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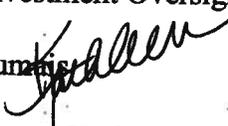
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## The Maryland House of Delegates

ANNAPOLIS, MARYLAND 21401

### MEMORANDUM

TO: Justice Reinvestment Oversight Board Members

FROM: Kathleen Dumais 

RE: 2018 Legislative Update

DATE: April 20, 2018

Below please find a brief summary of legislation related to criminal justice passed during the 2018 Legislative Session of the Maryland General Assembly. All of the legislation listed below as passed, is still subject to a veto by the Governor and is indicated by its House Bill ("HB") or Senate Bill ("SB") number. Please note that most of the legislation will not become effective until later this year.

#### Law Enforcement & Corrections

**Correctional Facilities - Pregnant Inmates - Medical Care:** HB 787 and SB 629 require each State and local correctional facility to have a written policy in place regarding the medical care of pregnant inmates. The managing official of a correctional facility must provide the required written policy to an inmate at the time of a positive pregnancy test result. The Maryland Commission on Correctional Standards must review each correctional facility's policy during regular inspections.

**Correctional Services - Inmates - Menstrual Hygiene Products:** HB 797 and SB 598 require the managing official of a correctional facility and the director of the Patuxent Institution to ensure that the facility has a sufficient supply of menstrual hygiene products available to meet the needs of the inmate population at all times. Each correctional facility and the Patuxent Institution must (1) have a written policy and procedure in place requiring menstrual hygiene products to be provided at no cost to a female inmate, as specified, and (2) maintain records on the provision and availability of menstrual hygiene products to inmates.

## Criminal Law – Substantive Crimes

**Hate Crimes - Group Victim:** HB 700 and SB 528 prohibit a person from committing certain acts against a group because of the group's race, color, religious beliefs, sexual orientation, gender, disability, or national origin, or because the group is homeless.

**Sextortion and Revenge Porn:** SB 769 prohibits a person from causing another to engage in sexual activity or causing another to engage as a subject in the production of a visual representation or performance that depicts the other with the other's intimate parts exposed or engaging in or simulating an act of sexual activity by threatening to (1) accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute; (2) cause physical injury to a person; (3) inflict emotional distress on a person; (4) cause economic damage to a person; or (5) cause damage to the property of a person. A violator is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a \$10,000 fine. The bill also prohibits a person from knowingly distributing a visual representation of another identifiable person that displays the other person with his or her intimate parts exposed or while engaged in an act of sexual activity under specified criteria. A violator is guilty of a misdemeanor, punishable by imprisonment for up to 2 years and/or a \$5,000 fine.

## Criminal Procedure

**Criminal Law – Crimes of Violence, Expungement, and Drug Treatment:** SB 101 contains the following provisions that address crime and its causes and consequences:

**Crime of Violence** – the bill modifies the definition of “crime of violence” under § 14–101 of the Criminal Law Article by: (1) changing “use of a handgun in the commission of a felony or other crime of violence” to “use of a firearm in the commission of a felony except possession with intent to distribute a CDS or other crime of violence”; and (2) striking the requirement in the sexual abuse of a minor item that a touching not be through the clothing. The bill also makes the mandatory minimum 10 year sentence for a second or subsequent conviction of a crime of violence not eligible for parole.

**Expungement** – the bill allows expungement of a felony conviction for theft, possession with intent to distribute, and burglary after 15 years.

**Substance Abuse Evaluation and Commitment** – the bill prohibits a person serving a sentence for a crime of violence from being evaluated for or committed to substance abuse treatment under §§ 8–505 through 8–507 of the Health – General Article with the Maryland Department of Health (MDH) until the person is eligible for parole. This prohibition may not be construed to prohibit a defendant who is serving a sentence for a crime of violence from participating in any other treatment program or receiving treatment under the supervision of the Department of Public Safety and Correctional Services under any other provision of law.

**Felon in possession** – the bill modifies § 5–133(c) of the Public Safety Article by: (1) adding firearm – related drug crimes under §§ 5–621 and 5–622 of the Criminal Law Article as

predicate crimes and (2) allowing a person serving a sentence for the crime to participate in § 8-507 drug treatment.

**Criminal Law - Prohibitions, Prosecutions, and Corrections:** SB 1137 contains the following provisions that address crime and its causes and consequences:

Inmate case record – the bill requires the Division of Correction (DOC) to conduct, for each inmate, as soon as feasible after the individual is sentenced to the jurisdiction of DOC, an educational, vocational, and job history interview. DOC must include the educational, vocational, and job history of the inmate and the results of the interview in the case record for the inmate.

