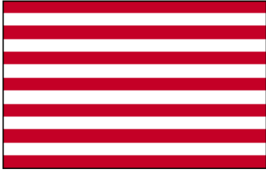


**Maryland Citizens
for the Right to Keep
and Bear Arms**

P.O Box 10448

Silver Spring, MD 20914-1044

Maryland Violent Crime

Philip F. Lee, PhD, pflee at wdn dot com

5/15/02

History of Crime in Maryland and Crime Fighting Approaches

Maryland ranked sixth in the nation in violent crime in 1993, according to FBI data (released in 1994), while Virginia stood 35th among the 50 states. At that time, Maryland's Gov. Parris Glendening's and Lt. Gov. Kathleen Kennedy Townsend's Commission On Gun Violence proposed a laundry list of new gun laws while Maryland treated violent criminals with light sentences, lax parole conditions, and easily evaded home detention conditions. Gov. Parris Glendening and Lt. Gov. Kathleen Kennedy Townsend banged their fist and demanding tougher gun laws while doing almost nothing to enforce the violent crime laws that already exist. Five years later the consequences of the Glendening-Townsend policies were summarized in the Baltimore Sun editorial ("*Getting away with murder*," February 13, 1999) in part:

Nearly 80 percent of those arrested for Baltimore homicides last year were men and women under the age of 30. Most had long arrest records for crimes ranging from gun violence and drug trafficking to robberies. Yet relatively few spent serious time in jail. Getting off with multiple probations bolstered their sense of immunity, made them more brazen and added to the violence they perpetuate.

Neighboring Virginia took the opposite tack, getting tough on criminals and allowing honest citizens the right to carry firearms. Virginia's Allen made crime-fighting a major goal and won passage of a Truth-In-Sentencing law requiring violent criminals to serve 85% of their sentences, virtually eliminating early parole. Murderers in Virginia can expect to serve an average of 32 years in prison versus 10 years as recently as 1993. Violent thugs were given the message that Virginia was not the place to earn a living as a criminal predator, preying on innocent, law-abiding citizens. Now Virginia's violent crime rate is significantly lower than that of Maryland. Maryland's ranks 3rd in murder in 2000, 3rd in violent crime, and 1st in robbery among the states in 2000 compared to 5th in murder and 6th in violent crime and 2nd in robbery in 1993. Maryland's rates of violence in murder, robbery and overall violent crime exceeds that of all of its neighbors and has done so for more than a decade.

That Virginia, with its permissive concealed handgun permits, should prove less violent than Maryland is no fluke. The Heritage Foundation reports that states with such permits average a 26% lower violent crime rate than states with no or restrictive permits (see **CRIME Making America Safer**, Robert E. Moffit, Ph.D., and David B. Muhlhausen, www.heritage.org/ISSUES_2000/chap12.html).

An insight into Maryland's problem with violence can be obtained from the Montgomery Journal editorial "*Truth in sentencing: a justifiable and fair demand*," January 29,2002:

… in Maryland, a judge can reduce a sentence at any time and for any reason. To be eligible for a sentence reduction, the convicted criminal must file a request for sentence reconsideration. These requests are routinely filed in criminal cases. According to a computer analysis by The Washington Post, from 1995 through 2000, there were 1,100 sentences reduced. **[Enclosure(1)]**

Maryland is not a "Truth in Sentencing" state – far from it. A partial reason for these reduced sentences and the violence Maryland Experiences is explained in the Washington Post article "*Crime, Punishment -- Shaped by One Man*", February 5, 2001. **[Enclosure(1)]**

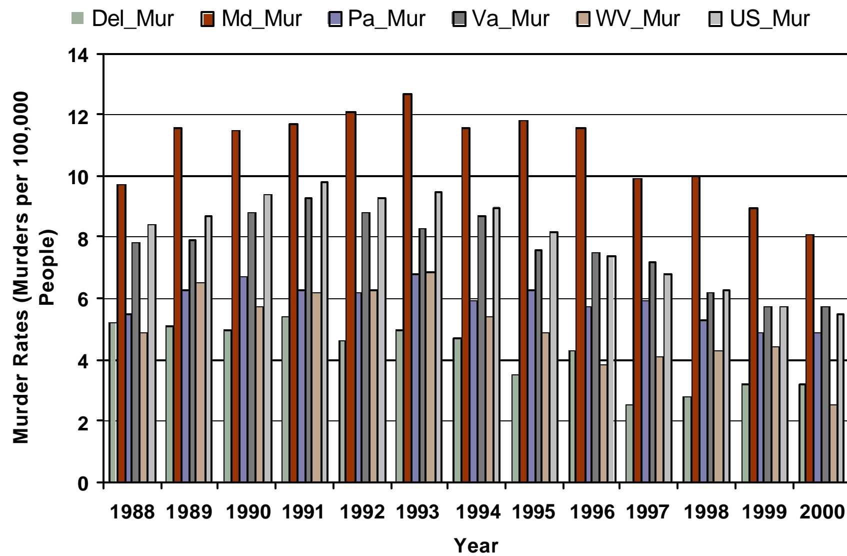
There's a lesson here for anyone willing to learn it --

