the department is not necessary to protect the public or benefit the youth, the case may be closed. The youth may receive counseling, short-term intervention or services from another agency when the case is closed.
- Disapprove = The intake officer may disapprove a case if it lacks legal sufficiency or is outside the jurisdiction of the juvenile court.
- Informal Supervision = This is a 90-day supervised program administered by an intake officer in lieu of being referred to juvenile court. By law, consent must be received from the victim, the youth, and the youth's parent or guardian to pursue this route.
- Formal Petition = A formal petition to have a case referred to the juvenile court is made when it is necessary to protect the public or to effect a positive adjustment for the youth.

At the intake hearing, 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 when determining the appropriate action. If the case is closed, disapproved or recommended for informal supervision, the youth is sent home in the custody of a parent or guardian. If a formal petition is recommended, the child may be sent to secure detention (to protect the public or the youth), shelter care (if there is no suitable home environment) or home in the custody of a parent or guardian, depending on the severity of the case.

Formal petitions to juvenile court comprised the largest number of intake decisions in Fiscal Year 1993. Exhibit 10.2 shows the distribution of intake case dispositions during Fiscal Year 1993.

Exhibit 10.2

INTAKE DETERMINATIONS
FISCAL YEAR 1993



Source: Department of Juvenile Services

When a formal petition to juvenile court is recommended, the child will be released to the custody of a parent or guardian, placed in a secure detention facility or assigned to a home monitoring unit or community detention. Home monitoring requires the child to wear an electronic device at all times to verify that he or she is at home. A computer will telephone the child at home and the electronic device must be placed near the phone. If there is no response, the computer will notify the community detention worker. Community detention is a 24-hour supervision of the child in the community without requiring the heavy security of a detention center.

The department may determine that the alleged act is too serious to close at intake, but does not require the court's intervention. In these circumstances, informal supervision may be offered to the youth. The child might be referred to a diversion program — a 90-day intensive treatment program which the child must complete successfully as a condition of not having to appear in court. Diversion programs address general problems that face young people: drug abuse, broken families, other domestic problems, and school difficulties. The department contracts with private providers who administer six separate diversion programs which served over 1,300 children during Fiscal Year 1993.

JUVENILE COURT

Formal petitions to juvenile court are reviewed by the office of the state's attorney. The state's attorney will file a petition with the juvenile court if it is believed that court action is necessary. The petition may be denied by the state's attorney who reviews the case for prosecution. In this instance the case is removed from the juvenile justice system. If the child is accused of a felony, the case is forwarded to the state's attorney for review whether the intake officer recommends court action or not.

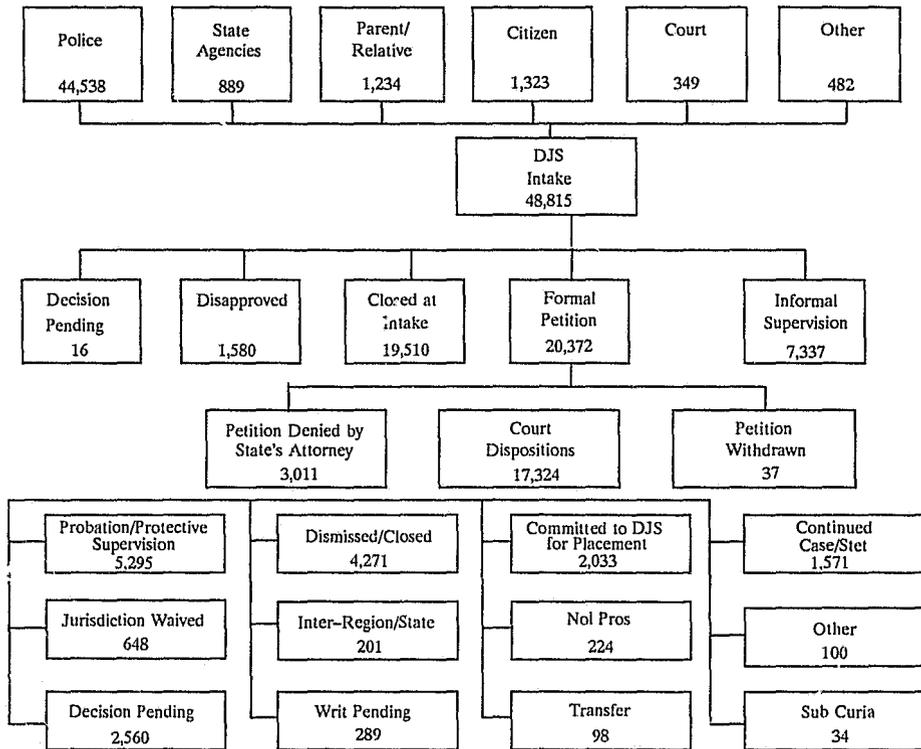
If a child is placed in emergency detention by an intake officer, a hearing is held the next court date. If a formal petition is filed alleging the child is delinquent, a hearing must be held within 60 days after the petition is served, unless the court extends the time. A juvenile judge or master presides over the case and determines whether to adjudicate the child as delinquent or not delinquent. A master can preside over any case, but all dispositions must be approved by a judge. Cases adjudicated as delinquent are then scheduled for a dispositional hearing. In the meantime, the child is either returned home, placed in detention, or placed at the level of care recommended by the court. Cases adjudicated as not delinquent are not subject to any further court action.

The judge or master will determine, typically in separate hearings, if the child is delinquent (adjudication) and recommend the level of treatment needed (disposition). A delinquent act is one that would be a crime if committed by an adult. The courts used to have the authority to send a child directly to a specific facility. However, the Court of Appeals ruled in 1991 that the court may only designate a type of facility, and the department will determine the specific facility.

Exhibit 10.3 shows the distribution of cases in the juvenile system by intake source, intake disposition, and court disposition.

Exhibit 10.3

**DEPARTMENT OF JUVENILE SERVICES/FLOW CHART OF CASE REFERRALS
FISCAL YEAR 1993**



Source: Department of Juvenile Services

CLASSIFICATION PROCESS

During the period between the adjudication and disposition hearings, each child goes through a classification process administered by the department to standardize case management and structure the department's recommendations to the juvenile court. The classification process is broken down into four components: a risk assessment and needs assessment which are performed following adjudication, and the service plan and progress assessment which take place after disposition. The risk assessment must be completed within 30 days following the adjudicatory hearing. It helps determine the level of risk of harm that a child presents to himself or herself, to the public or of escaping. A case manager gathers information on the case and assigns points to certain areas which would indicate whether the youth presents a risk. Points are assigned to the categories listed below based on severity:

<u>Category</u>	Maximum Point <u>Value</u>
● Current offense	40
● Prior involvement with the department	15
● Prior escapes or runaway incidents	15
● Age of first delinquency referral	4
● Substance abuse	5
● Parental control	4
● Prior removal from home for longer than 30 days	4
● Educational status	5
● Peer relationships	2

The case manager inputs the scores into the computerized Information System for Youth Services (ISYS). The minimum level of supervision that will be recommended for that child is determined on the basis of total points.

The second classification tool employed is the needs assessment. This step is performed initially in tandem with the risk assessment and identifies which types of treatment will be most beneficial to the child. Needs assessments are updated every three months or as a child's needs change. The case manager inputs scores into ISYS. The categories that are rated in the needs assessment include:

<u>Category</u>	Maximum Point <u>Value</u>
● Substance abuse	7
● Sexual issues	7
● Primary family/guardian relationships	7
● Emotional stability	7
● Educational status	5

<u>Category</u>	<u>Maximum Point Value</u>
● Vocational technical skills	5
● Employment	4
● Health and hygiene	4
● Community service	1
● Victim restitution	1

Third is the development of the service plan to establish a specific rehabilitation plan for the child and family to follow. The case manager utilizes the findings from the risk and needs assessments to determine what program, people or agencies are best suited for the child, what goal achievement is expected, and what the role of the child's family is during this time.

The final step is the progress assessment. The progress assessment tracks the youth's progress in completing the service plan developed by the case manager. Progress assessments are performed every three months following the implementation of the service plan. The case manager scores the child's progress according to each goal set forth in the service plan. A point system is used to determine the youth's progress in achieving these goals based on the following scale:

<u>Category</u>	<u>Maximum Point Value</u>
● Goal achievement	+ 2
● Progress	+ 1
● N/A -- no objective defined	0
● No Progress	-1
● Regression	-2

A satisfactory completion of the service plan will usually result in the case manager recommending to the juvenile court that the child be placed in a program that is less restrictive or that further supervision is no longer needed and the case could be terminated.

YOUTH SERVING PROGRAMS

The department provides numerous programs to help rehabilitate children according to the variety of needs to be served. Programs range from supervision by an intake officer to detention to long-term residential care. Informal supervision is the most common single form of treatment representing 15% of all cases that came to intake in Fiscal Year 1993. The supervised activity may be counseling, community service, victim restitution or any other relative activity or treatment as determined by the intake officer. Probation is akin to informal supervision because the child must participate in a similar treatment program or

activity for a determined length of time. The difference is that probation is ordered by the juvenile court rather than an intake officer. Probation was the most common result in matters referred to the juvenile court in Fiscal Year 1993, representing 26% of the cases.

The second most common disposition of juvenile court cases is commitment to the department for placement. The court recommends the level of care and the department determines the type of facility that will best suit the child based on the service plan and the court's decision. In Fiscal Year 1993, 2,033 children were committed to the department for placement. The department operates or contracts with approximately 80 facilities to provide residential services to children. This figure does not include specialized treatment facilities in other states which accept children with severe mental or emotional problems. Some are group homes which try to rehabilitate children while not separating them from the community. Youth centers, located throughout the state, focus on developing academic and vocational skills and interpersonal skills through peer-group relationships. There are also foster care services, independent and alternative living programs, and specialized programs to treat addictions and mental health needs. In Fiscal Year 1993, the department spent approximately \$43.3 million for placing children in residential programs. Exhibit 10.4 lists all state-owned juvenile facilities in the state.

Exhibit 10.4

DEPARTMENT OF JUVENILE SERVICES
STATE-OWNED FACILITIES

Facility Name	Location	Type of Facility	Operated by State/ Private Capacity	
Thomas J.S. Waxter	Anne Arundel	Detention	State	38
Alfred D. Noyes	Montgomery	Detention	State	40
J. DeWeese Carter	Kent	Detention	State	15
Cheltenham	Prince George's	Detention	State	101
		Shelter Care	State	20
		Secure Committed	State	43
Charles H. Hickey, Jr.	Baltimore Co.	Detention	Private	48
		Secure Committed	Private	144
		Impact	Private	72
		Sex Offender	Private	24
Wm. Donald Schaefer House	Baltimore City	Spec. Residential	State	19
Maryland Youth Res. Center ¹	Baltimore City	Shelter Care	State	30
Maryland Youth Res. Center ²	Baltimore City	Residential	State	12
Backbone Mountain	Garrett	Youth Center	State	45
Green Ridge	Allegany	Youth Center	State	45
Maple Run	Allegany	Youth Center	State	45
Meadow Mountain	Garrett	Youth Center	State	35
Savage Mountain	Garrett	Youth Center	State	45
Eastern Shore Structured Shelter	Dorchester	Shelter Care	Private	10
Catonsville Structured Shelter	Howard	Shelter Care	Private	10
West, Maryland Structured Shelter	Allegany	Shelter Care	Private	8
Sykesville Structured Shelter	Carroll	Shelter Care	Private	10
Allegany County Girls Home	Allegany	Group Home	Private	9
Karma Academy	Frederick	Group Home	Private	12
Thomas O'Farrell	Carroll	Youth Center	Private	38
Doncaster ³	Charles	Juv. Boot Camp	Private	40
Hurlock	Caroline	Group Home	Private	10
Ferndale Respite	Baltimore City	Group Home	Private	6
Victor Cullen ⁴	Frederick	Residential	Private	159
Mount Clare House ⁵	Baltimore City	Spec. Residential	Private	4

Notes:

- ¹ MYRC changed from group home to shelter care in June 1994.
- ² Accounts for residential care to children in Living Classrooms program.
- ³ Changed from youth center to boot camp in July 1994.
- ⁴ Expanded from 125 bed capacity to 159 in June 1994.
- ⁵ Facility has a total of 12 beds: four used by Departments of Juvenile Services, Human Resources and Health and Mental Hygiene each.

Source: Department of Juvenile Services

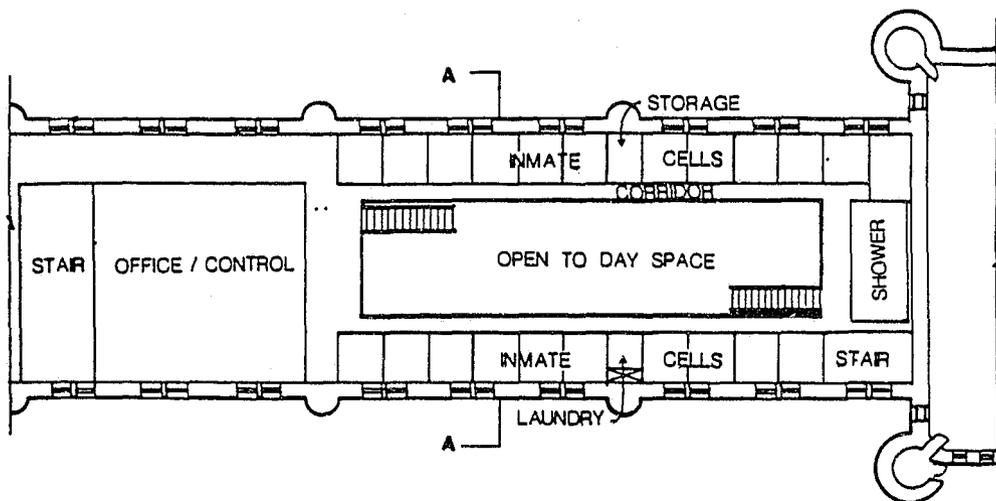
AFTERCARE

Aftercare is a program provided to children following release from a residential facility. Programs are provided by the department and private vendors. The department offers some form of aftercare to all children released from residential programs. The purpose of this is to ease the transition from the highly supervised environment of the residential program to the less structured home environment. It is a widely held belief that residential programming is wasted if there is not some form of aftercare for the child. Aftercare workers contact schools and necessary programs prior to the child's release so that the transition can begin immediately after release. Aftercare workers visit children's homes and schools to monitor their progress and will often provide transportation to counseling sessions if necessary.

The importance of an effective aftercare program is known to be an integral component of rehabilitation. Tracking recidivism has helped the department to develop more effective aftercare programming. The department's initial research in recidivism has shown that there are likely time periods within which a child is most likely to commit another crime. The trends are affected by the type of offense that was committed, the type of programming involved, and a variety of other factors. By utilizing recidivism data, aftercare workers can construct treatments and increase levels of supervision to decrease the likelihood of recidivism.

Section 3

Punishment and Rehabilitation



There is never enough time, unless you're serving it.

Malcolm Forbes

For the convicted offender, the state has a variety of punishments, which range in severity from supervision to incarceration. Chapters in this section discuss the options facing individuals convicted of certain crimes, including probation, the Drinking Driver Monitor Program, intermediate sanctions, alternatives to incarceration, or incarceration in a state or local facility. State prison options also include the Patuxent Institution, a special program designed to remediate youthful offenders. Incarcerated offenders may be eligible to serve a portion of their sentences under parole supervision or home detention.

CHAPTER 11

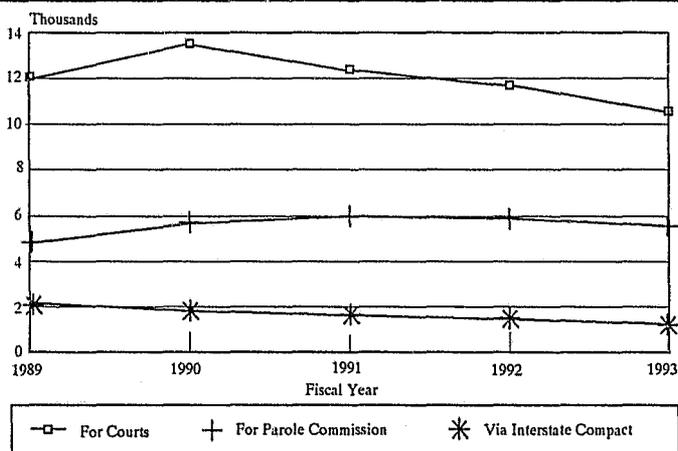
PROBATION AND DRINKING DRIVER MONITOR PROGRAM

The agency which administers probation services is the Division of Parole and Probation of the Department of Public Safety and Correctional Services. The division administers the criminal supervision and the Drinking Driver Monitor Program through approximately 60 probation and parole field offices located in four regions.

An offender's contact with the Division of Parole and Probation may begin before he or she is sentenced. A pre-trial investigation may be requested by the court in order to set bail or release pending trial. Also, a sentencing judge may request a pre-sentence investigation report, which contains confidential information about the offender and the offense and may include a victim impact statement. The court may also request a special court investigation which may take the form of an updated pre-sentence investigation report, a report on some specific aspect of the offense or the defendant's background, or special information to assist the court in setting bond. The sentencing judge or a panel of judges reconsidering the sentence may request a post-sentence investigation. All of these types of investigations are conducted by the Criminal Investigation Services Unit of the division. As seen in Exhibit 11.1, the number of investigations requested have decreased slightly from 19,000 in Fiscal Year 1989, to 18,000 in Fiscal Year 1993. The reduction may be due to a reluctance by judges to delay sentencing because of investigations.