Diminution credits – the bill adds life skills training and antiviolence therapy to the educational programs that an inmate in the custody of DOC may receive 5 diminution credits per month for participation in.

Interception of communications – firearms crimes – the bill adds the following offenses under the Public Safety Article to the list of crimes for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications: § 5-134 (restrictions on sale, rental, or transfer of regulated firearms); § 5-136 (straw purchases); § 5-138 (sale, transfer, or disposal of stolen regulated firearms); § 5-140 (transporting regulated firearm for unlawful sale or trafficking); § 5-141 (knowing participation in straw purchase); and § 5-144 (knowing participation in a violation of Title 5, Subtitle 1 of the Public Safety Article). The bill also adds these offenses to the list of crimes for which a judge may grant an order authorizing the interception of wire, oral, or electronic communications.

Drug paraphernalia – the bill modifies prohibitions against use or possession of drug paraphernalia to exclude equipment used to test or analyze drugs.

Volume Drug Dealing – the bill adds 5 grams or more of fentanyl and 28 grams or more of any mixture containing fentanyl to the prohibition against volume drug dealing. The bill also clarifies the statute by adding language to specify that a mixture containing a detectable amount of a prohibited substance be scientifically measured using representative sampling methodology.

Witness Intimidation – the bill increases the maximum penalty for witness intimidation offenses not involving a drug felony or crime of violence under §§ 9-302 (inducing false testimony or avoidance of a subpoena), 9-303 (retaliation for testimony), and 9-305 (intimidating or corrupting a juror, witness, or officer of the court) of the Criminal Law Article from 5 to 10 years.

Task Force – the bill creates the Task Force to Study Maryland's Criminal Gang Statutes.

**Maryland Department of Health - Defendants Found Incompetent to Stand Trial or Not Criminally Responsible – Commitment:** HB 111 and SB 233 require a court, upon a finding that a defendant is incompetent to stand trial and is a danger to self or others, or upon a verdict that a defendant is not criminally responsible, to enter an order of commitment that requires the Maryland Department of Health (MDH) to commit the defendant to a designated health care facility as soon as possible but no later than 10 business days after MDH receives the order. If MDH fails to timely place the defendant in a facility, the court may impose any sanction reasonably designed to compel compliance, including requiring MDH to reimburse a detention facility for costs incurred as a result of delayed placement.

**Incompetency and Criminal Responsibility – Court-Ordered Evaluation:** HB 202 and SB 361 (1) authorize a court to order the Maryland Department of Health to evaluate a defendant found incompetent to stand trial or not criminally responsible under specified circumstances and develop a prompt plan of treatment and (2) require a clinical review panel to convene within a certain amount of time if the treatment plan indicates danger.

**Victim Services Unit - Victims' Compensation:** HB 247 establishes a Victim Services Unit (VSU) in the Governor's Office of Crime Control and Prevention (GOCCP) to coordinate State responsibilities concerning services to victims, including the collection of restitution and reimbursements for sexual assault forensic evidence examinations (SAFE Exams) and other eligible expenses for cases involving rape, sexual offenses, or child sexual abuse. The bill transfers related functions from the Department of Public Safety and Correctional Services and the Maryland Department of Health to GOCCP/VSU and establishes a reporting requirement for GOCCP. The required transfer of functions must take place on July 1, 2018.

**Courts - Evidence of Sexually Assaultive Behavior - Admissibility (Repeat Sexual Predator Prevention Act of 2018):** HB 301 and SB 270 authorize a court, in a prosecution for specified sexual offenses, to admit evidence of sexually assaultive behavior by the defendant that occurred before or after the offense for which the defendant is on trial. The bills establish procedural requirements for the introduction of such evidence.

**Violation of Conditions of Release:** HB 388 and SB 170 add a crime of violence under § 5-101 of the Public Safety Article and a crime against a victim who is a person eligible for relief under § 4-501 of the Family Law Article to the list of charges for which a person is statutorily prohibited from violating a condition of pretrial or post trial release prohibiting contact, harassment, or abuse of the alleged victim or going in or near the alleged victim's residence or place of employment.

**Post-conviction - DNA Testing and Petition for Writ of Actual Innocence:** SB 423 expands eligibility to file a petition for post-conviction DNA testing or a database/log search to include a person convicted as the result of a plea of guilty, an Alford plea, or a plea of *nolo contendere*. The bill also establishes procedures for petitions filed under these circumstances. The bill makes similar changes to eligibility to file a petition for writ of actual innocence and procedures for those petitions.