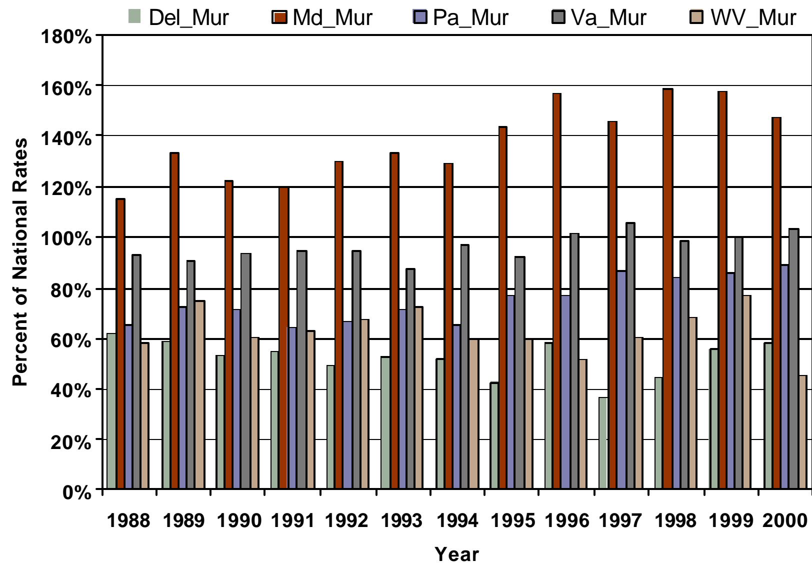
Virginia Fights Criminals and is Effective; Maryland Fights Guns and is Not!

The intent of this report is to document some details of Maryland's Violence Policies and their unfortunate consequences for Maryland residents and visitors. The reasons that common sense "Truth in Sentencing" and other violence fighting measures **are not adopted** are that they are opposed by several legislative leaders who have an economic interest in the current sentencing and other criminal justice practices.

In blunt terms, these Legislators corruptly serve their interest rather than the public's.

Maryland Had 1170 More Murders During the Glendening-Townsend Administration (1994-2000) Than It Would With Virginia's Rate.





Figures 1 and 2 compare Maryland murder rate to the United States as a whole and its neighboring states.

For more than a decade Maryland has had higher rates of murder than the US and its neighboring states as reported by the FBI in its annual Uniform Crime Reports (http://www.fbi.gov/ucr/ucr.htm).

Maryland murder rates have declined along with the nation as a whole and neighboring states. But Maryland has been losing ground relative to the nation and its neighbors over the last 10 years. Figure 2 makes clear the relative decline with murder rates plotted as a percent of the national rate.

During the Glendening-Townsend Administration Maryland's murder rate has increased from 130% of the national rate to around 150% of the national rate.

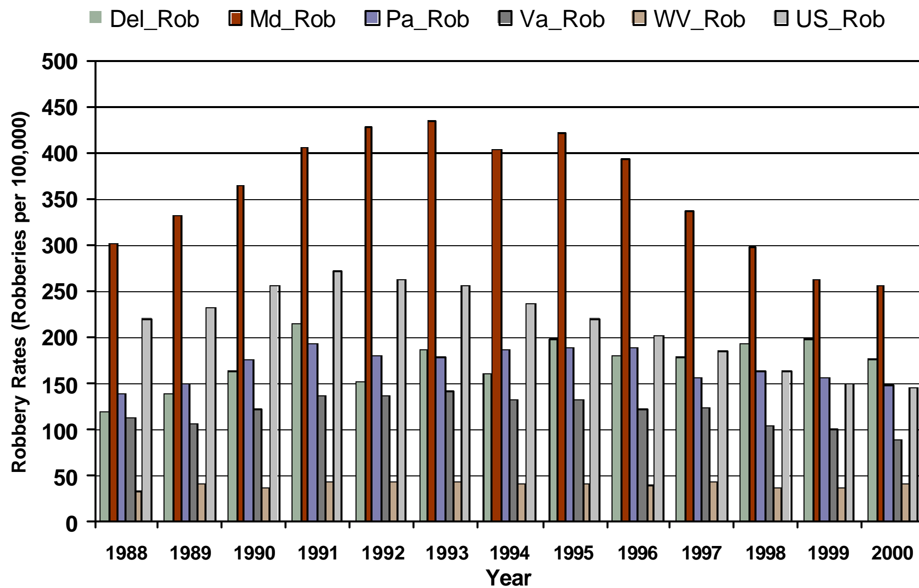
Maryland's neighbors have 30% to 60% lower murder rates.