Exhibit 11.1

TOTAL CRIMINAL INVESTIGATIONS/ DIVISION OF PAROLE AND PROBATION



Source: Division of Parole and Probation

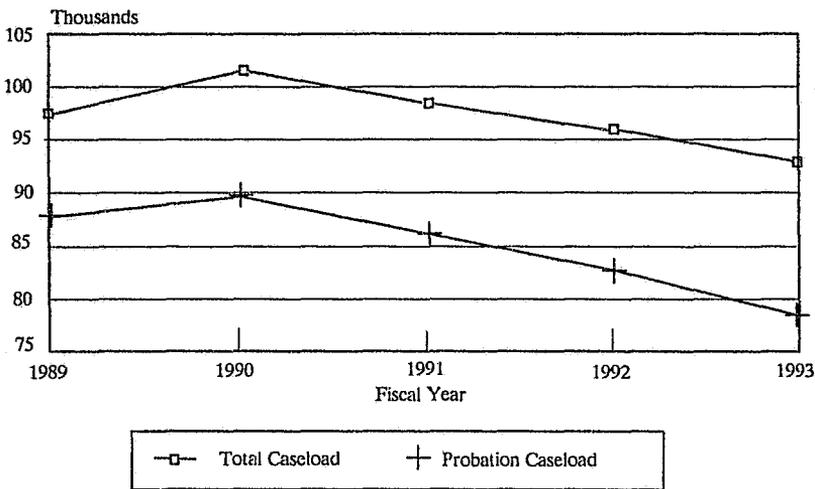
CRIMINAL SUPERVISION PROBATION

Probation is a disposition under which a court defers imposition of a sentence or suspends the sentence and releases the individual conditionally on good behavior, under prescribed terms for a specified period of time. In many cases, probation is part of a split sentence that also includes a term in a local detention center. Probation services are not designed to rehabilitate offenders. They are designed instead to make the offender accountable for his or her actions. Case supervision emphasizes structuring and placing appropriate restrictions on the offender's behavior and freedom of movement in order to limit his or her opportunity to commit crimes without being detected. Where substance abuse problems arise, the Division of Parole and Probation attempts to link offenders with treatment services.

In Fiscal Year 1993, probation cases composed approximately 85% (79,000) of the total cases sentenced to the Division of Parole and Probation. The remaining 15% of cases are parole cases and mandatory supervision cases. Exhibit 11.2 shows that the number of probation cases declined from 89,000 in Fiscal Year 1990 to 79,000 in Fiscal Year 1993. This means that judges are sentencing fewer offenders to probation. The division's total caseload is 4,000 less in Fiscal Year 1993 than in Fiscal Year 1989.

Exhibit 11.2

TOTAL UNDER CRIMINAL SUPERVISION VS. PROBATION CASELOAD AT CLOSE OF FISCAL YEAR



Source: Division of Parole and Probation

Once an offender is sentenced to probation supervision, an offender's file is established and the offender is assigned to an agent under the Case Management Services Unit. All offenders are given a risk assessment, which includes the following factors:

- an evaluation of that offender's prior criminal record;
- an assessment of the offender's history of substance abuse (i.e., drug and/or alcohol); and
- an analysis of the offender's academic and intellectual abilities, emotional stability, employment status, and general health.

This risk assessment determines the level of parole and probation supervision necessary for each offender.

The Division of Parole and Probation supervises cases at two levels: intensive and standard.

Intensive Supervision

Intensive supervision is the most restrictive type of supervision and is often provided for violent offenders, many of whom are under mandatory supervision. Parole and probation agents are assigned approximately 30 intensive cases to monitor. It is likely that over 13,000 offenders will be supervised at this level in Fiscal Year 1995. Under intensive supervision, an offender may have face-to-face contact with his or her agent as many as six or seven times per month, either in the agent's office or in the community. Once a month, the agent also verifies the offender's employment, special conditions attached to the parole order, and other records. A home visit may also occur either announced or unannounced.

For certain intensive supervision cases, electronic monitoring is utilized. This program provides 24-hour electronic supervision for program participants. Offenders targeted for the program are parolees and mandatory releasees from prison who were serving sentences for violent crimes. Individuals selected for the program reside in Baltimore City and Anne Arundel, Baltimore, Howard, and Prince George's counties.

Intensive supervision programs are a relatively new criminal justice tool. Between 1980 and 1990 every state adopted some form of intensive supervision for adult offenders. In most states the program is designed for offenders who have committed crimes too serious to be eligible for routine probation or parole, but not so high a risk as to require imprisonment. In these cases, intensive supervision is limited to nonviolent offenders. However, some states such as New Jersey and now Maryland, use the program for felons who have been released from prison.

The benefits of intensive supervision include reduced costs and reduced recidivism. The costs of intensive supervision are often lower than incarceration but higher than traditional parole and probation. States such as Georgia, Illinois, and New Jersey have reported cost savings. Many states have found that offenders in intensive supervision have lower recidivism rates than those of the regular prison population, i.e., 10% in New Jersey and 20% in Iowa. However, the selection process may skew results. Also, offenders in intensive supervision tend to have many technical violations. It is not clear whether these violations would have occurred under any type of parole and probation but would have gone undetected.

Standard Supervision

Offenders who pose less of a risk to the community are placed on standard supervision. Under this supervision, the number of times the agent will check the conduct of the offender will vary depending upon the circumstances of each case. An offender may have contact with an agent every month, with face-to-face contact every other month. Verification of employment occurs every other month. Special conditions attached to the offender's sentence are checked once per month or once every three months. On average, a parole and probation agent is assigned 80 active standard cases.

All offenders assigned to the Division of Parole and Probation receive a case plan which:

- describes the special conditions imposed by the courts or parole and probation authorities with which the offender must comply; and
- specifies the action that the offender must take to address identified problems.

In many instances, the conditions imposed include drug treatment.

A reassessment of the offender's risk and needs is performed at six month intervals to measure his or her progress under supervision. If the offender demonstrates a record of successful performance, such as negative drug tests or a stable employment record, then the level of supervision may be reduced.

Offenders under intensive supervision receive a case plan developed by their agents to address their need to comply with the orders of probation and any special conditions that may be imposed by the courts. This plan specifies the actions the offender must take to meet any special conditions such as drug treatment or victim restitution, which are required of the offender by the courts.

Exhibit 11.3

DIVISION OF PAROLE AND PROBATION

CONTACT STANDARDS PER MONTH
BETWEEN OFFENDERS AND AGENTS

	<u>Intensive</u>	<u>Standard</u>
Positive*	2	1
Face-to-Face	2	1 every 2 months
Employment Verification	1	N/A
Special Condition Verification	1	1 every 2 months
Record Check	Every 6 months plus 30 days prior to expiration	N/A
Home Visit	1 verifying visit within 20 calendar days of new case or when offender moves 1 visit every 4 months since last visit unless circumstances dictate more frequent contact within the home	1 verifying visit within 20 calendar days of receiving case 1 collateral verification within 40 calendar days when offender moves. Must be on-site for selected offenders.

*Positive contacts are direct contacts with the offender face-to-face or by telephone.

Source: Division of Parole and Probation

DRINKING DRIVER MONITOR PROGRAM

The Drinking Driver Monitor Program (DDMP) is a specialized program for persons convicted of driving while under the influence of alcohol or drugs (DUI) or driving while intoxicated (DWI). Offenders may be referred to the program in one of two ways:

- a court sentences the offender to probation with special condition requirements, including abstinence; or

- as a condition for reinstating a motor vehicle license after it has been suspended or revoked, the Motor Vehicle Administration (MVA) assigns a person to the program.

The Drinking Driver Monitor Program emphasizes abstinence from alcohol and other drugs, alcohol education and treatment, and rehabilitation.

Offenders assigned to the program must report to DDMP within 72 hours of the sentence imposition. At that time, offenders are notified of the conditions of probation and assigned to a weekly reporting location and a probation officer, known as a monitor. There are approximately 60 DDMP field offices, usually located within the same locations as a parole and probation field office.

When the program began, each offender was required to report weekly to his or her monitor. This was done to ensure compliance with the alcohol treatment requirements of the courts or MVA and other probation requirements such as community service and alcohol restrictions on the offender's license. Supervision contacts were reduced from weekly to biweekly and even monthly in some cases due to cost containment during Fiscal Years 1992 and 1993. Currently most contacts are biweekly and the division hopes to restore some offenders to weekly supervision in Fiscal Year 1995. Offenders are also required to attend treatment services and self-help groups at least twice a week. The monitors maintain frequent contact with treatment providers and community services. Offenders must also be tested for drugs, since the division believes that at least 40% of the DDMP clients are also drug abusers. The monitors also verify lawful conduct of the offender through periodic criminal and motor vehicle record checks. Finally, the monitors collect fines and costs, and restitution when court ordered.

If an offender does not report, violates the conditions of probation or displays unlawful conduct, the monitor will notify the court or MVA within 10 days. The monitor will provide testimony and possible recommendations at court hearings on violation of probation charges.

Since DDMP authority is limited to enforcing court orders, the program is most effective if the court conditions specify treatment. In recent years, the majority of probation orders received by the DDMP for supervision include abstinence as a specified condition of probation, along with structured treatment and self-help group programs.

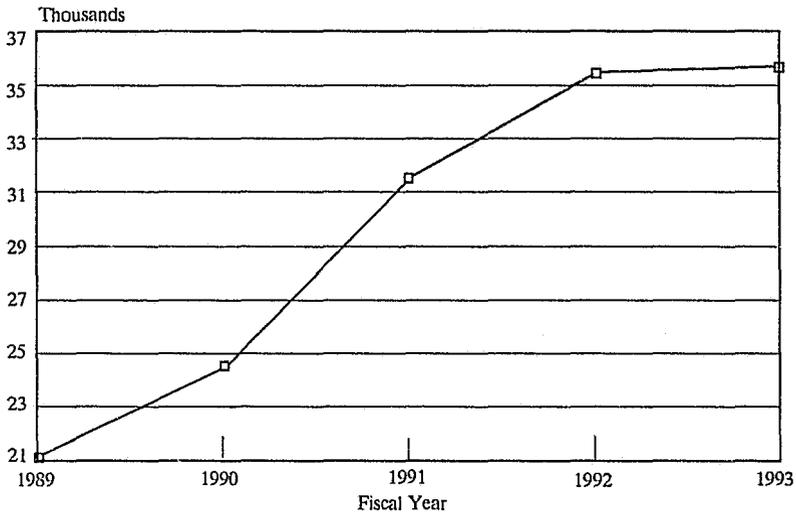
The advantages of the Drinking Driver Monitor Program are:

- services are provided at less cost than traditional probation since the offender is required to report to a DDMP office in lieu of a field visit;
- offenders are immediately enrolled in treatment and recovery groups; and
- offender accountability is at a high level due to the intensive nature of the supervision.

The level of clients assigned to DDMP has increased from Fiscal Year 1989 to Fiscal Year 1993, as seen in Exhibit 11.4. Total cases increased from 21,000 in Fiscal Year 1989 to over 37,000 in October 1992. Since October 1992, total cases have dropped. The average caseload is expected to be lower in Fiscal Year 1994 than in Fiscal Year 1993, due to a decrease in arrests. It is anticipated that cases in Fiscal Year 1995 will continue to decrease, although it is unclear how long this trend will continue.

Exhibit 11.4

TOTAL CASES
DRINKING DRIVER MONITOR PROGRAM



Source: Division of Parole and Probation

A report by the National Public Services Research Institute examined the recidivism rates of the program in Prince George's County and found that the recidivism rates for offenders in the program were one-fourth the rates of offenders who did not participate in any programs. This implies that monitor programs which effectively supervise offenders have an impact on recidivism rates. Although the program examined is similar to the state's program, there were some differences. The Prince George's County program has weekly contacts between the offenders and monitors, while the state program has biweekly contacts.

INTERMEDIATE SANCTIONS

The state and many counties in Maryland have established sanctions that are more restrictive than traditional supervision, but less restrictive and costly than incarceration. These intermediate sanctions include probation with home detention and electronic monitoring, and the DWI facility or ignition interlock restrictions for drinking drivers. These programs give judges more sentencing options for repeat or serious offenders. Authorities in the criminal justice field are divided over whether these programs are simply more restrictive punishment options (intermediate sanctions), or whether they actually divert offenders from being sent to local detention centers or prison (alternatives to incarceration).

Home Detention

Maryland has a home detention program administered by the Division of Correction. Although most offenders in the program are under the jurisdiction of the Division of Correction, probationers can be placed on the program. The program is discussed in Chapter 13.

DWI Facility

The DWI facility located in Prince George's County is an example of a program designed to meet the specific needs of certain types of offenders. Sixty DWI offenders are housed in this minimum security facility. Most of the persons assigned to this facility hold full-time jobs and return by 6:00 p.m. each night. Offenders must pay for each day's sentence to the facility. When the facility is filled to capacity it is self-supporting. During the weekends and evenings, all offenders participate in intensive alcohol diagnostic and therapeutic programs run by the Prince George's County Health Department. All residents are subject to random breath and urine tests as well as tests each day upon return from their employment.

In addition to problems with alcohol, it is estimated that about one-fifth of the offenders are addicted to other drugs. Most offenders are assigned to the facility for 28 days, although judges can sentence offenders to lesser periods. Sentence to the facility is intended to break down the offender's pattern of denial and to collect enough information on the offender to design an appropriate treatment program in the community. After the sentence to the facility, the intent is that an offender be assigned to the Drinking Driver Monitor Program for at least a year.

There are several studies on recidivism for persons enrolled in the DWI and monitor programs. Studies by the Prince George's Department of Corrections based on a sample of 1,600 DWI residents showed a low 8% recidivism rate.

Other recent studies of DWI facility residents have indicated that recidivism was 5-6 times greater for DWI offenders who did not receive both the DWI facility program and probation as a sentence than those who were sentenced to both programs.

Other Programs for Drunk Drivers

In 1988, the General Assembly enacted Chapter 252 and Chapter 253 which authorized a court to prohibit a person convicted of certain alcohol-related offenses from driving a motor vehicle that is not equipped with an ignition interlock system. An ignition interlock system is a device that connects a motor vehicle ignition system to a breath analyzer that measures a driver's blood alcohol level and prevents the ignition from starting if the driver's blood alcohol level exceeds the device's calibrated setting. The act prohibited tampering with or attempting to circumvent the use of an ignition interlock system, for example, by having another person attempt to start the ignition.

In 1989, the Motor Vehicle Administration (MVA) approved the Guardian Interlock Systems, Inc. as a provider of ignition interlock devices in Maryland. If a judge provides for the ignition interlock system as a condition of probation, MVA notes the restriction on the driver's license. Then the offender is required to pay the \$40-\$50 monthly cost of leasing the equipment and must provide periodic proof that the system is in good working order.

A study of 88 first-time and multiple DWI offenders in Calvert County showed that multiple offenders were most likely to find the system a deterrent to driving and drinking. No other Maryland studies are available. A study in Hamilton County, Ohio, compared 358 drivers who were convicted of driving under the influence. Half had ignition interlock devices installed, while the other half were given suspended licenses and local detention center terms. After 12 months, the noninterlock group were rearrested five times more frequently than the interlock group.

CHAPTER 12

ADULT INCARCERATION IN LOCAL DETENTION CENTERS

The law now provides that the minimum sentence to the state prison system is over one year (Chapter 128, Laws of 1986). Judges may send offenders to either the local detention center or the state prison system for sentences over one year (12 months) up to 18 months (Chapter 481, Laws of 1968). Any inmate with less than the minimum sentence (12 months and under) is sentenced to a local facility. The counties are reimbursed for those inmates who actually serve between 91 and 365 days. This is the confinement population diverted to the local detention centers. The state pays these costs in one of two ways depending on which calculation provides for the highest payment:

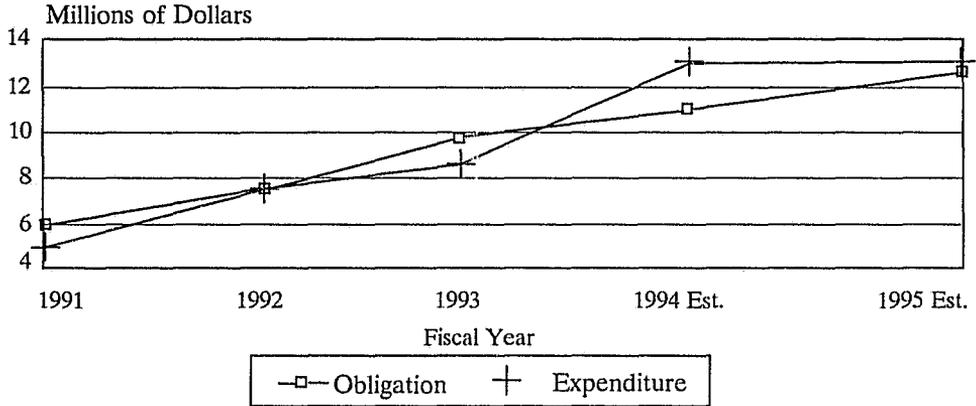
- 50% of the per diem cost of housing an inmate for the 91st through the 365th day of confinement; or
- for 85% of the per diem cost of housing an inmate for every day that the actual number of prisoner days exceeds the average number of prisoner days that occurred during Fiscal Years 1984–1986.

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

Exhibit 12.1 shows the local obligations and expenditures from Fiscal Year 1991 to Fiscal Year 1995. Obligations are expected to increase from \$6 million in Fiscal Year 1991 to almost \$13 million in Fiscal Year 1995. The increase is primarily due to the growth in the 91 to 365 day population in the local detention centers, which has increased the number of billable days.

Exhibit 12.1

**LOCAL DETENTION CENTER REIMBURSEMENTS
OPERATING BUDGET OBLIGATIONS AND EXPENDITURES**



Source: Department of Public Safety and Correctional Services, December 1993

There is an exception to the requirement that sentences to a state facility must be in excess of 12 months. If a county has made an application to the Secretary of the Department of Public Safety and Correctional Services for financial assistance in the construction or enlargement of a detention facility, then inmates sentenced to more than 6 months may serve in a state facility. As of May 1993, 12 local jurisdictions, including Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Charles, Frederick, Harford, Howard, Prince George's, St. Mary's and Washington counties, were exempt.

The state does not reimburse for pre-trial detention time in a local detention facility. The state does reimburse at the per diem rate, time spent in a local detention center for inmates sentenced to and awaiting transfer to the state prison system.

COMMUNITY ADULT REHABILITATION CENTERS

Local jurisdictions are also authorized to administer Community Adult Rehabilitation Centers (CARCs). CARCs were first built in the 1970s. The state funds the construction and operating costs of CARCs. CARCs place offenders sentenced to less than three years in the community, allowing offenders to leave the facility to go to work or perform community services. This maintains an offender's community ties while serving his or her sentence. Currently, there are

two jurisdictions (Montgomery and Cecil counties) which have 21 offenders in CARCs. Because the local communities are concerned with having offenders with three year sentences, the use of CARCs by local jurisdictions has been very limited.

LOCAL DETENTION CENTER CONSTRUCTION PROGRAM

The state operates a Local Detention Center Construction Program which assists jurisdictions with the planning, improvement, and construction of local detention centers and work release and other correctional facilities.