**Pretrial Services Program Grant Fund – Establishment:** HB 447 establishes the Pretrial Services Program Grant Fund for the purpose of providing grants to eligible counties to establish pretrial services programs, subject to specified requirements. The Governor’s Office of Crime Control and Prevention must administer the fund.

### **Firearms**

**Public Safety - Handgun Permit Review Board – Appeals:** HB 819 and SB 741 alter the process by which a person who is denied a permit to wear, carry, or transport a handgun, or a renewal of such a permit, or whose permit is revoked or issued with restrictions by the Secretary of State Police, may appeal the decision to the Office of Administrative Hearings (OAH). Within 90 days after receiving a request to review a decision, the Handgun Permit Review Board must (1) review the record developed by the Secretary *and* (2) conduct a hearing. Within 60 days after the last hearing in the matter, the board must submit, in writing, the reasons for the board’s decision to the applicant, the permit holder, and the Secretary. Within 30 days after the issuance of the board’s written reasons for its decision in the matter, the applicant, the permit holder, or the Secretary may appeal the board’s decision for review by OAH. Within 60 days after the receipt of such a request from the applicant, permit holder, or the Secretary, OAH must schedule and conduct a *de novo* hearing on the appeal, at which witness testimony and other evidence may be provided. Within 90 days after the conclusion of the last hearing on the matter, OAH must issue a finding of facts and a decision. A party aggrieved by the decision of OAH may appeal the decision to the circuit court. By December 1, each year, the Handgun Permit Review Board within the Department of Public Safety and Correctional Services (DPSCS) must report to the Governor and the General Assembly on specified items relating to such appeals. The bills also make the board subject to the Open Meetings Act.

**Criminal Law – Firearm Crimes – Rapid Fire Trigger Activator:** HB 888 and SB 707 prohibit a person from (1) transporting a “rapid fire trigger activator” into the State or (2) manufacturing, possessing, selling, offering to sell, transferring, purchasing, or receiving a rapid fire trigger activator. Violators are subject to an existing misdemeanor penalty of a maximum of three years imprisonment and/or a fine of \$5,000. In addition, the bills prohibit a person from using a rapid fire trigger activator in the commission of a felony or a crime of violence. Violators are subject to the existing more stringent penalties that apply to the use of an assault weapon or a magazine with a capacity of more than 10 rounds of ammunition in the commission of a felony or crime of violence. The bills allow a person to continue to possess a rapid fire trigger activator if the person applies for and receives authorization from the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) by October 1, 2019.

**Criminal Law – Wearing, Carrying, or Transporting Loaded Handgun – Subsequent Offender:** HB 1029 prohibits a person from violating the State’s prohibition on wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article with a handgun loaded with ammunition. A person who is eligible for subsequent offender status under § 4-203 who violates this prohibition is subject to the penalties currently specified in statute. However, the bill (1) clarifies that the minimum sentence applicable to such a defendant is a mandatory minimum sentence; (2) prohibits a court from suspending any portion of the applicable mandatory minimum sentence; and (3) specifies that except as specified in § 4-305 of the

Correctional Services Article (parole for inmates at Patuxent Institution), a person is not eligible for parole during this mandatory minimum sentence. A mandatory minimum sentence may not be imposed unless the State's Attorney complies with specified notice requirements.

**Public Safety - Extreme Risk Protective Orders:** HB 1302 establishes an "extreme risk protective order" and sets forth a process by which a petitioner may seek a court order to prevent a respondent from possessing or purchasing a firearm for a limited period of time, based on a determination that the respondent poses a danger of causing personal injury to himself or others by possessing a firearm.

**Criminal Procedure - Firearms - Transfer:** HB 1646 requires the State's Attorney, before trial or acceptance of a guilty plea or equivalent, to provide written notice to the defendant, the defendant's counsel, and the court, when a defendant has been charged with a disqualifying crime that is a domestically related crime, as specified, that (1) the defendant has been charged with a disqualifying crime and (2) under State law, it is illegal for a person who has been convicted of a disqualifying crime to possess or own a regulated firearm, rifle, or shotgun. When a defendant is convicted of or pleads guilty to such a crime, the court must inform the defendant that the person (1) is prohibited from possessing a regulated firearm, rifle, or shotgun and (2) is ordered to transfer all regulated firearms, rifles, and shotguns owned by the defendant or in his/her possession. A transfer of firearms under the bill must be made within 2 days after the conviction to a law enforcement agency or licensed firearms dealer.

NOTE: This information was compiled by Chairman Vallario and the House Judiciary Committee counsel.