The Table shows the murder rates (murders per 100,000) for Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the US. The Figures display that data year by year left to right in the same order.

Murder Rate

Year	Del_Mur	Md_Mur	Pa_Mur	Va_Mur	WV_Mur	US_Mur
1988	5.2	9.7	5.5	7.8	4.9	8.4
1989	5.1	11.6	6.3	7.9	6.5	8.7
1990	5.0	11.5	6.7	8.8	5.7	9.4
1991	5.4	11.7	6.3	9.3	6.2	9.8
1992	4.6	12.1	6.2	8.8	6.3	9.3
1993	5.0	12.7	6.8	8.3	6.9	9.5
1994	4.7	11.6	5.9	8.7	5.4	9.0
1995	3.5	11.8	6.3	7.6	4.9	8.2
1996	4.3	11.6	5.7	7.5	3.8	7.4
1997	2.5	9.9	5.9	7.2	4.1	6.8
1998	2.8	10.0	5.3	6.2	4.3	6.3
1999	3.2	9.0	4.9	5.7	4.4	5.7
2000	3.2	8.1	4.9	5.7	2.5	5.5

Maryland Had 78,340 More Robberies During the Glendening-Townsend Administration (1994-2000) Than It Would with Virginia's Rate.



Figures 3 and 4 compare robbery rates for Maryland, neighboring states and the United States (data from FBI published rates).

> Maryland has reported the highest robbery rate in each annual FBI Uniform Crime Report since 1995.

Maryland robbery rates have declined along with the nation and its neighbors, but Maryland has been losing ground relative to the nation and its neighbors over the last 10 years. Figure 4 shows Maryland's decline relative to the US and its neighboring states by plotting robbery rates as a percent of the national rate.

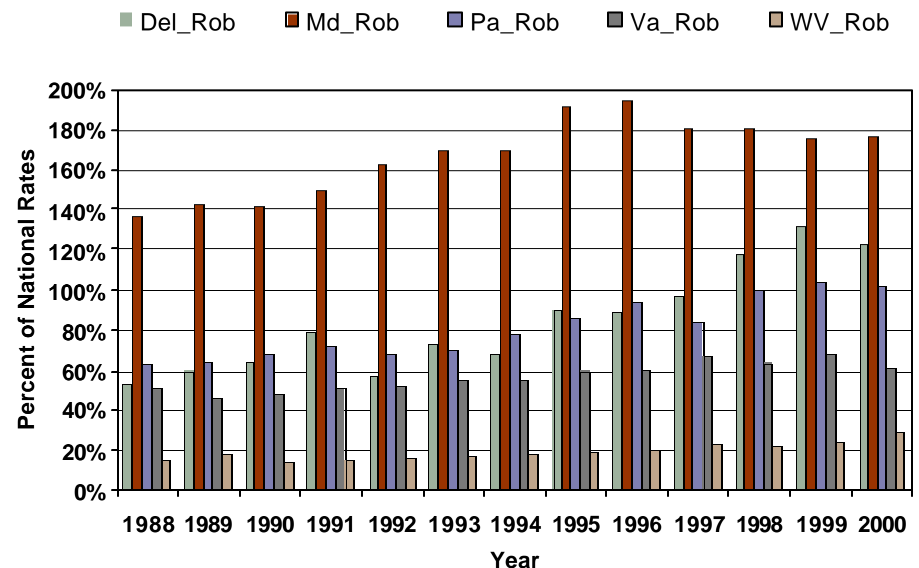
> Maryland's relative rate has increased from 160% of the national rate in 1992 to around 180% of the national rate in 2000.

> Maryland's neighbors are doing 30% to 80% better than Maryland.