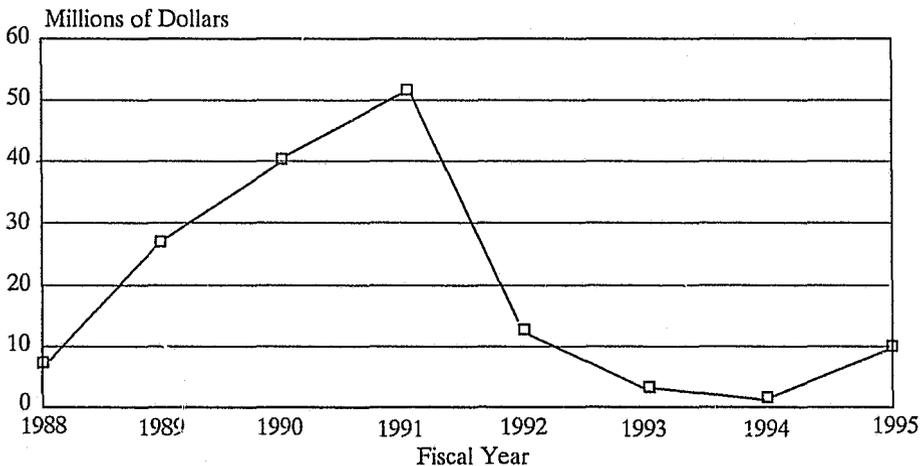
The program provides either 100% or 50% funding for construction or expansion of local detention centers. Subdivisions make application to the Department of Public Safety and Correctional Services for inclusion in the construction program.

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

Since Fiscal Year 1988, the state has appropriated over \$150 million in local construction grants. Exhibit 12.2 shows that most of the funds were authorized between Fiscal Year 1989 and Fiscal Year 1992.

Exhibit 12.2

LOCAL DETENTION CENTER CAPITAL APPROPRIATIONS
AUTHORIZED BY THE GENERAL ASSEMBLY



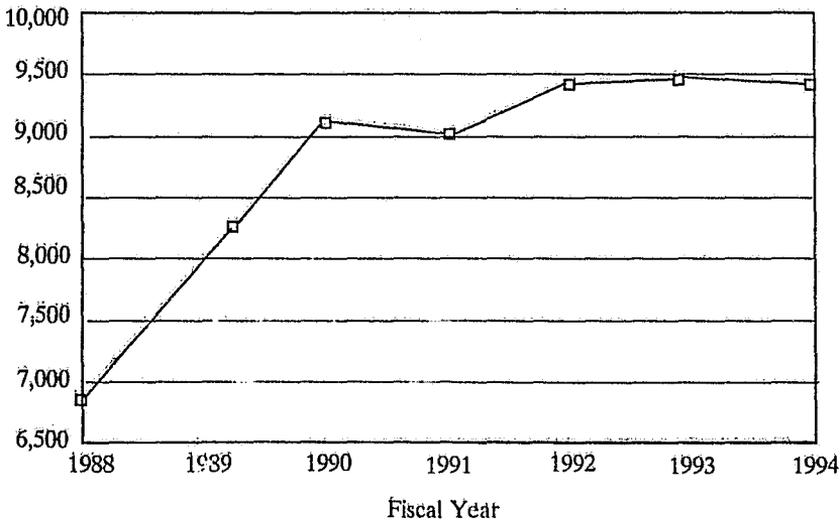
Source: Capital Improvements Authorized by the General Assembly

LOCAL DETENTION CENTER POPULATION

From Fiscal Year 1988 to Fiscal Year 1994, the average daily population of local detention centers rose from 6,743 to 9,391, a 39% increase as seen in Exhibit 12.3. As Exhibit 12.4 shows, over 60% of the population is still pre-trial. Within the population sentenced to local jurisdictions, it is interesting to note the changes in the lengths of sentences in the sentenced population. Exhibit 12.5 shows that the population sentenced for 91–365 days increased by 340 inmates from the end of January 1988 to the end of January 1989. Since January 1989, the rate of growth has decreased substantially. This implies that the local detention centers have absorbed most of the population increase resulting from the change in sentencing laws.

Exhibit 12.3

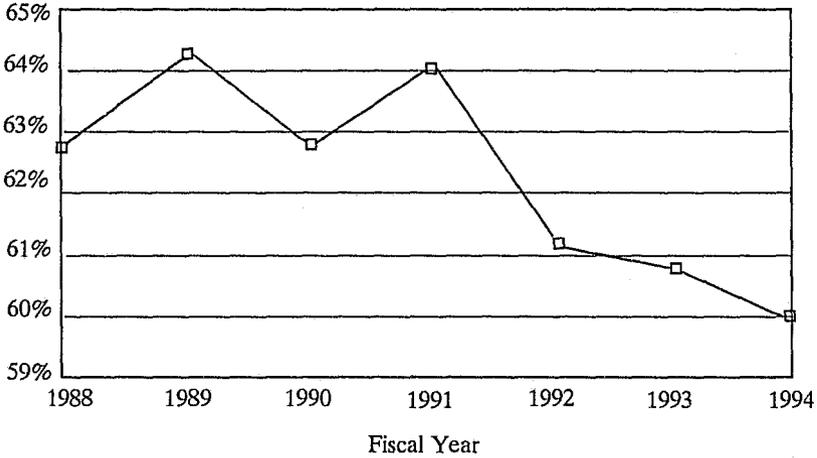
LOCAL DETENTION CENTERS
AVERAGE DAILY POPULATION



Source: Department of Public Safety and Correctional Services

Exhibit 12.4

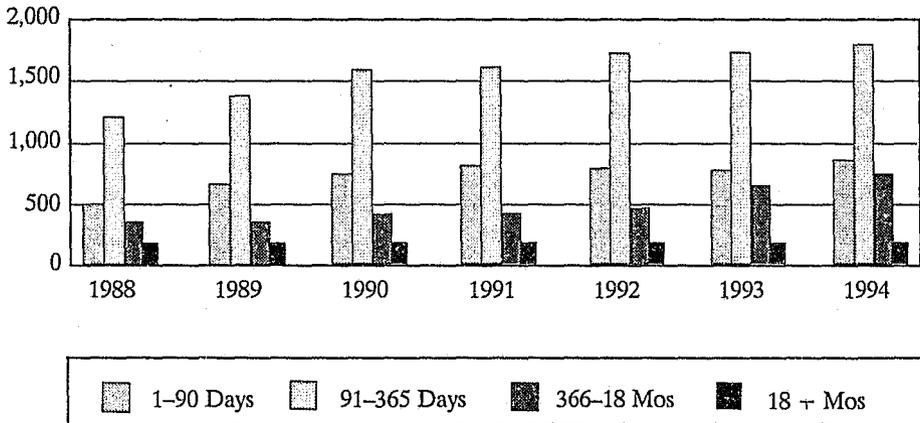
LOCAL DETENTION CENTERS
PERCENT PRETRIAL



Source: Department of Public Safety and Correctional Services

Exhibit 12.5

LOCALLY SENTENCED INMATES
LAST DAY POPULATION - JANUARY



Source: Department of Public Safety and Correctional Services

In Fiscal Year 1991, the General Assembly directed the local jurisdictions to make greater use of alternatives to incarceration. Implementation has been directed largely toward local pre-trial populations. In Fiscal Year 1994, approximately 300 to 400 individuals were placed on home detention each month by the counties and the Baltimore City Detention Center, producing a savings in current and future bed needs.

CHAPTER 13

ADULT INCARCERATION IN STATE PRISONS

RECEPTION

Upon sentencing by the trial court to the state prison system, the offender is received into the custody of the Division of Correction. Male inmates are sent to the Maryland Reception Diagnostic and Classification Center, a maximum security facility located in Baltimore City. Females are received at the Maryland Correctional Institution for Women in Jessup. The purpose of the initial reception process is to match the necessary degree of security, the programmatic needs of each inmate, and the institution which can best meet those needs.

During the reception and diagnostic process, the inmate receives a physical examination, Division of Correction clothing, and an informational handbook. The Division of Correction creates its own internal file for each offender which includes an identification number and a commitment file containing fingerprints and a photograph. In addition, he or she receives addictions and educational testing, a psychological screening and assessment, AIDS education orientation, an initial classification testing, and a hearing by a classification team. All other inmates have files prepared for them which will initiate the parole hearing process when eligibility has been met.

Inmate Classification Process

The inmate classification process begins when an inmate is received into the custody of the Division of Correction, and continues at each institution where the inmate is housed until the time of release. Each inmate's initial classification and determination of security designation must be completed within 45 days of reception. In classifying inmates committed to its custody, the Division of Correction uses a multi-disciplinary process which requires consideration of objective behavior-oriented data, inmate participation, and correctional staff review.

Beginning in 1988, the Division of Correction implemented a new objective system for classifying inmates into one of four security classifications: maximum, medium, minimum, and pre-release. According to the system, six risk assessment factors are used to initially assess the inmate's potential for violence, escape, and institutional behavior:

- severity of the current offense;
- total length of sentence;
- existence and type of detainer (a detainer is a document issued by the courts which list any other charges which are pending for an individual);

- prior commitments;
- history of escape; and
- history of violence.

The total score indicates the initial security level necessary to control the inmate's behavior within the least restrictive setting. For example, an inmate convicted of first degree murder sentenced to life could expect an initial classification of no less than maximum security.

Since implementation of the objective classification system, the proportion of the total inmate population in minimum and pre-release security housing has steadily increased. Before 1988, 95% of all inmates were classified medium security. Since 1988, approximately 55% of inmates have been classified as medium security. Most of this shift has been into pre-release and minimum security, which increased by twice as much as maximum security.

After an inmate classification score is determined, each inmate's classification score is reviewed by a three member classification team. The team will determine the inmate's security level, institutional work and program assignment, as well as the need for administrative, disciplinary, or protective custody. Each team is comprised of a correctional officer at the rank of sergeant or above, the inmate's assigned classification counselor, and either a classification supervisor, senior classification counselor, or in the case of the pre-release system, the unit manager or captain. Additional categories of staff which may serve on a team include psychologists, vocational or academic instructors, social workers, State Use Industries managers, or other employees designated by the warden.

In addition to the recommended score, the team also reviews the inmate's age, length of sentence, type of offense, criminal and social history, medical status, institutional adjustment, psychological reports, programming needs, work history, and parole status/current mandatory release date. Based on these factors, the team will decide either to agree with the recommended security score or to override it in favor of an alternative security designation. If the team recommends an override, it must be for substantive reasons only, and not due merely to disagreement with the instrument or the weighting of factors. The basis for any decision to override must be accompanied by a written explanation. A 1988 study of the operation of the first ten months of the new system found that 19% of all initial classification recommendations were overridden. It was found that in the majority of cases, the decision to override was made to effect an increase in initial security assignment. In Fiscal Year 1994, 12% of initial classifications were overridden.

Following the assessment of the inmate's security and programmatic needs, and after direct questioning of the inmate to ascertain whether the inmate has any enemies incarcerated in any of the state prisons, the classification team makes a

final recommendation for incarceration at a particular institution. For example, an inmate recommended for medium security confinement, having a mental health problem requiring housing within a mental health unit, would be placed in the Mental Health Unit at the Patuxent Institution, if space is available. The actual prison selected is contingent on the availability of bed space.

An inmate has the right to be present for any classification team action of which the inmate is the subject, although the inmate may waive that right by providing a written statement. Any recommendations made by the classification team may be contested informally or formally by an inmate through written complaints directed to the Inmate Grievance Office.

The warden, or his or her designee, is required to review all classification team recommendations. However, the warden is required to personally review, approve, or disapprove all recommendations that:

- override an initial or reclassification instrument recommendation;
- initially designate an inmate to minimum or pre-release status;
- reclassify an inmate to an increased or decreased custody or security level;
- transfer an inmate to a "CARC" (Community Adult Rehabilitation Center).
- remove an inmate from disciplinary segregation;
- place or remove an offender from protective custody or administrative segregation; or
- restore revoked good conduct credit.

The following classification team actions require the approval of both the warden and Commissioner of Corrections or his or her designee:

- family or special leaves where an inmate is allowed to leave an institution;
- interstate corrections compact transfers;
- all contracts for predetermined parole release dates (Mutual Agreement Program); and
- any transfer to the Federal Bureau of Prisons.

Any actions to disapprove a classification team's action or order for further proceeding must be supported by a written rationale of the official rejecting the recommended status. Action by the warden and/or the Commissioner of Correction reflecting a classification override or change in security level for an inmate is final.

Once a classification decision is made and approved, the chair of the classification team is required to enter the date by which the inmate must be seen for reclassification. Inmates recommended for maximum or medium security institutions are reviewed one year from the initial review date. Inmates recommended for housing at minimum security or pre-release facilities must be seen no later than six months after the initial assessment.

The reclassification team may also make changes to an inmate's security classification level to permit nonmedical or nonmental health institutional transfers and to alter the institutional program assignment without a change in security designation. Assessment by the classification team for reclassification actions includes the same risk factors present on the initial classification, as well as eight additional factors:

- time remaining to serve;
- history of drug or alcohol abuse;
- time since last infraction;
- seriousness of infractions;
- frequency of infractions;
- job and program performance;
- family/community ties; and
- responsibility demonstrated.

The inmate's total score will determine whether the inmate's security level increases, remains the same, or decreases. Reclassification serves as a means of systematically monitoring progress. Simply achieving a score which makes an inmate eligible for a change does not guarantee or imply that a change will occur. As with initial classification, final recommendations for reclassification made by a classification team are reviewed by a warden for approval or disapproval.

After the offender is classified, the information is entered into a computerized Offender Based State Correctional Information System (OBSCIS), containing all background and legal information on each inmate. Recently, the department expanded the system for diminution credit input and automatic release date calculation. In August 1993, the division began inputting diminution credits and expects to have all records updated by February 1996.

The department is currently developing integrated, automated information systems based on a single identifier (an individual's fingerprints). The system will integrate incarceration information with community supervision information, arrest booking information, health care management, and other information systems which are currently separate systems.

Diminution of Confinement

Most inmates are entitled to diminution of the period of confinement from the first day of sentencing to the custody of the Commissioner of Correction. An individual inmate's length of sentence can be reduced up to 20 days per month depending on qualification and participation in one of five categories:

- good conduct;
- industrial, agricultural, or administrative tasks;
- vocational, educational, or other training courses;
- special work or other special programs; and
- confinement within restrictive double-celled and dormitory housing areas.

Inmate length of stay can be reduced a number of ways. Five days may be deducted for each month during which an inmate has displayed exceptional industry, application, and skill in the performance of industrial, agricultural, or administrative tasks assigned to the inmate. Five days may also be earned for successful participation and progress in vocational and other educational programs or training courses. Inmates may also earn diminution credits through progress made in a qualifying special project. These may include assignments ranging from work in the central laundry facility, to employment by State Use Industries, or to assignment as a tutor to other inmates in educational programs. Finally, all inmates except those serving sentences for murder, rape, sex offenses, drugs, or child abuse may be eligible to receive an additional five day per month reduction when housed in a double-celled area in an institution under a court order which prohibits double-celling, are double-celled in an institution where the use of double cells causes the single cell capacity of that institution to be exceeded, or are housed in dorms where that area of confinement does not provide 55 square feet of living area. An inmate may not earn more than 20 credit days per month from all sources.

Inmate Drug Testing

The use of drugs, alcohol, or other controlled substances by inmates or the importation of these into the state prisons by staff or visitors is illegal and a threat to the safety of all persons in the institution. The Division of Correction has an inmate drug testing policy. This policy includes random urinalysis testing of inmates. While other methods may be used as well, testing is intended as an effective supplemental method of detecting and disciplining inmates using illegal substances. Inmates may be subject to drug testing on a routine, random and spot-check basis.

- Routine Testing - Routine testing is conducted whenever an inmate's custody status is subject to review or change. Upon reception into the custody of the Division of Correction, all inmates are tested within a

period of three days. Routine tests are also administered to inmates under consideration for work release, family leave, work detail, drug treatment, or any other program which permits the inmate to be outside the institution with or without supervision.

- Random Testing – An inmate may be selected for testing in the course of random testing of an entire population of an institution or a housing unit or program within an institution. Random testing of a segment of the entire population must be approved by a shift commander or higher authority who is responsible for determining the manner in which inmates are selected. The shift commander also documents the random testing process.
- Spot Check – A spot check of an inmate may occur when staff has reasonable suspicion to believe that an inmate is in direct possession of illicit drugs, has illicit substances in their designated housing area, or is intoxicated or under the influence of drugs.

An inmate found guilty of violating the division's substance control policy is subject to sanctions imposed by a hearing officer consistent with the nature of the violation and the previous adjustment history of the inmate. Recommended sanctions must be approved by the warden. Any of the following sanctions may apply:

- confiscation of contraband;
- counseling, warning, or reprimand;
- suspension of privileges;
- revocation of good conduct time earned;
- payment of expenses associated with the destruction of any property;
- housing restrictions;
- segregation; and
- other sanctions deemed appropriate.

The Commissioner of Correction may suspend, reduce or lessen any sanction recommended by a hearing officer or approved by a warden.

Security Classifications

The Maryland Division of Correction uses five security level classifications for the purpose of assigning inmates to institutions, housing units, and academic and vocational programs. Factors which relate to the physical configuration of an institution, and which are used to establish an institution's security level include, the number and type of perimeter barriers, the existence and period of operation of gun towers, use of exterior perimeter patrols, use of detection devices, and housing configuration.

The five security levels are:

Super Maximum

As the highest security level, a super maximum institution provides secure housing within a secure perimeter. Features include single-celling, extremely limited movement within the institution, constant observation, and limited inmate to staff and no inmate to inmate contact. Inmates may receive noncontact supervised visitation, and are eligible for compassionate leave, though they are not eligible for special or family leave. Transportation of super maximum security inmates (except for medical emergency) requires restraint with handcuffs, black box (a security device which covers handcuffs), waist chain and leg irons, and escort by two armed correctional officers.

The Maryland Correctional Adjustment Center, located in Baltimore City, is the only super maximum security custody level prison in the state. This institution houses the most dangerous and disruptive inmates for the Division of Correction, as well as those who have demonstrated their inability to be housed in the other state facilities. Inmates are housed in their cells for 23 hours per day, except for one hour of recreation. Use of telephones is not permitted; however, privileges, such as commissary and access to radios or televisions are allowed. Educational, religious, psychological, and addictions services are available to each inmate within his cell.