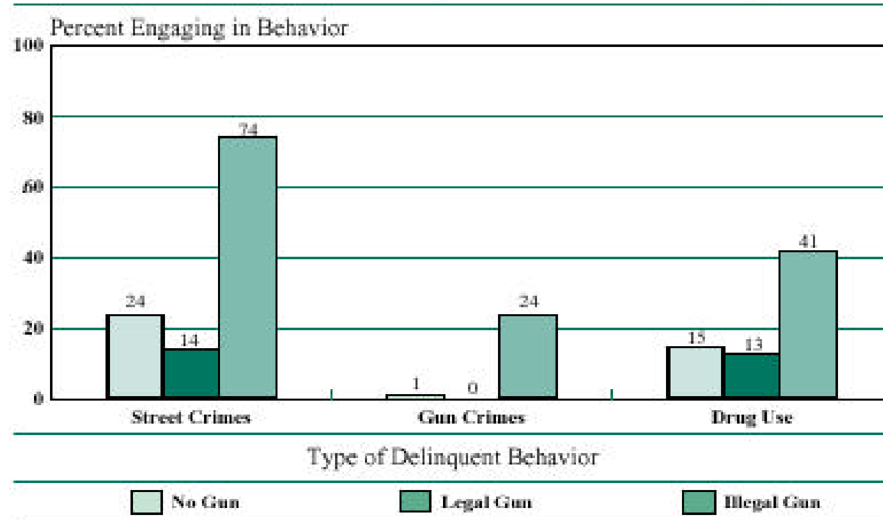
The Table shows the robbery rates (robbery per 100,000) for Maryland, its neighbors and the US over the period of interest.

Robbery Rate

Year	Del_Rob	Md_Rob	Pa_Rob	Va_Rob	WV_Rob	US_Rob
1988	118.8	301.3	138.1	112.5	34.2	220.9
1989	138.8	332.1	149.7	106.5	42.7	233.0
1990	164.8	363.8	176.2	123.3	37.9	257.0
1991	214.7	407.1	193.9	137.6	43.3	272.7
1992	151.2	429.0	180.7	137.8	43.5	263.6
1993	186.7	434.7	179.0	142.0	43.0	255.9
1994	161.6	402.5	186.7	132.8	42.4	237.7
1995	198.7	423.1	189.3	131.7	42.7	220.9
1996	179.9	393.2	189.0	122.6	40.4	201.9
1997	179.5	336.8	156.3	124.5	43.1	186.1
1998	194.2	298.7	164.9	105.6	37.3	165.2
1999	198.0	263.7	155.7	101.1	36.6	150.1
2000	177.9	256.0	147.8	88.9	41.4	144.9



Maryland Has Mistakenly Focused on Gun Control Aimed at the Law-Abiding Rather than Crime Control



Drugs, not guns, are the Driving Factor for Crime in Maryland:

From '*Most Baltimore murder victims have criminal records*,'' John Biemer, ASSOCIATED PRESS, **Washington Times** 12/18/2001:

> Since the 1980s, Baltimore has ranked among the nation's top markets for heroin and cocaine.
>
> "Almost every one of these people [murder victims] had a criminal record. That's a fact," Detective Carew said. "The bulk of their charges were related to drugs."

Crime has risen in other areas of Maryland too as the article '*Surge of slayings perplexes PG County*,'' (Brian DeBose, Washington Times, 12/25/01) indicates.

> Like Baltimore, violence in PG County is blamed on the drug trade and dealers fighting over turf.
>
> Even Relatively safe Montgomery County experienced an increase of murder – 18 in 2001 vice 12 in 2000.

In 1999, Maryland's Chief Medical Examiner recorded **324 drug overdose deaths** in Baltimore (excluding alcohol)-63 percent of all such deaths in Maryland. [Maryland Office of the Chief Medical Examiner] and **more than the number of murders** that year.

A Dept. of Justice Report shows **owning guns benefits society** since children of legal gun-owners commit fewer gun crimes than even the children of people who do not own guns. Figures 5 shows that result:

> **Urban Delinquency and Substance Abuse**, March 1994, David Huizinga, Ph.D., Rolf Loeber, Ph.D. & Terence P. Thornberry, Ph.D., NCJ-143454, US Department of Justice (www.ncjrs.org/pdffiles/urdel.pdf).

Figure 5 here is actually Figure 13 on Page 18 of that report.

The report states "Boys who own legal firearms have much lower rates of delinquency and drug use and are even slightly less delinquent than non-owners of guns."

The kids of NRA members, and kids who are in supervised shooting programs are actually less likely to be involved in gun violence or accidents than kids whose parents do not own guns.

Education and training, the character and judgment built in the children of legal gun-owning families are positive contributions to public safety, but that is not what the Glendening-Townsend administration says.

They **BLAME LAW-ABIDING GUN OWNERS** for violence.

Md. Violent Crime is Primarily in Baltimore City and PG County
Baltimore City (2000) is One of the Most Violent Big Cities in the US.

Order	Cities	2000 Pop.	Violent Crime Index (from FBI UCR Table 6 or 8)
1	Atlanta, GA	422,266	2745
2	**Baltimore, MD**	**647,955**	**2478**
3	St. Louis, MO	341,708	2327
4	Detroit, MI	972,390	2275
5	Miami, FL	390,540	2017
6	Camden, NJ	85,142	1961
7	Philadelphia, PA	1,451,520	1572
8	Dallas, TX	1,119,580	1433
9	Richmond, VA	195,375	1200

Source FBI Uniform Crime Report for 2000. Baltimore's violent crime rate is approximately double the average for the 25 US cities with population more than 500,000.

Crime Concentrations in Maryland and Its Major Jurisdictions – Baltimore City and PG County are the Centers for Murder.

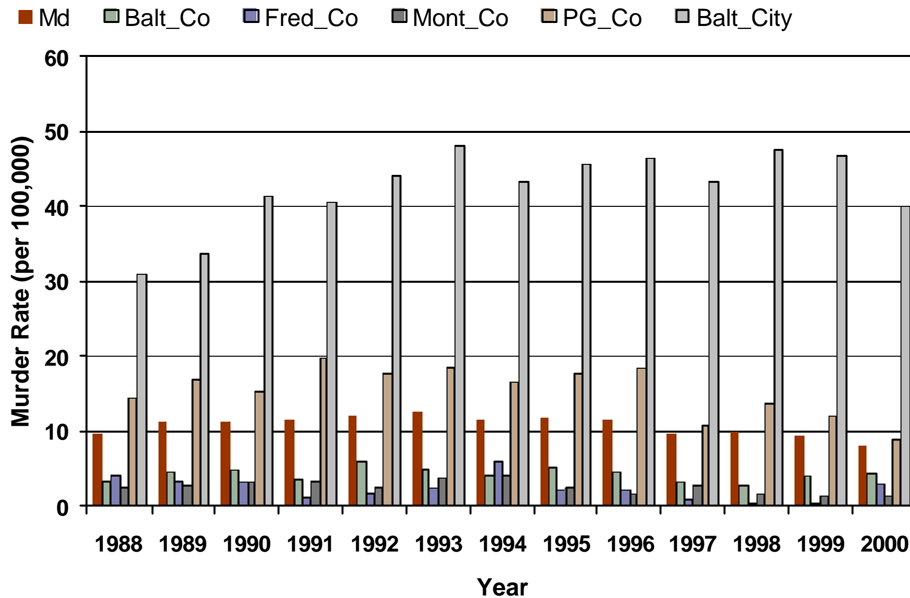


Figure 6 shows murder rates (per 100,000) for Maryland and some significant local jurisdictions (data from Maryland State Police Uniform Crime Reports). Approximately 80% of Maryland murders are committed in Baltimore City and Prince George's County which have about 25% of the population of Maryland.

The violence is not:

A Rural/City Issue – Montgomery County provides an example of a stable, low-violence jurisdiction with city density. Montgomery's murder rate averages about one-third the national rate.

A Proximity to DC Issue – Montgomery County is as close to DC as PG County and Baltimore City is further away.

A Legal Gun Ownership Issue – many counties such as Carroll have high levels of gun ownership, yet low levels of violence.

Figure 7 shows the results of Maryland's steady deterioration of violence relative to the United States norm. The failure is principally in Baltimore City (murder increasing to more than 7times the national rate) but drugs and violence are spreading.