Maximum Security

Maximum security is the second highest security level. These institutions provide secure housing within a secure perimeter to control the behavior of inmates who pose a high risk of violence, are significant escape risks, have a history of serious institutional disciplinary problems, or are likely to have serious disciplinary problems. Inmates within the institution are under direct supervision and restricted to certain areas. All movement is either directly controlled or closely observed. Inmates have access to jobs and programs within the perimeter only. Inmates in maximum security status are permitted to have both contact and noncontact supervised visitation. Privileges include weekly commissary, phone use, access to radios and televisions, and scheduled recreational periods. Family and special leave are not allowed. Any inmate transported for compassionate leave or other reasons (except medical emergency) requires full restraint with handcuffs, black box, waist chain and leg irons, and escort by two armed correctional officers.

The Maryland Penitentiary and the Maryland House of Correction Annex are currently the only state prisons which exclusively house maximum security inmates. The major portion of the penitentiary was built in Baltimore City in 1894 but parts of the penitentiary were built in 1809. The House of Correction Annex was built in the early 1990s with the support services building still under construction in 1994. The current master plan is to transfer all inmates from the penitentiary into the House of Correction Annex and convert the penitentiary into a minimum security Metropolitan Transition Center. Maximum security

prisons include inmate housing, medical services, school, library, recreation building, and two recreation yards. Full-time day and evening classes for elementary through college levels, utilizing computer and reading labs, are available. Inmates may only participate in prevocational programs, self help groups, and religious and psychological services.

Medium Security

Medium security institutions provide secure housing within a secure perimeter for inmates who pose some risk of violence, are moderate escape risks, or have a limited history of institutional disciplinary problems. Inmates receive periodic observation, and move within the institution under staff supervision. Movement is usually confined to specific areas on a scheduled or written pass basis. Access to jobs and programs is available within the perimeter. Inmates may receive contact and noncontact supervised visitation, are eligible for special and compassionate leave (escorted by an armed correctional officer), and other routine privileges (commissary, phone use, radio, TV, recreation). Transportation (excepting medical emergency) requires restraint with handcuffs, black box, waist chain and leg irons, and escort by one armed correctional officer.

The Division of Correction operates six medium security institutions throughout the state, each of which provide a full range of security, classification, medical, religious, recreation, social work, and visiting programs and services. These include: the Eastern Correctional Institution in Somerset County; the Maryland Correctional Training Center in Hagerstown, which offers the division's most comprehensive vocational training program; the Roxbury Correctional Institution in Hagerstown; the Maryland Correctional Institution - Hagerstown; the Maryland House of Correction in Jessup, parts of which date to 1879; and the Maryland Correctional Institution - Jessup.

Minimum Security

Minimum level security institutions have fewer security features because the inmates assigned to these facilities pose less risk of violence or escape, and have a minimal history of disciplinary problems. While the inmates require secure confinement, they may move within the institution without direct staff supervision. Supervised participation in jobs and programs may be either within or outside of the perimeter. Contact and noncontact supervised visitation is allowed inside or outdoors. General transportation of minimum security inmates, as well as special and compassionate leave only require escort by on-duty staff. During incarceration, inmates have access to commissary, phone, radio and television, periodic movies, and recreational privileges.

State minimum security institutions include the Brockbridge Correctional Facility in Jessup; the Central Laundry Pre-Release Unit in Sykesville (Carroll County) which provides laundry services to many state institutions; the Jessup Pre-Release Unit; the Baltimore City Correctional Center; the Metropolitan

Transition Center which is scheduled to open at the end of Fiscal Year 1995; and the Herman L. Toulson Boot Camp, a six month military style program emphasizing physical exercise, intensive counseling, and educational training for first time offenders. Programs at these institutions are primarily work-oriented, seeking to assist inmates in making responsible choices concerning societal reentry. A variety of educational, religious, psychological, and social activities are provided to the inmate population. Addictions counseling and numerous self help support groups also operate to better prepare inmates for lesser security reclassification and eventual release.

Pre-Release

Pre-release institutions have the fewest security features, and are designed for inmates who present the least risk of violence and escape, and who have a satisfactory record of institutional behavior. Minimal supervision is provided. Inmates are eligible for unescorted family, special, and compassionate leave programs; however, they are accountable to the staff. Periodically supervised indoor and outdoor contact visitation is allowed, and inmates have access to all previously mentioned privileges.

Most inmates are released for reentry into the community through the Maryland Correctional Pre-Release System. This system runs programs and services that are intended to prepare inmates for return to society. These programs emphasize job readiness training, work crews, work experiences, and actual work release.

In order to assist in the transition, the following programs are provided to the inmate: orientation, group counseling, individual counseling by an assigned counselor or other support personnel, special education, basic, advanced, and pre-GED classes, Alcoholics Anonymous, Narcotics Anonymous, AIDS education, employment readiness, recreational activities, and religious services by volunteer outreach ministries.

The system is administrated centrally with offices located at the Jessup Camp site. Pre-release facilities include the Baltimore City Pre-Release Unit, Eastern Pre-Release Unit in Church Hill (Queen Anne's County), Southern Maryland Pre-Release Unit in Charlotte Hall (St. Mary's County), Poplar Hill Pre-Release Unit in Quantico (Wicomico County), the Harold E. Donnell Building at the Maryland Correctional Training Center, and the Pre-Release Unit for Women in Baltimore City. The division also has contractual arrangements for 123 beds in county and privately operated facilities.

The Maryland Reception Diagnostic and Classification Center (MRDCC) and the Maryland Correctional Institution for Women (MCI-W) house all levels of security. MRDCC is the reception center for male inmates. MCI-W is the reception center for women, and the only state prison for female inmates within the Division of Correction. Both of these institutions are classified

administratively as maximum security, but house all classification levels of inmates. MRDCC operates as a maximum security prison. The women's prison maintains separate campus style dormitory housing for medium and minimum security inmates.

Incarceration at the seven-story Reception Center in Baltimore City is of a temporary nature, as inmates participate in the classification process prior to transfer to a facility which is appropriate to their security and programmatic needs. Educational and psychological programs operate mainly for screening and assessment. Each regular housing unit has a small area for television viewing; the size and construction of the housing units, however, does not permit space for other recreational activities. Outdoor recreation is conducted from May to October on a rooftop deck.

Upon arrival at the Women's Correctional Institution, female inmates receive comprehensive testing as well as diagnostic and classification services. Incoming inmates participate in orientation counseling sessions, and program counseling to meet their educational, vocational, and recreational needs during incarceration. Prior to release, inmates participate in release orientation programs which address legal issues, family reintegration, positive problem solving, employment readiness, and community service referrals.

Exhibit 13.1

DIVISION OF CORRECTION PRISON POPULATION BY AREA

JESSUP AREA STATE PRISONS

	<u>Security Class.</u>	<u>Operating Capacity</u>	<u>Total Pop.*</u>	<u>Cost per Inmate**</u>
MCI - Women	Medium	815	809	16,870
MD House of Correction - Annex	Maximum	1,180	1,180	15,563
MD House of Correction	Medium	1,198	1,198	24,236
MCI - Jessup	Medium	1,161	1,152	17,897
Brockbridge Correctional Facility	Medium	651	643	16,125
Jessup PRU	Minimum	560	556	14,282
<u>H.L. Toulson Boot Camp</u>	<u>Minimum</u>	<u>367</u>	<u>255</u>	<u>17,112</u>
Total		5,932	5,793	

State Prisons in Baltimore City

	<u>Security Class.</u>	<u>Operating Capacity</u>	<u>Total Pop.*</u>	<u>Cost per Inmate**</u>
MD Correctional Adjustment Center	Maximum	288	256	39,792
MD Penitentiary	Maximum	912	912	25,467
MD Reception, Diagnostic & Class Ctr	Maximum	853	836	12,164
Baltimore City Correctional Center	Minimum	508	503	13,333
Baltimore PRU	Minimum	221	221	12,504
<u>Baltimore PRU - Women</u>	<u>Minimum</u>	<u>136</u>	<u>134</u>	<u>19,975</u>
Total		2,918	2,862	

Hagerstown Area State Prisons

	<u>Security Class.</u>	<u>Operating Capacity</u>	<u>Total Pop.*</u>	<u>Cost per Inmate**</u>
MCI - Hagerstown	Medium	1,852	1,852	18,475
MD Correctional Training Center	Medium	2,927	2,922	12,164
<u>Roxbury Correctional Institution</u>	<u>Medium</u>	<u>1,918</u>	<u>1,911</u>	<u>13,051</u>
Total		6,697	6,685	

Somerset County State Prisons

	<u>Security Class.</u>	<u>Operating Capacity</u>	<u>Total Pop.*</u>	<u>Cost per Inmate**</u>
Eastern Correctional Inst.	Medium	2,649	2,649	16,271
<u>Eastern Correctional Inst. - Annex</u>	Minimum	420	418	16,271

	<u>Security Class.</u>	<u>Operating Capacity</u>	<u>Total Pop.*</u>	<u>Cost per Inmate**</u>
Total		3,069	3,067	

Remaining State Prison Population

	<u>County</u>	<u>Security Class.</u>	<u>Oper. Capacity</u>	<u>Total Pop.*</u>	<u>Cost per Inmate*</u>
Central Laundry PRU	Carroll	Minimum	498	494	13,650
Eastern PRU	Q. Anne's	Minimum	180	180	13,607
Poplar Hill PRU	Wicomico	Minimum	180	177	13,680
<u>Southern Maryland PRU</u>	<u>Charles</u>	<u>Minimum</u>	<u>180</u>	<u>178</u>	<u>13,459</u>
Total			1,038	1,029	

	<u>Operating Capacity</u>	<u>Total Pop.*</u>
Contractual Pre-Release	136	131
Home Detention	600	348
Local Jail Backup	N/A	72
Patuxent Institution – Annex***	530	488
<u>Patuxent Institution – Mental Health</u>	<u>192</u>	<u>159</u>
Total		1,198

*Population on September 16, 1994

**Estimated cost for fiscal year 1995

***The Patuxent Institution is an agency which reports to the Secretary and is not part of the Division of Correction. The Patuxent Annex houses the DOC overflow population. The Patuxent Institution also has a program, limited to 350 offenders, which brings the total Patuxent capacity to 1,072.

Source: Department of Public Safety and Correctional Services

Exhibit 13.1 reflects the designed security levels of the specified institutions as well as the capacity and population housed at each institution. If the commissioner or designee determines that emergency housing conditions exist, an inmate may be housed in an institution with a different security designation.

The Division of Correction also provides special housing for inmates at each of the maximum and medium security institutions:

- **Disciplinary Segregation** – Disciplinary segregation is used to isolate an inmate from the general population for punishment. Inmates may only be housed on disciplinary segregation when found guilty of an infraction. All inmates in disciplinary segregation are allowed showers and exercise periods. Privileges such as telephone use, radios, televisions, and movies generally are not permitted. Meals are served in the cells, and regular

medical and dental care is provided. Reading material may be requested through the institutional library. Only commissary items designated by the warden of each institution may be ordered.

- **Administrative Segregation** – Administrative segregation is used to isolate an inmate from the general population in order to prevent escape, to house inmates under death sentences, to protect other inmates, and to provide housing pending adjustment action or criminal investigation. An adjustment action would occur if an inmate is caught breaking a rule. Inmates may be placed on administrative segregation at the request of the warden. However, a classification team must hold a hearing within 96 hours to determine whether or not administrative segregation should be continued. All inmates on administrative segregation are provided exercise periods, showers, and in-cell meals.
- **Protective Custody** – Protective custody status is either requested by an inmate or initiated by an institution if a danger to the safety of an inmate is perceived. Protective custody is granted after the institution has conducted an investigation to verify that the inmate is in danger. The same privileges available to inmates in the general population are available to those on protective custody where possible.

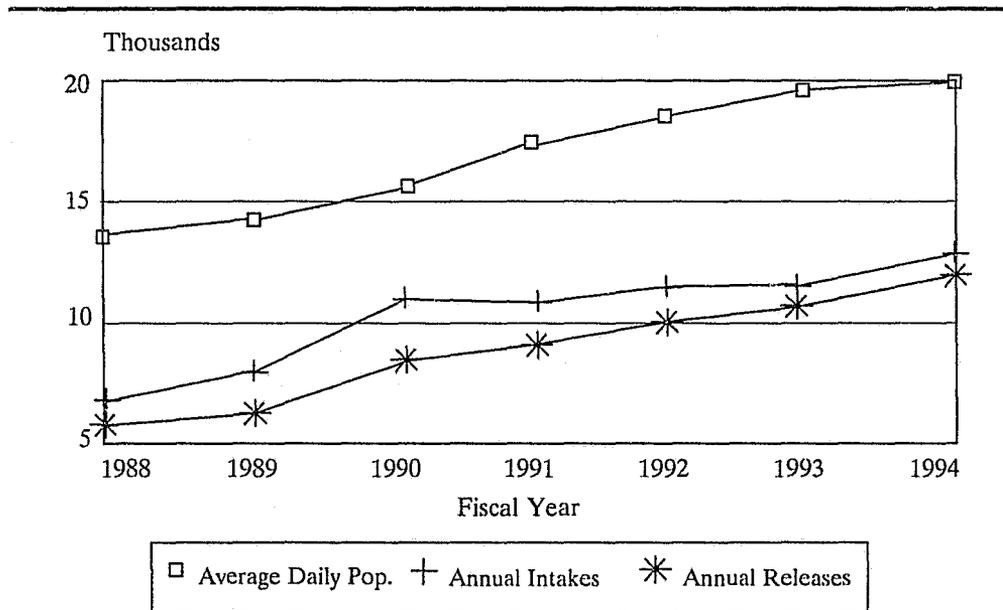
Operating Factors

Statistical Trends

Since Fiscal Year 1988 the state prison population has expanded from an average of almost 13,000 to over 20,000 in Fiscal Year 1994, as seen in Exhibit 13.2. Because of the rapid growth, particularly during 1988–92, overcrowded conditions have become the norm. To accommodate the population, the Division of Correction has increased the number of beds in the system. From Fiscal Year 1981 to Fiscal Year 1994, the General Assembly authorized funds to add almost 12,000 beds at a cost of \$318.9 million. These projects to expand the division's prison capacity include the new House of Correction Annex, the annex at the Eastern Correctional Institution as well as housing units in the Roxbury Correctional Institution, the Maryland Correctional Training Center, and the Maryland Correctional Institution in Hagerstown. During the 1994 session, the General Assembly authorized \$40 million to begin constructing the new 1,296 bed Western Correctional Institution in Allegany County. The new prison is designed so that a second component of 1,296 beds can be built if necessary.

Exhibit 13.2

DIVISION OF CORRECTION
POPULATION TRENDS SINCE 1988



Source: Department of Public Safety and Correctional Services

Population Growth

Increases in crime rates and criminal convictions have resulted in more offenders being committed to the Division of Correction. A large influx of offenders is a problem when the numbers of those convicted enter the system (intakes) in excess of the number of inmates released due to parole and sentence completion (releases). Exhibit 13.2 displays the annual average number of intakes and releases over the last ten years. Fiscal Year 1990 experienced an average intake of 931 inmates per month against 728 releases, a net increase of 203 per month or 2,436 new inmates per year. The disparity in intakes over releases decreased to 26 in Fiscal Year 1993 as releases began to catch up to intakes.

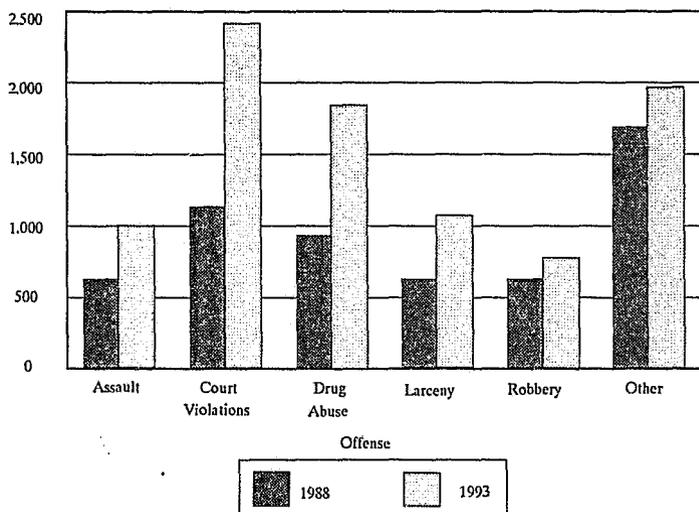
A second factor relates to higher rates of serious crime. In particular, crimes involving drugs have risen substantially and consequently have had the greatest impact on the penal system. Many controlled dangerous substance offenses now carry lengthy mandatory sentences, serving to increase the size of the standing population while at the same time reducing the pool of inmates eligible for early release. Since Fiscal Year 1988 inmates convicted of drug offenses increased from 10% (936) of intakes to 20% (1,770). Similar growth is evidenced in the percentage of those incarcerated for court violations, rising from 21% (1,218) to

27% (2,414). Court violations occur when an offender on parole, mandatory release, or probation commits an infraction and is sent to the division. It is interesting to note that during the same period, those incarcerated for robbery and burglary showed significant declines as a percentage of the total population. For robbery, the percentage fell from 11% (642) to 9% (827). Those incarcerated for burglary decreased from 10% (607) to 6% (562) of the population. Exhibit 13.3 compares the major offenses at intake for Fiscal Year 1988 with Fiscal Year 1993.

Whether these trends indicate a shift in emphasis by the law enforcement community or are reflective of changes in criminal behavior patterns is not clear. However, it does appear that the number of offenders convicted of drug infractions, and the lengths of their sentences, will continue to climb.