The violence is a symptom of Maryland's leadership failing:

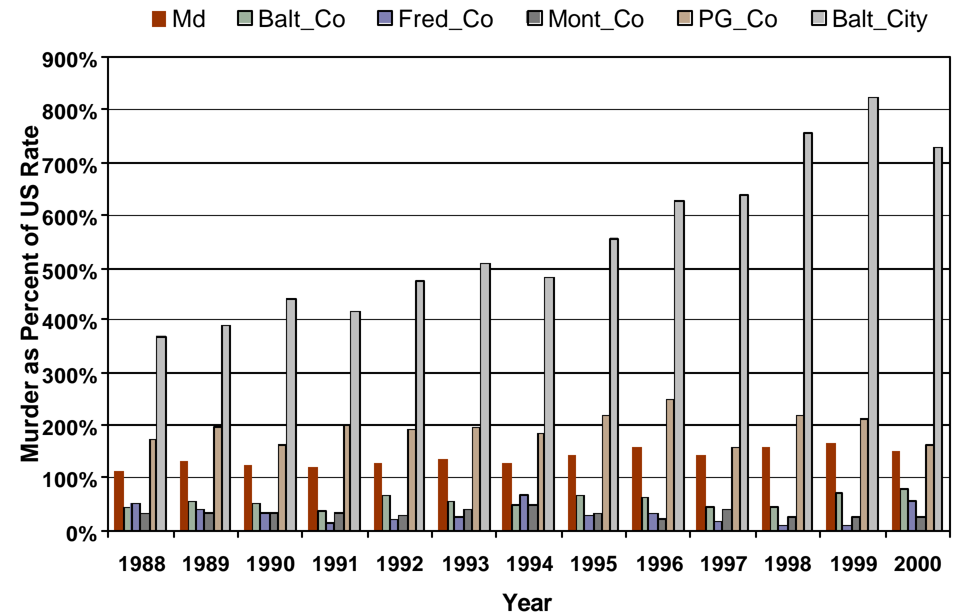
Our leaders have simply failed to execute a rational and effective crime control program.

Zero tolerance programs such as demonstrated under the administration of Mayor Rudy Giuliani work.

Project Exile programs as demonstrated in Richmond, VA work.

Instead of using approaches that work, our leaders have chosen showboating against guns to give an appearance of fighting violence.

The people of Baltimore City have responded to this failed leadership by leaving and the population is reported shrinking at a rate of 16,000 per year (**Baltimore Sun**, "*The city shrinks*,"5/1/02).



Maryland’s Judicial System Fails and the Political Leadership Ignores the Problems.

The Baltimore Sun in a series of articles have identified problems in Maryland’s judicial system. Shown are segments from articles:

Criticizing the Glendening-Townsend administration for failing to reform Baltimore’s criminal justice system.

Reporting failures to enforce the law against gun use by violent criminals in 75% of the cases.

Criticizing Maryland’s justice system by the family of slain police officer Bruce Prothero

The three segments contain portions of the articles – the full articles are included as enclosures for this report.

Tough gun law, timid enforcement

Courts: **Nearly three decades after Maryland set strict penalties for gun crimes**, the law has had little impact in Baltimore. **Three out of four people charged with handgun violence serve less than the mandatory five years**.

Caitlin Francke, Baltimore Sun, Jan 30 2000

The case against Donnell Harris seemed rock-solid: **When Baltimore prosecutors charged Harris with carjacking two men and shooting one of them, they were armed with a confession from his accomplice, testimony from the two victims and a cache of .38-caliber bullets found at Harris' house.**

But when Harris pleaded guilty, he was sentenced only to inpatient alcohol treatment. He left after a month.

Days later, Harris and another man shot and killed a teen-ager and stuffed the body in the trunk of a car.

Like most gun-wielding criminals in Baltimore, Harris did not receive the mandatory five-year, no-parole sentence required by state law for those who use a gun to carry out their crimes.

In this city, where 300 or more people have been killed every year for the past decade, the tough gun law that was designed to help stop shootings and homicides is virtually ignored.

An analysis by The Sun of nearly 3,000 court records and interviews with criminologists, defense lawyers, prosecutors and judges reveals that fewer than one in four people charged with gun crimes will get the required five-year prison sentence.

…

[Enclosure(3)]

Justice breakdown demands anger, action

Outrageous acts: A number of public officials share in the criminal justice system's failures.

Baltimore Sun, February 11, 2001

TWO YEARS AGO, in an editorial called "*Getting Away with Murder*," we urged Gov. Parris N. Glendening, Court of Appeals Chief Judge Robert M. Bell and then-Mayor Kurt L. Schmoke to lead corrective action in Baltimore's broken criminal justice system.

But our repeated calls for high-level intervention fell on deaf ears.

Those leaders shuffled their responsibility off to a Criminal Justice Coordinating Council that had no legal authority and was given no clear direction. The council tinkered around the edges of the problems, ….

[Enclosure(2)]

Bail denied for Moore brothers

Extradition hearing set in Philadelphia for suspects in killing; `No jubilation' for family; Prothero's relatives express frustration with justice system

By Dan Thanh Dang And Dennis O'Brien, Baltimore Sun, Feb 21 2000

As the family of a slain Baltimore County police officer gathered at a somber celebration of his youngest daughter's second birthday, two brothers charged in the fatal shooting ...

... to stand trial in the death of Sgt. Bruce A. Prothero, who was shot Feb. 7 as he chased four men who fled from a Pikesville jewelry store after a daylight robbery.

The arrest of the Moore brothers Saturday afternoon ended an intensive 12-day manhunt and brought widespread relief to a grieving Baltimore County Police Department . Two other suspects had been arrested earlier.

The Prothero family expressed frustration yesterday over a justice system that fails to keep violent offenders in jail. Police and court records show that all four suspects have lengthy criminal histories ranging from drug possession to attempted murder.

"Too often people are apprehended and out on the street the next day," said Rick Prothero ...

[Enclosure(4)]

The Washington Post and Others Have Identified Maryland Criminal Justice Failings Including Misplaced Priorities.

The Maryland judicial system was labeled as "… the craziest thing I've ever heard" -- Susan Gaertner, president of the County Attorneys Association in Minnesota ("*Sentences Without Finality*")

Attempts to reform the judges' power to reduce sentences have largely been for political show as the article "*Miller Kills Bill on Resentencing*" makes clear.

The reference document **Treating Baltimore's Drug Problem** paints a picture of Maryland authorities ignoring the drug trafficking problems fueling Maryland's violent crimes.

Sentences Without Finality

Judges Can Cut Terms for Whatever Reason -- or No Reason

Lori Montgomery and Daniel LeDuc, Washington Post, February 4, 2001; Page A1

Judgment day for Christopher Kelly unfolded according to plan. Kelly had pleaded guilty to shooting Willie Calloway in a fight over money. On sentencing day, the dead man's family settled into the courtroom benches, hungry for revenge.

They heard the prosecutor deliver a solemn monologue about helping "this family heal." The judge responded by sentencing Kelly to five years in prison, then ordered the bailiff to take him away in handcuffs. The Calloways went home satisfied: Kelly would do time behind bars.

But **in Maryland, some judgments are never final**. And on this particular April morning in 1995, the sentencing hearing at the Prince George's County Courthouse was an event staged to placate the grieving family.

A month earlier -- in an agreement that the judge ordered sealed from public scrutiny -- the prosecutor and defense attorney stipulated that Kelly would receive a five-year prison term on sentencing day, but they agreed that he would be brought back to the courtroom within 60 days so that the judge could "reconsider" that sentence.

Oblivious to the deal, the Calloway family was absent in May when Kelly returned to Judge Darlene G. Perry's courtroom. She changed his sentence to probation, and he walked out a free man.

"Good luck to you," Perry offered. **Kelly had spent 71 days in jail.**

Why would a judge turn a killer loose? The answer is uncertain: **Maryland judges cannot be held accountable by the public for their actions. In an era when stiff sentences are touted as a deterrent to crime, Maryland operates a system in which the sentence handed down when the public is paying attention can be dramatically altered later.**

[Enclosure(5)]

Miller Kills Bill on Resentencing

Lori Montgomery, Washington Post

March 28, 2002; Page B7

Maryland Senate President Thomas V. Mike Miller Jr. has killed a bill that would have limited the power of Maryland judges to lower criminal sentences, overruling a Senate committee and handing an embarrassing defeat to Lt. Gov. Kathleen Kennedy Townsend on one of her top legislative priorities. Miller (D-Prince George's) said yesterday that he told Sen. Walter M. Baker (D-Cecil) … to hold the bill in procedural limbo ….

. . .

Miller, a criminal defense lawyer, remained vehemently opposed to the measure.