Exhibit 13.3

MAJOR OFFENSES AT INTAKE



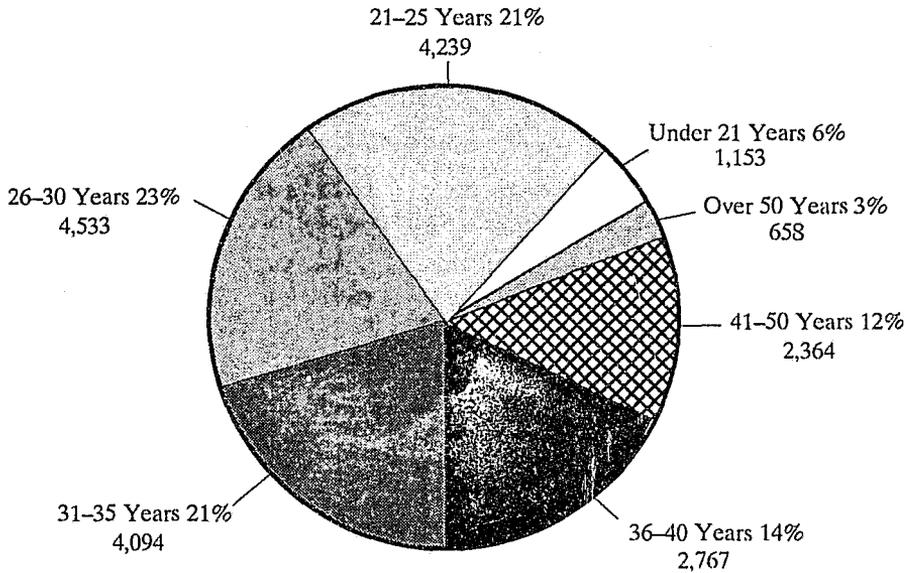
Source: Department of Public Safety and Correctional Services

Inmate Characteristics

Over the past four fiscal years, the characteristics of the state inmate population have remained relatively stable. As Exhibit 13.4 shows, 85% of the inmate population are under 41 years of age, 12% are 41-50 years, and 3% are over 50. Offenders aged 21-30 comprise 44% of the inmate population, making this the largest group in the inmate population.

Exhibit 13.4

**DIVISION OF CORRECTION
INMATE POPULATION BY AGE**



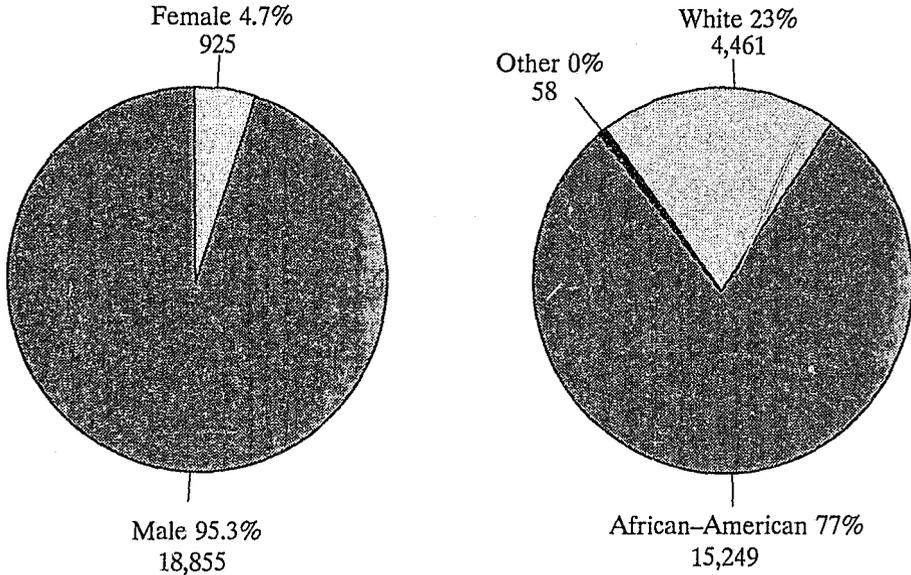
Source: April 1994 Inmate Characteristics, Department of Public Safety and Correctional Services

While inmates in their twenties still comprise the largest single group, there has been a gradual decrease from this segment accompanied by a small increase in those in their thirties. As the population continues to age, there will continue to be a gradual shift upward between age groups. While this trend will not have serious implications on housing accommodations for the inmate population in the near future, ultimately an older prison population will require more health care and other services.

Finally, Exhibit 13.5 contains race and sex data for the inmate population. As of April 1994, African-Americans comprised 77% of the inmate population, whites comprised 23% of the population, and all other races constituted less than 1% of the population. With regard to sex, 95% of the population is male and 5% female.

Exhibit 13.5

DIVISION OF CORRECTION
SEX AND RACE DISTRIBUTIONS



Source: April 1994 Inmate Characteristics, Department of Public Safety and Correctional Services

Inmate Idleness

Inmate idleness is among the most serious problems faced by the correctional system. It is viewed as a contributing factor in poor staff morale, institutional disturbances, and riots. Moreover, it represents a measure of lost opportunity to address the serious problems of inmates, such as:

- drug and alcohol dependency;
- lack of marketable job skills;
- poor work habits; and
- basic educational deficiencies.

Currently 30% of the inmate population receive no programming. This is due in large part to the inability of the state to develop program resources to keep pace with the rapid growth in the inmate population. Overcrowded conditions limit the provision of program services to inmates to varying degrees. As noted, inmates are assessed in terms of need upon entry into the system. Those with

educational deficiencies are required by law to receive remedial services. All other inmates participate on a space available basis. Overcrowding also restricts participation in vocational training, institutional jobs, prison industries, and work release or work crews.

To better manage limited resources, the division has implemented a case management process. As inmates approach their final years of incarceration, they are reevaluated in terms of programmatic need. Programs to assist in preparing for release and readjustment are thus reserved for inmates at the point in time when they will receive the greatest benefits. The correctional system also benefits from the expansion of educational and vocational training provided by the Maryland State Department of Education and the State Use Industries. All of these resources are fully discussed in later sections of this chapter.

Education and Vocational Training

One of the most critical points in the correctional process is an inmate's reentry into the community. Persons committed to the division are frequently undereducated and lack marketable job skills. The complications that accompany such a transition can be reduced by the controlled processing of offenders through both adequate supervision and educational and vocational programming services.

As part of the intake process at the Maryland Reception, Diagnostic and Classification Center, and the Maryland Correctional Institution for Women, inmates are tested for their level of educational functioning. In order to address the basic educational needs of inmates with the most severe educational deficiencies, the Division of Correction has established mandatory schooling programs for inmates scoring below the fifth grade level in reading or math. This minimum level was later increased over a three year period to the eighth grade reading level by legislative action.

The fiscal condition of the state from Fiscal Year 1992 to Fiscal Year 1994 resulted in reducing the programs offered to inmates. The major system-wide reduction was the abolition of night school. Educational programs were also abolished in some of the pre-release centers outside the Baltimore-Jessup region. The division also abolished some of the vocational programs, such as the heating and air conditioning program in the Maryland Correctional Institution in Jessup. The division is planning to restore some of these programs and fund them with inmate welfare funds derived from commissary and vending sales and phone commissions.

Adult Basic Education

Adult basic education is provided to inmates who lack skills in reading, writing, and mathematics and who have scored between 0.0 and 8.0 (grade equivalent) on standardized achievement tests. Students attend classes at least

ten hours per week, and follow a curriculum that stresses academic skills of reading, writing, and math computation. The adult basic education program leads to the Basic/Life Skills Certificate issued by the Maryland State Department of Education on the basis of standardized achievement test scores. Adult basic education services are available at all maintaining institutions and some pre-release units.

Adult Secondary Education

Many inmates continue their education by enrolling in the Adult Secondary Education Program which prepares them to take the high school equivalency examination. Administered by the Maryland State Department of Education, the program is designed to prepare students in each of the examination areas of the General Equivalency Diploma. During Fiscal Year 1988, the high school equivalency examination, which included a writing test for the first time, was implemented. Adult secondary education services are available at all maintaining institutions and some pre-release units. It is estimated that 2,900 inmates will enroll in these programs in Fiscal Year 1995.

Special Programs

The State Department of Education provides specialized educational programs for inmates who have not reached their 21st birthday. These include federal Chapter I programs for neglected and delinquent youths, and special education services for youthful offenders with identified disabling conditions which inhibit their learning. Inmates are screened at the Maryland Reception and Diagnostic Classification Center or the Maryland Correctional Institution for Women to determine eligibility. For those inmates identified as having disabling conditions, instruction is provided at the maintaining institutions by certified staff. For special education identified students, an individual educational plan is developed with student and parental involvement.

Vocational Programs

The State Department of Education provides training in competency-based vocational education programs that prepare inmates for entry level positions in a chosen field. The programs, which combine classroom and laboratory elements, are generally 600 hours in duration. Upon completion, each student is rated by criteria that measure his or her ability to perform specific trade tasks. It is estimated that 650 inmates will be enrolled in these programs in Fiscal Year 1995.

The newest training facility is the Occupational Skills Training Center in Baltimore City, part of the planned Metropolitan Transition Services Center at the Maryland Penitentiary. The project is a renovation of the State Use Industries warehouse located adjacent to the Maryland Penitentiary in Baltimore City. The building was converted into a co-educational facility for incarcerated males and

females. Inmates learn trade and technical skills through participation in short term training programs. Skill areas were developed around occupational clusters, including auto mechanics, graphics, office/clerical, and trade and industrial occupations.

Apprenticeship Program

The Division of Correction, in cooperation with the State Department of Education, sponsors apprenticeship programs registered with the Maryland Apprenticeship and Training Council. These programs provide related classroom instruction and skill training in a production setting, in such areas as upholstery, graphics, and meat cutting. Apprenticeship programs are between 6,000 and 8,000 hours in duration, with 1,000 hours considered a minimum period of training. Coordination between the State Department of Education's vocational training programs and State Use Industries (SUI) ensures that inmates receive a logical follow-up to their initial training, and SUI receives better prepared trainees for their registered apprenticeship programs. A full-time job developer placement specialist, employed by State Use Industries, provides specialized assistance to apprentices when they qualify for work release or are returned to the community.

Post-Secondary Education

Cooperating colleges and universities, in consultation with the State Department of Education and the Division of Correction, provide full-time post-secondary educational opportunities at all maintaining institutions. Inmate students help fund their programs of study through a combination of various federal grants, work study, and personal funds. Approximately 850 inmates enroll annually in post-secondary education programs.

Case Management Services and Inmate Programming

The Division of Correction has long recognized its obligation to ensure that programs and services are delivered systematically to inmates who really need services at the time in their incarceration when programming can be most beneficial. In the past, many inmates served their incarceration time without participating in needed programs. Other inmates, eager to impress the Parole Commission, or just wanting to keep busy and earn good time credits, would participate in programs that they did not need. Timing of when inmates receive programming is also a problem. Inmates would often be placed in vocational training programs years before they would be ready to return to work in the community. By the time the inmate went to work, either on work release or following incarceration, the benefits realized from training were lost. There was also a lack of continuity of programming as inmates moved from one institution to another.

Case Management Services Program

To address these problems, the Division of Correction created the Case Management Unit in 1986. Case management services are applied to all inmates when they are within two years of an estimated release date. Once an inmate is in this target population, an assigned classification counselor reviews all records to determine what assessment data is needed. An assessment may include reports from all of the various areas, including academic and vocational education, medical, classification, custody, psychology, social work, and addictions treatment. All of this data is then used to determine the programming that an inmate most needs.

When all of the assessment information is assembled, the inmate meets with a classification team to develop a program plan. When possible, this team is comprised of representatives from the various disciplines, such as educational, medical, and psychological services. This plan includes all programming needed by the inmate to best prepare him or her for release. This comprehensive plan is designed to address all of the remainder of time in which the inmate will be incarcerated. It includes start and stop dates for programs, transfers, changes in security, etc. Once approved, all programming is reserved via a computerized reservation system which is similar to that used for hotel or airline reservations. The computerized system ensures that resources are available and are not over-enrolled. When the program plan is developed, the reservation system tells the team what resources are available and when a vacancy exists in any particular program. If the inmate meets minimum standards of behavior, all programming is automatically provided according to schedule. The classification counselor is the case manager who monitors the program to ensure that the program is implemented and that the inmate is participating successfully.

Mutual Agreement Programming (MAP)

A second program coordinated by the case management staff is Mutual Agreement Programming (MAP). The MAP program is targeted to those inmates who are eligible for parole, have had at least one parole hearing, and are within three years of their next parole hearing. A MAP agreement is a legally binding agreement that guarantees a release date if the inmate completes the required program.

The process is initiated when an inmate submits a written proposal for a management plan to the Parole Commission and the Division of Correction. The DOC then has a team of representatives from the various institutions assess the inmate's needs and negotiate with the inmate a legally binding agreement to address them. The agreement may include academic, vocational, counseling, employment readiness programs and work release, as well as planned institutional transfers, changes in security status, and a guaranteed parole release date that is contingent upon successful completion of all other requirements. Program participation is assured through the previously mentioned computerized

reservation system. In return, inmates are expected to adhere to strictly defined behavioral standards, complete programming in all areas where program intervention is identified as necessary, and have a stable home situation and full-time job reserved prior to release.

The MAP program differs from the case management services program in that case management is less selective in terms of which inmates can participate and has no release requirements. The program appears to be a positive influence on inmate behavior and on return rates to probation or reincarceration. A 1988 report by the Department of Public Safety and Correctional Services indicated that inmates who participated in the MAP program were returned to probation or incarceration less often than any other group of releases studied over a three year period. The department estimates that this is still the case and attributes this to the additional incentives inmates in the MAP program have and the type of offender entering the program.

State Use Industries

State Use Industries is the prison industry arm of the Division of Correction. The mission of State Use Industries is to provide structured employment and training activities for Division of Correction inmates. It is the policy of the Division of Correction to provide a work environment that resembles that of a private business.

Business practices utilized include production bonuses, performance based promotional opportunities, double-shift operations, quality control standards, and professional marketing and sales. As a program, State Use Industries seeks to expand its vocational training and employment capabilities. Inmates are taught marketable skills and are provided with constructive employment. In combination, the business and program components make a cost effective contribution to the reduction of inmate idleness and preparation for release through the development of technical and social skills. Inmates are employed in various programs, including graphic arts, upholstery, meat cutting, metal fabrication, furniture assembly and restoration, telemarketing, sewing, data processing, and other skills.

The products and services are sold to the state, political subdivisions, and other nonprofit organizations as specified by law. The program operates on a revolving fund account and generates revenue to maintain its own operations. State Use Industries has a budget of \$25 million in Fiscal Year 1995. In Fiscal Year 1993, State Use Industries employed 1,016 inmates. The number of inmates employed is expected to increase. State Use Industries is planning to add a modular housing shop to the new Western Correctional Institution.

Religious Services

The primary function of religious programming is to permit inmates to exercise their First and Fourteenth Amendment rights to practice religion. The Chief, Religious and Volunteer Services for the Division of Correction develops religious services program policy and researches inmate requests to practice. Institutional chaplains, wardens, and the Commissioner of Corrections are advised of all such requests. The primary consideration in a decision to permit an inmate to engage in certain religious practices is the division's obligation to accommodate the request in light of security and management needs.

Worship services and religious studies led by chaplains, volunteers, or inmates are operational in most institutions. Special services called for during the religious calendar year are observed whenever possible. Chaplains and volunteers also sponsor special events such as seminars, retreats, and workshops. It is estimated that 20% of all inmates housed under the jurisdiction of the Division of Correction and the Patuxent Institution routinely participate in religious programming.

Because of their special functions, the Maryland Reception, Diagnostic and Classification Center (MRDCC) and the Maryland Correctional Adjustment Center (MCAC) provide services on a modified basis.

Finally, the chaplains evaluate how religious services volunteers and organized ministries can more effectively contribute to the Division of Correction's mission to prepare inmates for transition to the community.

Volunteer Services

Registered volunteers and citizen participants (occasional or one-time-only volunteers) provide a multitude of services to inmates and institutions. The majority of donated time supports the chaplaincy services department and inmate organizations managed under the Volunteer Activities Coordinator. These two areas have received as much as three-quarters of volunteer hours spent. Other areas benefiting from volunteer services include recreation and education programs; classification; social, psychology, and medical services; the institutional mailrooms; and the fiscal offices. The Department of Public Safety and Correctional Services conducts workshops to enhance the knowledge, skills, and training of volunteers.

Examples of the various programs and inmate organizations which operate throughout the state include: the Writers' Club at the Maryland House of Correction; Alternative Directions, a program offering structured segments on social, civil and legal issues at the Maryland Correctional Training Center and the Maryland Correctional Institution for Women; veterans' organizations; and the community AIDSWALK event which received the support of inmates at the Eastern Correctional Institution and the Maryland Correctional Training Center.

Volunteers representing various churches, temples, mosques, and organized ministries lead holy book studies, prayer groups, holy day celebrations, topical seminars, and retreats. They further provide counseling, supplies, equipment, and holiday gifts for inmates. In many instances, religious support volunteers continue to assist inmates after parole release by facilitating contacts with community worship groups.

Medical and Mental Health Services

The Division of Correction is responsible for ensuring that appropriate health care is provided to the inmate population. Fiscal Year 1985 marked the first year that the majority of health services were provided by private contractors. Health services are provided by contract in the Baltimore, Hagerstown, Jessup, and Eastern regions of the state correctional system. Contractor provided services include:

- preliminary screening;
- intake physical examinations;
- general dispensary services;
- physicians and nurses;
- dentists;
- optometrists;
- pharmacists;
- radiology;
- inpatient mental health;
- pre-employment and periodic physical examinations, and general on-call coverage;
- sick call;
- medical specialists;
- infirmaries;
- administration and medical records files; and
- inpatient and emergency hospital care.

Additionally, programs designed to address infection control, inmate health education, quality assurance, and high risk employee hepatitis are offered. The estimated cost for providing contracted health care services exceeds \$30 million each year.

Inmates who require special housing, intensive routine examinations, psychotropic medication, and who become occasionally or routinely dysfunctional in the prison population are considered to be in need of mental health services. Due to limited resources, efforts are invested in those inmates who are grossly dysfunctional, represent a threat to themselves or others, and require special attention and placement. Inpatient beds are used for special housing of inmates awaiting transfer to mental hospitals and for treatment of those inmates who are found acutely dysfunctional.

Social Services

Social services are available to inmates through social work and addictions programs. Services from self help groups such as Alcoholics Anonymous and Narcotics Anonymous are available. The Division of Correction and the Alcohol and Drug Abuse Administration of the Department of Health and Mental Hygiene had operated an intensive addictions program; funding for these programs, however, was abolished during the cost containment rounds of 1991.

Inmates' Rights

It is the policy of the Division of Correction to provide equal access for all inmates to programs, services, and activities without regard to the inmate's race, religion, national origin, sex, handicap, or political beliefs, to the extent that the security of the prison is not compromised.

Upon sentencing to the jurisdiction of the division, each inmate receives a handbook which contains all rules, regulations, and rights as they pertain to the individual. Any inmate charged with committing a major or minor infraction of any rule has the right of due process assured through the conduct of a fair and impartial hearing. Minor infractions can be disposed of through formal or informal methods. Informal disposition will result in a temporary penalty such as restriction to the housing area or loss of recreation for 24 hours or less. A hearing before hearing officers is held for major infractions or for formal disposition of minor infractions. When a hearing officer finds an inmate guilty of an infraction, that officer may recommend an action ranging from counseling and/or a warning to the restriction of privileges, revocation of good conduct time, or reclassification to greater security.

Each inmate also has specific legal rights pertaining to correspondence, representation, and administrative remedy of grievances.

Correspondence

An inmate may write to a lawyer, representatives of the Legal Aid Bureau, any court of law, or the State Public Defender's office for help with direct appeals of criminal convictions, petitions for post conviction relief, and for *habeas corpus*

relief in the state and federal courts. The inmate is notified that his outgoing correspondence will not be opened unless clear and convincing evidence to warrant inspections exist. However, all incoming correspondence is checked for contraband.

Representation

Indigent inmates may have a lawyer appointed to provide representation in direct appeals of criminal convictions. The lawyer is usually a public defender from the Appellate Inmate Services Division of the Public Defender. In capital death penalty cases, added representation may be provided. The court may also appoint a lawyer to represent an indigent inmate under the Uniform Post Conviction Procedure Act. Finally, inmates may request help from the United State District Court of Maryland.

The Division of Correction supplies legal materials to all inmates, limited only by institutional rules concerning space, fire, safety, and security. Inmates lacking funds for paper, envelopes, or postage for legal mail can receive assistance by contacting a classification counselor. Other services such as access to law books and typewriters are available. Inmates are also allowed to help each other with legal matters. An example can be found in *The Legal Manual for the Maryland Prisoner*. Edited and published by inmates and volunteers, this manual provides prisoners with a resource of legal and administrative information.

Administrative Remedy

An Administrative Remedy Procedure (ARP) is a mechanism available to resolve complaints or problems which the inmate is unable to resolve informally. Each written complaint is reviewed and investigated at the institutional level. The institutional response can be appealed to the Commissioner of Correction, and ultimately to the Inmate Grievance Office. Complaints 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 may dismiss the case. Cases which are dismissed can be appealed to the appropriate circuit court. Final decisions are reviewed by the Secretary of the Department of Public Safety and Correctional Services for affirmation, reversal, or modification. The secretary's decision is final for the department, but the decision may also be appealed in the circuit court within a 30 day period.

Finally, Maryland requires that most confined persons serving sentences of six months or more shall receive a parole hearing at or before the completion of one-fourth of the sentence. In the case of consecutive sentences, this applies to the total sentence. Offenders convicted of violent crimes, who do not receive a life sentence, shall receive a parole hearing at or before completing one-half of their sentence. Inmates serving a life sentence are eligible after serving a prescribed number of years, less credits for earned time. Institutions must notify the Parole Commission when the inmate becomes eligible. Prior to a parole hearing, inmates

have the right to inspect or have a representative inspect any file reports or other documents used by the commission in making its decision. After a decision has been rendered, an inmate may appeal to a panel of two commissioners for review.

Alternative to Incarceration and Intermediate Services

The Division of Correction also administers two programs which divert inmates from traditional prison. The home detention program is an alternative to incarceration which can reduce the amount of time an inmate spends in prison. Boot Camp is an intermediate sanction designed for nonviolent, youthful offenders sentenced to the Division of Correction.

Home Detention and Electronic Monitoring

The Maryland General Assembly enacted legislation instituting the home detention program in the 1990 session. The program is designed for low risk offenders with less than 18 months remaining on their sentences. Most offenders in the program are inmates sentenced to the Division of Correction, although it does include pre-trial detainees from the Baltimore City Detention Center. The program also includes offenders sentenced to probation that require more intensive supervision than the Division of Parole and Probation can offer, and includes offenders on parole.

In order for an offender to be eligible for the program, an inmate may not be serving a life sentence, be convicted of child abuse, or have a documented history of escape. Individuals in the program must also have a sponsor in order to participate in the program. Sponsors and their families must agree to limitations on their personal calls, maintenance of an alcohol free home, and removal of all firearms. In addition, offenders placed in the program are screened by the staff. Inmates are not placed into the program unless recommended by the Home Detention Unit of the Division of Correction.

Offenders in the program serve their sentences in their place of residence, and are supervised through the use of electronic monitoring equipment. This involves attaching an electronic band around the ankle of the offender, which electronically maintains contact with the verification unit located in their residence. If the offender breaks contact with the verification unit, the Home Detention Unit is alerted that a violation is in progress. Offenders receive random voice tests approximately four times per day. Failing the voice test might mean that the individual has absconded or is intoxicated; both are program violations.

As of June 1994, the state owned 600 home detention units but was only supervising 383 offenders. The department hopes to increase the number of participants in the program to 500 by Fiscal Year 1995.

There are a number of advantages to home detention. The punishment is effective, yet the cost is lower than incarceration. Since home detention is more restrictive than probation or parole and less confining than incarceration, it offers

corrections officials an alternative for offenders who do not need to be incarcerated but pose too great a risk to be placed on probation. Moreover, the offender can continue to work and maintain family connections. Finally, home detention offers limited relief for the state's overcrowded prisons.

Herman L. Toulson Boot Camp

Legislation creating the state's boot camp was enacted in the 1990 session, with the camp opening on August 6, 1990. As of October 1993, Maryland was one of 28 states operating boot camp programs. Boot camp programs are also referred to as shock incarceration programs. In 1983, the first shock incarceration program in the country was established in Georgia. Boot camps involve a short period of confinement, typically three to six months, during which young offenders are exposed to a demanding regimen of strict discipline, military-style drill and ceremony, physical exercise, and physical labor. The goals of this type of program are:

- to deter offenders from committing future crimes by giving them a sobering exposure to the realities of prison life;
- to provide offenders with the discipline to overcome past problems that might have led them to commit past crimes; and
- to provide punishment that is more restrictive than probation, but less so than prison.

The program is focused on first time, non-violent young offenders who are believed to be the most impressionable.

The Herman L. Toulson Boot Camp is located in Jessup. To be eligible for the program, offenders must be assigned to the Division of Correction. Eligible candidates must volunteer and meet the following criteria:

- are serving their first major adult incarceration in the Maryland Division of Correction;
- are less than 32 years old;
- are not serving a sentence for a crime of violence as listed in Article 27, Section 643B of the Annotated Code of Maryland, with the exception of burglary, daytime housebreaking, and attempts to commit the offenses;
- are initially classified minimum security or less;
- have at least nine months to serve on their sentence;
- have no history of escapes or elopements or absconding from supervision; and
- are medically, physically, and psychologically fit to participate in the program.

The program is six months in duration for offenders who are assigned to platoons of approximately 50 inmates. Although the program has a capacity of 367 inmates, there were only 243 inmates participating as of June 1994. Over 80% of the offenders in the program are male.

Offenders are given more freedom and better living accommodations as they successfully proceed through the program, although all living accommodations are classified as minimum security. The program involves academic training, employment readiness training, substance abuse treatment and education, and reality therapy counseling. This program is integrated with military discipline, physical training, and hard work. Every offender who enters the program negotiates a predetermined parole release agreement that outlines the future performance of the inmate in areas such as education, institutional behavior, drug and alcohol treatment, and work assignment. The agreement guarantees a definitive parole date to the offender upon successful completion of the program. Once the offenders are released on parole, they are placed on intensive supervision under the Division of Parole and Probation.

Since boot camp programs are new, there is little data available to determine if they are successful. Maryland's boot camp exhibits lower recidivism rates than inmates in the Division of Correction; this may be due, however, to the type of offender volunteering for the program compared to the division's average inmate, or other reasons. The number of offenders served by the boot camp is small, so there is little impact on reducing prison overcrowding. The program is more costly on a per diem basis due to more intensive demands on custodial and rehabilitative staff; cost savings are realized, however, because the offenders serve for a shorter sentence than he or she would have served in prison. Ultimately the success of this intermediate sanction will be gauged by the ability to reduce the number of offenders returned to incarceration.

Recidivism

Recidivism is the habitual or chronic relapse or tendency to relapse into crime or antisocial behavior. The recidivism rate is the extent to which an offender becomes a repeat offender. The new criminal event that is selected to record the offender's reentry into the criminal justice system, as a repeat offender, will influence the recidivism rate. Counting only new convictions that result in incarceration or new supervised probation will provide one rate of recidivism. Using any arrest on new charges or a revocation of parole as well as convictions will provide a different rate of recidivism.

The Department of Public Safety and Correctional Services has used a Repeat Incarceration Supervision Cycle (RISC) to follow-up on offenders between Fiscal Year 1981 and Fiscal Year 1991. The RISC sample includes only new convictions resulting in state prison incarceration or state supervised probation. Excluded would be subsequent commitments to local detention centers or rearrests without conviction. Based on this very narrow definition of the

criminal event that triggers recidivism, the findings show that the overall return rate for Division of Correction releases after three years has ranged from 41.9% to 51.1% between Fiscal Year 1981 and Fiscal Year 1989 (see Exhibit 13.6).

Exhibit 13.6**DPSCS RECIDIVISM RATES**

Fiscal Year of Release	Total Released	Cumulative Total and Cumulative % of DOC Releases Returned within:					
		1st Year		2nd Year		3rd Year	
1981	3,349	599	17.9%	1,092	32.6%	1,403	41.9%
1982	2,799	570	20.4%	1,041	37.2%	1,430	51.1%
1983	3,583	802	22.4%	1,357	37.9%	1,717	47.9%
1984	4,007	865	21.6%	1,536	38.3%	1,908	47.6%
1985	4,641	1,018	21.9%	1,778	38.3%	2,243	48.3%
1986	4,813	949	19.7%	1,753	36.4%	2,243	46.6%
1987	5,326	1,074	20.2%	1,931	36.3%	2,508	47.1%
1988	5,310	941	17.7%	1,876	35.3%	2,354	44.3%
1989	5,496	1,027	18.7%	1,857	33.8%	2,455	44.7%
1990	7,754	1,439	18.6%	2,640	34.0%	N/A	N/A
1991	8,662	1,771	20.4%	N/A	N/A	N/A	N/A

Source: Department of Public Safety and Correctional Services

CHAPTER 14

ADULT INCARCERATION IN PATUXENT INSTITUTION (STATE PRISON)

The Patuxent Institution is a maximum security correctional treatment facility, located in Jessup. The institution is an agency of the Department of Public Safety and Correctional Services. The Director of Patuxent is appointed by, and reports directly to, the Secretary of the Department. The operation of the institution is governed by Article 31B, Annotated Code of Maryland. Previously, the institution's mission was to rehabilitate habitual offenders. In 1988, incidents involving Patuxent inmates on early release led to the creation of a special committee to review the institution, culminating in legislation enacted in 1994 to codify a new mission. The major changes of the legislation stipulated that the institution:

- provide remediation services for youthful offenders;
- limit the eligible population to 350 offenders;
- remove obsolete procedures and language; and
- clarify and update parole criteria.

However, Article 31B continues to provide the institution with many unique characteristics by placing the responsibility for diagnostic and rehabilitative services, conditional release decision-making, and conditional release supervision under the control of one correctional agency.

Inmates convicted of first degree murder, first degree rape, or a first degree sex offense are excluded from admission to Patuxent, unless the sentencing judge has recommended referral for evaluation for potential admission. Inmates serving multiple life sentences or life sentences with aggravating circumstances are also excluded. All other Division of Correction inmates may apply for admission to the program on their own, or be recommended by the commissioner of the Division of Correction or the state's attorney. Further, at least three years must remain on an inmate's sentence in order to be admitted to Patuxent.

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

- has an intellectual deficiency or emotional imbalance;
- is likely to respond favorably to the institution's treatment programs; and

- can be better rehabilitated through these programs than by other types of incarceration.

Inmates who are found not eligible for Patuxent are returned to the Division of Correction.

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

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

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

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

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

Article 31B places additional limits on the authority of the Board of Review in relation to the conditional release status of parole. While the board may make recommendations concerning parole for nonlife sentences, final approval for

parole status is required by the Secretary of Public Safety and Correctional Services. The parole of eligible persons serving life sentences must be approved by both the Secretary of Public Safety and Correctional Services and the Governor. In addition, an eligible person serving a life sentence for first degree murder, first degree rape, or a first degree sex offense may not be released on parole until the inmate has served the same minimum time required for Division of Correction inmates (25 years for murder with an aggravating circumstance and 15 years for other life sentences, less diminution of confinement credits).

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

- frequent reporting schedules;
- prohibitions on drug and alcohol use;
- routine testing for illicit drug or alcohol use;
- unannounced home and job site checks;
- regular criminal history checks; and
- regular contacts with the eligible person's family and friends.

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

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

The Patuxent Institution has a capacity of slightly over 1,000 inmates, which includes a 48-cell housing unit for women opened in August 1990. As of June 1994, the institution housed 997 inmates, of which 686 were under the jurisdiction of the Division of Correction. Division inmates housed at Patuxent do not participate in the institution's treatment program as eligible persons; they are provided, however, with educational services.

Exhibit 14.1 shows that as of April 1994:

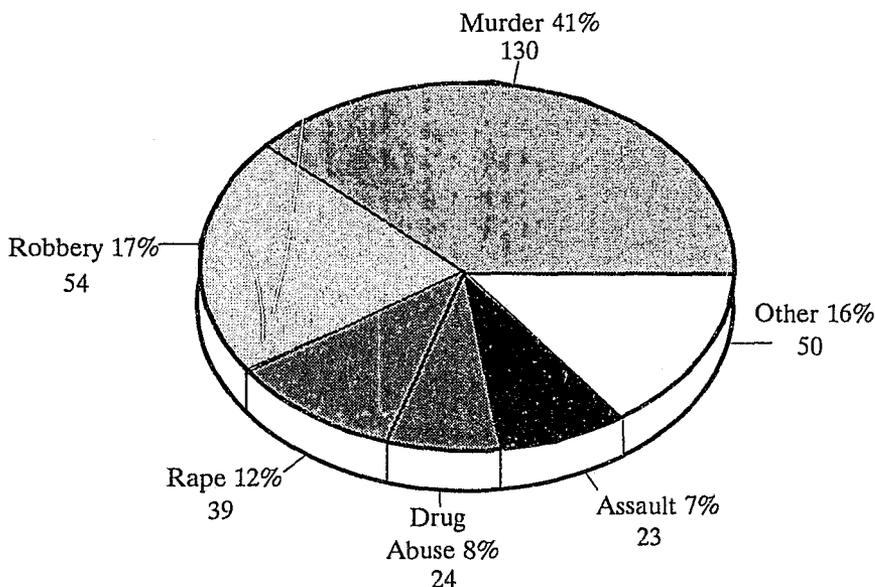
- over 40% of the Patuxent population was convicted of murder;
- 17% of robbery;

- 12% of rape;
- 8% of drug abuse;
- 7% of assault; and
- 16% of offenders were convicted of other crimes including other sex offenses, larceny, and kidnapping.

The average age of the Patuxent eligible population is almost identical to the average age of the Division of Correction population (32 years).

Exhibit 14.1

PATUXENT INSTITUTION
INMATES BY OFFENSES



Source: April 1994 Inmate Characteristics, Department of Public Safety and Correctional Services

The average annual cost per inmate at Patuxent is expected to be \$28,723 in Fiscal Year 1995, as compared to \$25,467 at the State Penitentiary, which is another maximum security facility in Maryland. In contrast to Division of Correction facilities, Patuxent Institution operates as a mini-correctional system. As a result, the slightly higher cost (13%) of incarceration at Patuxent includes many services not directly provided by division facilities, such as diagnostic services, academic education, conditional release decision-making, and

conditional release supervision. These services are provided to division inmates by other agencies, such as the Parole Commission, and the Division of Parole and Probation and are not included in the calculation of per capita costs at division facilities.

CHAPTER 15

PAROLE

PAROLE AND MANDATORY RELEASE

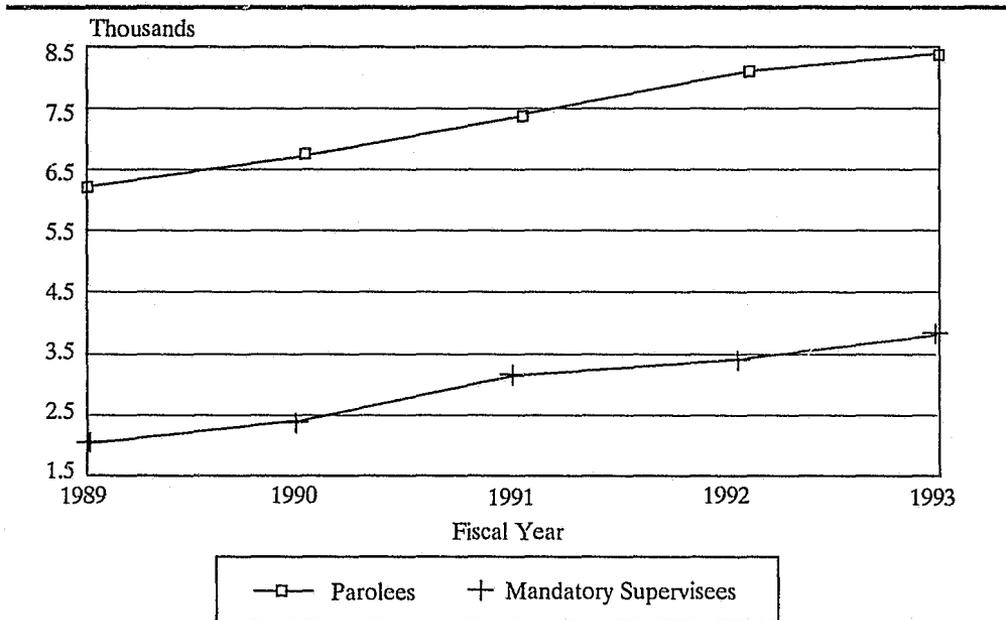
An offender who is incarcerated can be released prior to completion of sentence in one of two ways, through parole or through mandatory release. Parole is a conditional release from imprisonment. The offender is permitted to serve the remainder of his or her sentence in the community provided that the offender complies with the terms and conditions provided in the written parole order set by the Parole Commission. Mandatory release occurs after the offender has served his or her sentence less time credits earned for good behavior. The offender is supervised in the community as if on parole until the full sentence has expired. If the inmate violates the rules governing parole, the inmate forfeits all credits and can be returned to prison and required to serve the balance of the sentence.

Upon parole or mandatory release, an offender is assigned to the Division of Parole and Probation. After the initial processing is completed, the offender's continued connection with the division is through the Case Management Services Unit. Each offender is evaluated as to his or her risk to the community. An assessment includes an evaluation of the offender's criminality, personality, and social environment. Based upon this assessment, which is updated every six months, offenders will be supervised at one of two levels of supervision, intensive or standard. These are similar to those described in Chapter 11 for supervision of persons on probation.

The parole caseload of the Maryland Division of Parole and Probation has increased dramatically from Fiscal Year 1989 to Fiscal Year 1993. As shown in Exhibit 15.1, the number of parolees has increased from 6,098 cases at the end of Fiscal Year 1989 to 8,404 estimated cases at the end of Fiscal Year 1993, an increase of 38%. The mandatory supervision caseload almost doubled from Fiscal Year 1989 to Fiscal Year 1993. This growth has been the result of increases in offender incarceration trends, as discussed under the adult incarceration section of this handbook.

Exhibit 15.1

**PAROLEES AND MANDATORY SUPERVISEES
UNDER SUPERVISION AT THE END OF FISCAL YEAR**



Source: Division of Parole and Probation

MARYLAND PAROLE COMMISSION

The Parole Commission has jurisdiction over locally sentenced inmates and those sentenced to the State Division of Correction. Inmates admitted to Patuxent Institution are under the jurisdiction of a separate Patuxent parole board.

Inmates serving sentences of confinement of less than six months are not eligible for parole. Inmates serving sentences of confinement of six months or more are required to have their first parole hearing after serving one-fourth of their sentence, with exceptions. These exceptions are:

- all inmates convicted of crimes of violence who do not receive a mandatory sentence are required to serve at least one-half rather than one-fourth of their sentences before becoming eligible for parole;
- the minimum time to be served for offenders sentenced to life imprisonment is 15 years less diminution (good time) credits;

- the minimum time to be served for a sentence of life imprisonment under Article 27, Section 413 is 25 years less diminution credits. An Article 27, Section 413 sentence is a life sentence for first degree murder in lieu of a sentence of death;
- offenders of the age of 65 or more who has served at least 15 years of a mandatory sentence for a crime of violence may apply for and be granted parole; and
- inmates serving a term of life imprisonment at Patuxent Institution as eligible persons shall only be paroled with approval of the Governor.

Inmates serving their full sentence less diminution credits are released on parole until the expiration of their sentence or sentences. Mandatory release on parole would include those inmates serving a sentence of under six months who are not eligible otherwise for a parole hearing.

A hearing is held before a hearing examiner or a parole commissioner acting as a hearing examiner except where the inmate is convicted of homicide or serving a sentence of life imprisonment. Before the hearing the parole commissioner is required to give timely notice to the inmate of a scheduled hearing. Immediately after the hearing, the hearing examiner must inform an inmate verbally of the hearing examiner's decision. The hearing examiner has two days to submit a written report of findings and recommendations to the Commissioner of Correction, the Parole Commission, and the inmate. The inmate and the Commissioner of Correction have five days to file a written exception to the hearing examiner's recommendations. The recommendation of the hearing examiner is final unless an appeal is filed or the commission decides to hear the case.

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

The commission is required to give an inmate a written report of its findings within 30 days after the hearing. The commission, rather than the hearing examiner, makes the final decision to parole an individual and to negotiate and sign contractual parole release agreements such as the MAP program. The MAP program is a Mutual Assistance Program in which the inmate agrees to accomplish certain goals (i.e., education or job training) to earn a predetermined release date.

Victims' Rights

State law requires notification to victims of all crimes of violence listed under Article 27, Section 643B. Parole hearings may be open to the public on written request of the victim. The commission may restrict the attendance of certain individuals under certain circumstances. Upon the written request of the chief law enforcement official responsible for an investigation, some hearings may be closed in order to protect the investigation.

Ninety days from the date of the scheduled parole hearing, the commission is required to give notice of the hearing to the victim or the designated family member. The victim or designated family member has 30 days from the date of the commission's notice to submit an updated impact statement. The Division of Parole and Probation must complete the updated statement and provide it to the commission within 30 days.

Inmates' Rights

An inmate has a right to see any document in his or her file except diagnostic opinions, confidential victim impact statements, or other privileged information. On request, the commission has the responsibility of providing the substance of any information withheld from the inmate. The hearing examiner and the commission are required to consider the following factors in determining if an inmate shall be paroled:

- the circumstances of the crime;
- the physical, mental, and educational qualifications of the inmate;
- the progress of the inmate during confinement including progress in academic and mandatory education programs (Section 22-102 of the Education Article);
- the probability that the inmate will violate law while on parole;
- a determination that the release of an inmate is compatible with the welfare of society;
- an updated victim impact statement; and
- any recommendation of sentencing by the judge at the time of sentencing.

Revocation of Parole

An inmate charged with a violation of parole receives a revocation hearing before one commission member or hearing examiner. The offender is entitled to counsel of choice or is provided a counsel by the Public Defender's office. If parole is revoked, an offender shall serve the remainder of the sentence originally imposed unless the commission member grants credit for street time against the sentence. The offender may appeal to the circuit court within 30 days. The court shall hear the case on the record.

The parole agent has a duty under the rules to make application for a warrant of parole violation. The commission is authorized by statute to issue warrants for apprehension of violators. A parolee or mandatory releasee detained by a warrant may not be released on bail. All retake warrants are issued by the commission. The commission may, in its discretion, consult with the parole agent or other responsible person to determine whether a warrant should be issued. A parolee taken into custody as an alleged parole violator is entitled to a hearing before a hearing examiner. The hearing officer may:

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

This second alternative allows a violator to be released pending the parole revocation hearing. A hearing is held within 60 days after apprehension of the parolee on the parole violation warrant. The parole violator is entitled to counsel and may produce witnesses, provided that the commission is notified five days in advance. The commission may issue subpoenas to compel the appearance of witnesses.

One commissioner is authorized to conduct hearings, which are subject to judicial review. The commission, in its discretion, may delay a revocation hearing to consider the case by the commission *en banc*. The decision of the commission in such a hearing is by majority of commissioners participating on the *en banc* panel. The chairman or any two commissioners may order an *en banc* panel.

The commission is an administrative body not bound by the rules of criminal evidence in the conduct of the revocation hearing. The commission may decide to:

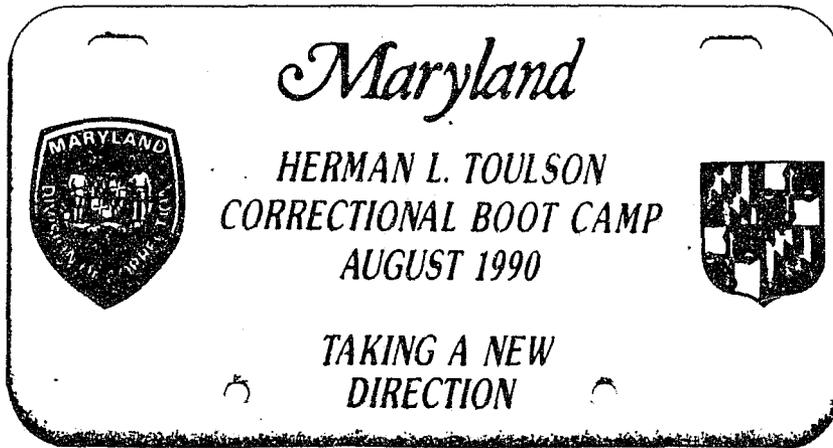
- continue the parolee on supervision on the original conditions of parole or mandatory release; or
- reincarcerate the offender with allowance for street time under parole supervision.

Unallowed time spent on parole supervision is added to the legal expiration date of the original sentence.

The *ex post facto* clauses of the U.S. and Maryland constitutions provide that terms of confinement are governed by the laws and regulations in force when the crime was committed, not to later laws which are more punitive. As applied to parole eligibility, these clauses require that inmates are subject to the parole laws and regulations in force at the time they are sentenced. Later laws that are more restrictive have the effect of denying liberty to inmates.

Section 4

Future Trends and Conclusions



We can have as much or as little crime as we please, depending on what we choose to count as criminal.

Herbert L. Packer

This final section discusses the trend toward tougher sentencing laws which, tempered by the fiscal requirements of incarceration, has resulted in policies and programs which reduce the amount of time in which offenders are actually incarcerated. Efforts to devise appropriate punishments providing alternatives to incarceration and general conclusions are also presented.

CHAPTER 16

THE FUTURE

INCREASING CRIME RATE

There is a public perception that crime has increased. Statistics show this perception to be accurate. From 1988 to 1993, the crime rates of most categories tracked by the State Police's *Uniform Crime Reports* have risen. In this period, Maryland has seen growth in the incidence of murder, rape, aggravated assault, robbery, larceny, burglary, and car theft.

TREND TOWARDS LONGER AND MANDATORY SENTENCES

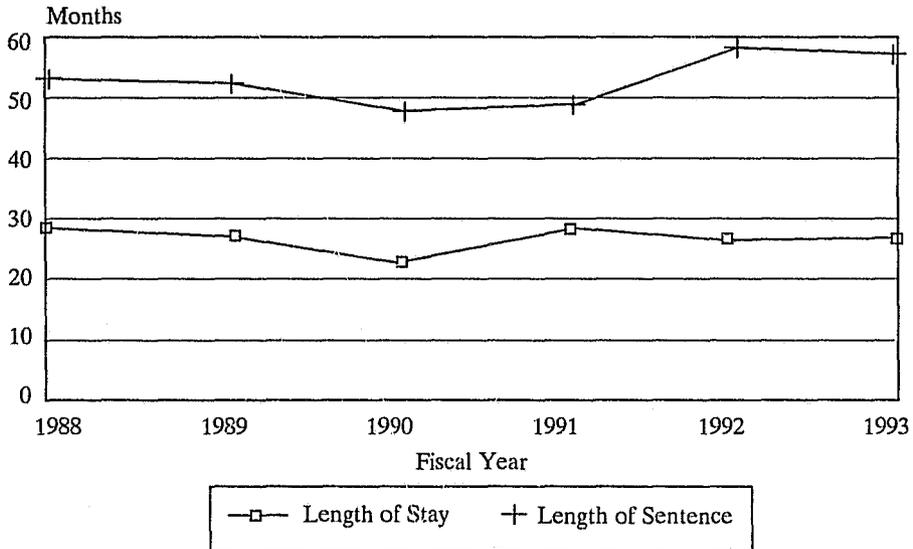
Under Article 41, Section 4-607, an inmate may be considered for parole after 25% of that inmate's sentence is served. The exceptions are for offenders convicted of violent crimes who are not required to be considered until 50% of their sentence is served, offenders sentenced to life imprisonment who must serve at least 15 years, and offenders convicted of first degree murder who must serve at least 25 years. These statutory requirements only address the minimum sentence length that must be served. Parole guidelines followed by the Maryland Parole Commission require offenders convicted of more serious crimes to serve a greater percentage of their total sentence.

There has been public demand for offenders to serve longer sentences for violent crimes. In response, the General Assembly has passed legislation requiring mandatory sentences for certain crimes, as well as to restrict parole for certain offenses. For example, Chapter 717 of the Acts of 1994 established a mandatory ten year sentence for anyone convicted of a second violent crime and required that individuals convicted of violent crimes serve at least one-half of their sentence before becoming eligible for parole. Chapter 237 of the Acts of 1987 and Chapter 418 of the Acts of 1988 allow the courts to impose a sentence of life without parole for first degree murder. The Drug Kingpin Act of 1989 (Chapter 287) mandated that large-scale drug traffickers serve a minimum of 20 years and a maximum of 40 years without parole. If a firearm is used during this crime, further years of incarceration are mandated.

Exhibit 16.1 compares the average sentence length with average time served by state inmates between Fiscal Year 1988 and Fiscal Year 1993. Average time served has fluctuated between 23 and 28 months while the average sentence length rose from 53 to 58 months. Over this period, average time served has been approximately one-half of the average sentence length.

Exhibit 16.1

DIVISION OF CORRECTION
AVERAGE SENTENCE VS. AVERAGE STAY



Source: Department of Public Safety and Correctional Services

Paradoxically, longer sentences for offenders, which result in higher construction and operating costs for state prisons and local detention centers, have been offset by efforts to reduce the amount of time which offenders actually serve behind bars.

The mechanisms for reducing the amount of time an offender spends incarcerated include administrative measures, such as the award of up to 20 days diminution of confinement per month for good behavior and participation in institutional programs; institutional controls such as parole authorized by the Maryland Parole Commission, and pre-trial release; and disciplinary alternatives. Examples of these would include intermediate sanctions (e.g., boot camp and CARCs) and alternatives to incarceration programs (home detention, day reporting, or drug court).

Without programs such as these, Maryland would need to spend hundreds of millions to construct and operate prisons for an inmate population that could exceed 40,000 offenders. This has spurred recent interest in truth in sentencing laws that would clarify this dynamic for the public.

PRISON CONSTRUCTION AND MORE INMATES

Population Status

The state prison population, including Patuxent Institution, totaled 21,087 inmates sentenced to state prisons as of June 1994. The Division of Correction (DOC) had a total population of 20,790 inmates under its jurisdiction as of June 1994. This number includes:

19,275 – in prison or pre-release facilities

88 – in local detention centers awaiting transfer to DOC

647 – in Patuxent Institution under DOC jurisdiction

409 – in home detention

269 – in the Baltimore City Detention Center

102 – in federal or other custody

20,790 – total under DOC jurisdiction

An additional 297 inmates were under the jurisdiction of the Patuxent Institution, with 280 incarcerated in the institution, two in other custody, and 15 in the halfway house in Baltimore City. This brings the total number of state prison inmates in custody to 21,087.

Currently, the Division of Correction is complying with four court orders limiting population in the division's institutions. The Penitentiary has been limited to 1,004 inmates, exclusive of the hospital. In the Maryland Correctional Institution at Hagerstown, a court order limits the dorm housing units to 320 inmates and forbids the division to double-cell the offenders in the main building. A court order in the House of Correction limits double-celling, requires at least 55 square feet per offender in O Dorm and limits the number of inmates in units C, D, H, I, and J to 492. The Maryland Correctional Training Center is limited to 304 double-celled units.

State Correction's Capital Construction Program

Since 1981, the state has significantly increased prison capacity with the construction of housing for an additional 11,887 inmates as seen in Exhibit 16.2. This included the construction of new facilities such as the Eastern Correctional Institution (ECI), Maryland Correctional Adjustment Center (Supermax) and the

House of Correction Annex, and added housing units to existing prisons. Much of the construction since 1987 has been based on the Department of Public Safety and Correctional Services' master plan. The plan originally included three main components:

- increased bed capacity at the Hagerstown complex;
- demolition of the House of Correction; and
- demolition of the Penitentiary and construction of a new Metropolitan Transition Services Center and Occupational Skills Training Center.

Exhibit 16.2

CORRECTIONAL CAPITAL PROGRAM
HOUSING FACILITIES COMPLETED
FY 1981 to FY 1994

<u>Facility</u>	<u>Operating Capacity</u>	<u>Cost (in millions)</u>	<u>Completion Date</u>
Reception and Diagnostic Ctr (Baltimore City)	800	\$ 16.5	1981
Maryland Correctional Institution (Jessup)	1,092	28.0	1981
Roxbury Correctional Institution (Hagerstown)	1,463	42.0	1983
Baltimore City Correctional Center	480	9.6	1984
192 Cell Unit at MCI for Women (Jessup)	384	6.7	1986
Eastern Correctional Institution (ECI)	2,462	102.1	1987
Super-Maximum Security Facility (Baltimore City)	288	24.0	1989
128 Bed Dorm Housing (Patuxent)	128	2.0	1990
256 Bed Dorm Housing (Central Laundry)	256	3.3	1990
Herman L. Toulson Boot Camp	310	0.6	1990
Maximum Security Facility for Women (Patuxent)	48	2.3	1990
Jessup Pre-Release Unit Dorm Housing	420	6.4	1990
192 Cell Unit at MD Correctional Training Center	384	7.4	1991
192 Cell Unit at Roxbury Correctional Institution	384	7.4	1991
192 Cell Unit at MD Correctional Institution (Hagerstown)	384	7.4	1991
*Pre-Release Center for Women (Baltimore City)	72	3.5	1992
Jessup Pre-Release Dorm Addition	140	1.2	1992

<u>Facility</u>	<u>Operating Capacity</u>	<u>Cost (in millions)</u>	<u>Completion Date</u>
MD House of Correction Housing Unit #1	144	6.4	1992
MD House of Correction Housing Unit #2	192	6.4	1992
MD House of Correction Housing Unit #3	384	6.9	1992
MD House of Correction Housing Unit #4	384	6.9	1992
MD House of Correction Housing Unit #5	384	6.9	1993
MD House of Correction Housing Unit #6	384	6.9	1993
Minimum Security Dorm Housing/Support Building (ECI)	420	7.6	1993
Minimum Security Dorm Housing (BCDC)	<u>100</u>	<u>1.3</u>	1994
	11,887	\$318.4	

HOUSING UNDER CONSTRUCTION
FY 1994 TO FY 1995

<u>Facility</u>	<u>Operating Capacity</u>	<u>Cost (in millions)</u>	<u>Completion Date</u>
*Minimum Security Dorm Housing (Penitentiary)	400	\$ 14.3	3/95
Baltimore City Detention Center Central Booking	775	58.2	2/95
	<u>1,175</u>	<u>\$ 72.5</u>	

PLANNED HOUSING
FY 1996 TO FY 1999

<u>Facility</u>	<u>Operating Capacity</u>	<u>Cost (in millions)</u>	<u>Completion Date</u>
Western Correctional Institute (Allegany County)	1,296	\$ 92.5	1997
Minimum Security Dorm Housing	420	11.1	N/A
	<u>1,716</u>	<u>\$103.6</u>	

* Indicates Replacement Housing

Source: Department of Public Safety and Correctional Services

To date, the state has implemented most of the master plan. Capacity has been added in all of the Hagerstown prisons and in a number of other prisons statewide. The state constructed the House of Correction Annex as a maximum security unit to house inmates that were previously housed in the Penitentiary; because of the increase in population, however, the state has not been able to demolish the House of Correction.

The concept behind conversion of the Penitentiary into the Metropolitan Transition Services Center was to build a minimum security facility for inmates returning to Baltimore City. Approximately one-half of all inmates incarcerated in state prisons come from Baltimore City. The Metropolitan Transition Services Center and the Occupational Skills Training Center are intended to reduce recidivism rates by slowly bringing the offender back into the community and providing the offender with marketable job skills. The state also has not demolished the entire Penitentiary as planned. Instead, only the south wing has been demolished. A new 400 bed dorm being constructed at the Penitentiary will be completed by April 1995. Since there are no funds included in the five year Construction Improvement Program, it is unclear if the state will complete the conversion of the Penitentiary into the Metropolitan Transition Services Center.

The increase in the prison population has required the state to begin construction of a new prison. As of 1994 the General Assembly authorized \$60 million to construct a new medium security prison in Allegany County (Western Correctional Institution). Construction of a 1,296 bed compound will be completed in 1997 at a cost of \$92 million. The prison is designed so that a second compound of 1,296 beds can be added if the need exists. Because of the increase in population, it is likely that the state will need to build those housing units before the end of the decade.

Other needs include the construction of a minimum security women's facility. The state currently has only one women's facility, which is at capacity. Due to the growth in the female inmate population the prison capacity for women will need to be increased. The 1995 Construction Improvement Program includes \$11 million to construct a new 420 bed medium security women's facility. Planning is scheduled to begin in Fiscal Year 1997.

Because the increase in housing was not accompanied by an increase in support services, there also exists a need to increase capacity in support services. Most critical is the need for additional food-service capacity. Currently, the state does not have the capacity to feed the entire prison system in addition to the new Western Correctional Institution. If food service capacity is not increased before the completion of the new prison, the state will need to consider alternatives, such as contracting with the private sector. The division is developing a food service master plan to address the food service needs of the state. It is anticipated that capital funds to implement the master plan will be requested for the Fiscal Year 1996 capital budget.

FUTURE LOCAL DETENTION CENTER CAPITAL PROGRAMS

Assuming crime and incarceration rates continue to climb, local jurisdictions will also be required to renovate and expand existing facilities and construct new detention centers.

Since 1987, the General Assembly has authorized over \$150 million in state capital construction funds for local detention center construction projects. Much of this construction was due to the sentencing changes adopted in 1986. During the 1992 to 1994 sessions, the General Assembly authorized \$13 million for local detention center construction, compared to \$117 million during the 1988, 1989, and 1990 sessions. Future construction to increase capacity of local detention centers is likely to continue at a more modest rate.

INTERMEDIATE SANCTIONS AND ALTERNATIVES TO INCARCERATION

Most states continue to experience prison overcrowding. This crisis is the result of more and longer prison sentences, especially for drug offenders. As with most states, Maryland's primary response has been prison construction.

It is clear that no state can build its way out of its prison crisis. For this reason, Maryland has followed the lead of other states and instituted such intermediate sanctions as intensive supervision, home detention, and shock incarceration. These programs are still too limited to impact on prison overcrowding. However, program expansion is likely if these programs successfully balance the values of appropriate punishment and community safety at a lower cost per offender and a lower recidivism rate than incarceration. One of the keys to success will be a careful risk assessment of offenders. In addition to existing programs, there are other programs that the state could consider instituting. These include statewide pre-trial services, drug and alcohol treatment centers, and other correctional options.

Pre-Trial Services Supervision

Pre-trial supervision programs require that certain conditions be met by persons charged with crimes prior to their actual trial and allow these persons to be released into the community awaiting trial. The conditions required might include participation in drug or alcohol testing or treatment programs, telephone supervision, or curfews. If a person successfully meets these conditions and is convicted, the court might be more lenient in setting a sentence. If a person does not comply with restrictions, the court has the option of incarcerating the individual prior to the trial date. All persons involved in pre-trial supervision programs must be monitored to determine compliance with the restrictions.

Pre-trial services programs currently exist in Prince George's, Baltimore, Frederick, Montgomery, Wicomico and Anne Arundel counties and in Baltimore City. The county programs are locally operated and supported by the local jurisdictions, while the program in Baltimore City is operated by the state. Since the state administers the Baltimore City Detention Center, the state is able to

integrate the detention center's programs with state programs. Currently, persons under the jurisdiction of the detention center are on the state's home detention program. The institution of pre-trial services statewide may reduce the need for local detention center beds.

Drug and Alcohol Treatment Centers

In Prince George's County, a DWI facility was established as a sentencing option for persons convicted of DWI offenses. Offenders are housed at this minimum security center. These persons work during the day and are required to attend alcohol treatment programs at night and on weekends. For most offenders, the program lasts 28 days and offenders must pay all their expenses. When the facility is filled to its 60 bed capacity, the facility becomes self-supporting. Baltimore County has received a \$1.5 million state bond to establish its own DWI facility.

Due to the apparent success of the Prince George's County facility in reducing recidivism and the low operating costs of the facility, other counties may wish to establish their own DWI facilities as an alternative to building or expanding local detention centers. State capital funds may be requested for these facilities.

Corrections Options

The Department of Public Safety and Correctional Services implemented the corrections options and drug court program in Fiscal Year 1994. The program is administered by the Division of Parole and Probation. The major components of the program are corrections options, Pre-Trial Detention Services drug court, and a drug court probation project.

Corrections options provides services for youthful offenders. The program focuses on nonviolent parolees as they leave prison or as they begin to experience problems during community supervision. Among the services offered is the Regimented Offender Treatment Center (ROTC) located in the Patuxent Institution. The center is the program's 30-day inpatient care facility to assess and develop treatment plans. Offenders assigned to the facility include those for whom outpatient treatment is inappropriate or those that require higher levels of disciplinary sanctions. After completing the center's treatment program, the offender is referred to a community based treatment program.

The corrections options program provides day reporting services. Day reporting sites are located in Baltimore City at Guilford Avenue, Dismas House East, and Cathedral House, and in Jessup at the Patuxent Institution Half-Way House. The services provided by the centers include life skills, general education classes (GED), employment, and parenting. Services at the St. Ambrose Pre-Release Facility will be enhanced. These services provide close supervision

for female offenders in their transition into the community. Finally, corrections options plans offer enhanced services for offenders in boot camp aftercare, home detention, and intensive and standard supervision.

The second component is the Pre-Trial Detention Services drug court. This program diverts substance abusers from prosecution. The focus is on offenders whose criminality is driven by their substance abuse. The progress of the offenders will be monitored by the case managers in the drug treatment court probation unit. The department has estimated that 350 offenders will be diverted from prosecution and monitored by the unit.

The final component is the drug court probation project. This program is for offenders who cannot be diverted from prosecution but whose criminality is limited to substance abuse. These offenders are required to enter into treatment oriented contracts which will be monitored by the drug treatment court probation unit. The department has estimated that the probation drug court will supervise approximately 250 inmates.

The state received a federal grant of \$4.2 million for the corrections options and drug court. Beginning in Fiscal Year 1996, the corrections options and drug court program will be state funded at an estimated \$5 million per year.

CHAPTER 17

CONCLUSIONS

Changes in criminal justice policy are usually the result of events which trigger a reaction. For example, a substantial rise in accidents involving drinking drivers could be raised as an issue by victims, law enforcement groups, concerned citizens, policymakers, or the media. Such attention often results in new laws or policies which attempt to address the problem.

During the 1980s, one of the main determinants of criminal justice policy in the U.S. was the "War on Drugs," which emphasized enforcement, education, and treatment activities. Special emphasis was paid to improving the capabilities and coordination of federal, state, and local law enforcement agencies. The growth in recorded criminal offenses and arrests in Maryland, as displayed in this handbook, is due in part to this focus on drug enforcement.

Implementation of this change in law enforcement did not fully recognize impacts on other parts of the criminal justice system. As a result, this state has experienced overloaded court dockets, increased use of plea bargaining and placement of offenders on probation supervision, overcrowded detention centers and prisons despite additional construction, and high rates of recidivism. At the same time it is unclear that the policy has been successful.

SUMMARY

The purpose of this handbook has been to increase the readers' understanding of the criminal justice process in Maryland from the perspective of the offender. The presentation of caseload statistics and trends highlight the problems of the system, as well as the policies which have exacerbated the burdens currently experienced. It is hoped that future efforts to address the problems of crime and punishment in this state will recognize the potential impacts on all elements of the criminal justice system.

GLOSSARY

Adjudication – the process by which a court arrives at a decision on whether the facts alleged in a petition (other than the allegation that a youth requires the court's assistance, guidance, treatment, or rehabilitation) are true; also, the resultant decision.

Adjudicatory hearing – a hearing to determine whether the allegations of a petition are supported by the evidence beyond a reasonable doubt (in the case of an alleged delinquency, an adult contributing to a condition which brings a minor within the jurisdiction of the court, or an alcoholic beverage violation) or by a preponderance of the evidence (in all other cases).

Aftercare – post-residential services provided to youths discharged from a 24-hour program.

Aggravated assault – the unlawful attack by one person upon another for the purpose of inflicting severe bodily injury.

Alternatives to incarceration – programs which divert criminal offenders from prison or local detention centers. Examples are home detention, day reporting, and drug court.

Appeal – a petition to a higher court to review the decision of a lower court. Witnesses and evidence are not used, as the appellate court only examines whether the lower court made an error.

Appeal of right, first – statutory appeal allowed all criminal convicts sentenced to two years or more imprisonment.

Bail – a way for a criminal to obtain release from pre-trial detention by offering money or other security to insure appearance for trial.

Binding over – process by which the District Court sends a criminal case to a circuit court or from a District Court commissioner to a grand jury for an indictment.

Breaking and entering – the unlawful entry of a property to commit a felony of theft.

CJIS – Criminal Justice Information System – an event-based computerized system maintained by the Department of Public Safety and Correctional Services for the reporting of all criminal activity in Maryland. CJIS contains criminal arrest and conviction records for every adult charged with a criminal offense. CJIS also contains some juvenile records.

Case management – the coordinated approach to service delivery designed to ensure that offenders receive all the services they need in a timely and appropriate fashion.

Certiorari, writ of – an order by a superior court to produce a certified record of a case tried in the inferior court. Used by the Court of Appeals when it decides to hear a criminal case appealed from the circuit courts or the Court of Special Appeals.

Charges – formal accusation of a crime, through a statement of charges, information, or indictment.

Charging document – a written accusation alleging that a criminal defendant has committed an offense.

Collateral review – review limited to sentencing or other tangential matters, not a review of the conviction itself.

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 or the Department of Public Safety and Correctional Services for a specific reason authorized by law; also, the result of the action and admission to the program.

Common law – law made up of prior court decisions, convention, and tradition, as opposed to statutory law which is produced by the General Assembly. Common law is the written and unwritten laws of England used by the English colonies, and adopted at the time of reception (when the colonies declared their independence, 1776). Most states have abolished English common law, but Maryland has not.

Community detention – an alternative to secure detention in which a youth is placed on 24-hour supervision and thus enabled to remain in the community while awaiting court action or review.

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

Convict – a person convicted of a criminal offense.

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.

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

Criminal – one who has committed a crime. Usually 18 years old or older.

De novo – a new trial, as opposed to an appeal.

Defendant – the accused in a criminal case (after charges have been filed, but before conviction).

Delinquent – a youth who has been adjudicated for an act which would be a crime if committed by an adult and who requires guidance, treatment, and/or rehabilitation.

Detainer – a notice in a criminal or criminal defendant's file that there is another criminal action pending against the individual.

Detention, juvenile – temporary (generally 1–30 days) confinement in a secure setting for alleged delinquents awaiting adjudication or adjudicated delinquents awaiting disposition.

Diminution of confinement credits – credits earned by criminal inmates which reduce the period of confinement. In Maryland, inmates can earn up to 20 days per month by displaying good conduct and participating in vocational, educational, or other programs.

Dismissal, criminal – the decision by a court or state's attorney to terminate adjudication of all outstanding complaints in a case, or all outstanding complaints against a given respondent in a case, thus terminating court action in the case and permanently or provisionally terminating court jurisdiction over the respondent in relation to those complaints.

Disposition – the action by the juvenile court which prescribes the nature of the assistance, guidance, treatment, or rehabilitation to be provided to an adjudicated youth.

Disposition hearing – a juvenile hearing held subsequent to the adjudicatory hearing in order to determine disposition.

En banc – a session of court in which more than one judge presides. In the circuit courts, usually a panel of three judges that hears appeals from a single-judge trial. Incorrect spelling "in banc" is used in the Maryland statutes and constitution.

Felony – a criminal offense more serious than a misdemeanor. The term is ill-defined in Maryland. At common law, a crime that carried a penalty of death or imprisonment for one year or more. Generally, this is still true, as well as any crimes classified as a felony by statute.

Grand jury – a group selected by a jury commissioner who determine whether probable cause exists that a crime has been committed and that a certain person has committed it. If the grand jury finds probable cause, it issues an indictment. The grand jury operates in secret, and only accuses; a grand jury does not determine guilt (see jury, petit).

Habeus corpus, writ of – an order to release a person from unlawful imprisonment. Used by the federal courts to review the constitutionality of state court convictions or sentences.

Incarceration – confinement of an individual in a local detention center or a state prison. This can include individuals who are sentenced or are detained prior to trial.

Indictment – a criminal charging document returned by a grand jury (as opposed to an information which is a charging document issued by a public official) and filed in a circuit court.

Informal supervision – time-limited counseling, referral, and/or supervision of a youth in the community without the intervention of the court.

Information – a criminal charging document filed in court by a prosecutor (as opposed to an indictment which is a charging document issued by a grand jury).

Inmate – a criminal serving a sentence under the supervision of the Department of Public Safety and Correctional Services or a local detention center.

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

Intake, juvenile – the process for determining whether the interests of the public or the youth require the authorization or filing of a petition with the juvenile court or the forwarding of a citation to the office of the state's attorney. Generally, the complaint or citation is received, reviewed, and processed; detention or shelter care is authorized or recommended where permitted and necessary; and services are provided for youths and their families, including informal supervision, diversion, and/or referral to other community agencies.

Intermediate sanctions, criminal – programs which attempt to fill the sentencing gap between supervision and incarceration. The boot camp program is an example of an intermediate sanction.

Jury, petit – a group selected by a jury commissioner who determines issues of fact in a jury trial. In death penalty cases, the jury may also determine whether or not the convict shall be executed.

Larceny – the unlawful taking of property from the possession of another person.

Mandate – official communication from a superior court to an inferior court directing action be taken or a disposition made by the lower court, usually in the case of a Court of Special Appeals directive to a circuit court.

Mandatory supervision – a release from prison after a criminal offender has served his or her sentence less time credits earned for good behavior.

Maryland Rules – see definition under Rules, Maryland.

Master – a person appointed to act as a representative of the court. In juvenile courts, masters try the cases and then make recommendations to the circuit court judge overseeing the juvenile court (District Court in Montgomery County).

Misdemeanor – a criminal offense less serious than a felony. The term is ill-defined in Maryland. At common law, a crime that did not carry a potential sentence of imprisonment in the penitentiary was a misdemeanor. Generally a crime that carries a maximum penalty of 90 days imprisonment or less, or any crime that is classified as a misdemeanor by the statute.

Mutual Agreement Program (MAP) – a legally binding agreement entered into by the state and a criminal offender that guarantees a release date if the offender completes the required program.

Nolle prosequi (nol pros) – a formal statement entered into the record by the state's attorney that a criminal case will not be prosecuted.

On-view arrest – an arrest by a law enforcement officer when the officer actually saw the crime committed by the suspect.

Parole – a conditional release from criminal imprisonment.

Petition – in juvenile court, a written request or plea in which it is alleged that a child is delinquent, in need of assistance, or in need of supervision or that an adult has contributed to a condition which brings a child within the jurisdiction of the court.

Preliminary hearing – the hearing by a judge or District Court commissioner to determine whether the criminal defendant should be held for trial. The state's attorney must show that a crime has been committed and that there is probable cause to suspect that the defendant committed it.

Pre-Trial detention – confinement of individuals who, having been charged with a crime against the state, cannot make bail or are deemed a risk to public safety.

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

Probable cause – facts that would lead a reasonably intelligent person to believe that the accused person had committed the offense.

Probation, adult – a disposition under which a court defers imposition of a sentence or suspends the sentence, and releases the individual conditionally on good behavior, under prescribed terms and rules for a specified period of time.

Probation, juvenile – the court disposition enabling the provision of community services and case management oversight for adjudicated delinquents.

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

Recidivism – the habitual or chronic relapse or tendency to relapse into crime or antisocial behavior.

Recidivism rate – the extent to which an offender becomes a repeat offender.

Remediation – attempting to correct or overcome something which is wrong.

Respondent – defendant in a criminal case or juvenile case.

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

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

Secure commitment – a long-term (generally seven months or more) secure, institutional, 24-hour program for delinquents in which both on- and off-ground movement is limited and controlled by staff and/or architecture.

Shelter care – temporary 24-hour care for juveniles awaiting disposition in a physically unrestricted environment.

Stet – a formal statement entered into the record by the state's attorney that the criminal case is being indefinitely postponed with the consent of the defendant. A charge can be rescheduled for trial within one year.

Summons – a notification that a person is required to be in court on the date and time specified in the summons.

Suspect – a person suspected of a crime, but against whom charges have not been filed.

Trial – a judicial proceeding to determine issues of fact and law and their application to the alleged crime. Witnesses and evidence are used to make the determinations of fact.

Uniform Crime Reports (UCR) – a report prepared annually by the Maryland State Police which tracks crime rate and arrest data on a statewide basis. Definitions used in the report are consistent with Federal Bureau of Investigations (FBI) definitions. Data provided by the report is submitted to the FBI and other national databases.

Warrant, arrest – a written order from a judicial officer to a law enforcement officer to arrest the person named in the warrant or to search and seize property described in it.

Warrant, bench – an arrest warrant issued by a judge after an indictment or when a person does not respond to a summons.

Youth center – a long-term (generally six to nine months) 24-hour program located in a relatively undeveloped area and providing outdoor work and vocational/educational activities in addition to general care and supervision.

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