[Enclosure(6)]

Treating Baltimore's Drug Problem, Drug Strategies, 2000

http://www.drugstrategies.org/Baltimore/BaltCh_2.html

- **Drug arrests climbed steadily in Baltimore** from 1990 to 1995, peaking at 23,092, before falling to 15,706 in 1996 due to a shift in police priorities toward gun enforcement.
- Heroin is Baltimore's primary drug of abuse. The proportion of city residents needing treatment for **heroin abuse is 15 times the national rate**.
- Drinking, drug addiction and drug trafficking fuel both property crime and violent crime in Baltimore. **Three-quarters of nonviolent property offenses in Baltimore are linked to alcohol and drug abuse, with unrecovered property losses totaling $46 million a year-more than $885,000 per week. Baltimore law enforcement officials estimate that 50 to 60 percent of the city's homicides are related to drug dealing**, including violent clashes among competing dealers and buyers and sellers.
- **Heroin's price in the Baltimore metropolitan area-**already 40 percent cheaper than the national average in 1998**-fell by a third in 1999**, to 33¢ per pure milligram.
- **One-third of the 3,400 Baltimore youth involved in the juvenile justice system in early 2000 had drug problems.**
- **From 1990 to 1999, the number of heroin overdose deaths nearly tripled in Baltimore, and more than tripled in the rest of the state**, led by a nearly five-fold increase-from 24 to 112 deaths-in Baltimore's five neighboring suburban counties (Baltimore County and Anne Arundel, Carroll, Harford and Howard counties)

The Way Ahead -- Recommendations

Stop Maryland's Revolving Door Justice System with Truth in Sentencing

Keep the Legislature from Evading their Responsibilities with Meaningless Feel Good Legislation Designed to Disguise that they are DOING NOTHING.

Example – Gun Control

Institute Rigorous Crime Data Collection and Reporting

Many Jurisdictions in Maryland are not Reporting Crime Data or are Reporting Late

Some have Reported Doctored Data

Data is not Easily Available for Analysis – Should be Posted on Web Quarterly and Annually

Finally, Report Some Quality Measures about Maryland's Court Operations

Time to Trial (Measured from Date of Criminal Charge to Start of Trial or Plea on Charge)

Percent of Charges Resulting in Prison Time

Final Sentence

Cost per Cases Handled

Additional Suggested Material

1. Consider Great Britain which has some of the strongest gun laws in the world today and where handguns were banned in 1997 following the school massacre at Dunblane. Even to own a long gun requires a license. Within two years of the ban, handgun violence was up 40 percent.

- Britain finds that criminal enterprises are able to easily smuggle firearms from eastern European countries or Jamaica ("**Yardies at War on our doorsteps**," Justin Davenport, 9/10/01, Associated Newspapers Ltd.)
- or manufacture them locally ("**Yard smashes guns factory**," Philip Nettleton, 8/8/01, http://www.thisislondon.co.uk/) to supply all of their needs. Even machine guns are readily available in Britain now (to criminals, not decent citizens).
- Recent editorial writers in Britain have declared that the government has failed them in protecting against violent crime and called for people to defend themselves (see "**If the state fails us, we must defend ourselves**," By Simon Heffer, 02/24/2002, http://www.telegraph.co.uk/).

This experience in Britain indicates how futile Maryland's approach to violence by fighting guns will continue to be.

2. The Baltimore Drug Problem is defined by the reports at links:

http://www.drugstrategies.org/Baltimore/BaltCh_1.html
http://www.drugstrategies.org/Baltimore/BaltCh_2.html
http://www.drugstrategies.org/Baltimore/BaltCh_3.html
http://www.drugstrategies.org/Baltimore/BaltCh_4.html
http://www.drugstrategies.org/Baltimore/BaltCh_5.html
http://www.drugstrategies.org/Baltimore/BaltCh_8.html

3. The FBI publishes their annual Uniform Crime Reports on line and the most recent may be found at:

http://www.fbi.gov/ucr/ucr.htm

The Disaster Center publishes the FBI annual Uniform Crime Report data in state tables going back to 1960 at:

http://www.disastercenter.com/crime/

4. The Calvert Institute reported on juvenile crime in 1997. That report addresses the Maryland crime climate prior to the Glendening-Townsend administration and documents the deteriorating situation resulting from Townsend's policies. See **The Dissent: How the Townsend Report Fails to Address the Roots of Juvenile Crime and What to Do About It**, Robert M. McCarthy, J.D. with David B. Muhlhausen, Calvert Institute at:

http://www.calvertinstitute.org/main/pub_detail.php?pub_id=9

5. Joseph Curran's approach to juvenile crime is shown by his 1996 report:

"Tune it Out: Media Violence, Children, and Crime," concluded that media violence is responsible for approximately 15% of all juvenile crime. Following that report, the Attorney General's Office issued more than 600,000 media violence diaries, interactive tools that enable parents to monitor their children's exposure to media violence.

Quoted from his web page at:

http://www.mdarchives.state.md.us/msa/mdmanual/08conoff/html/msa01493.html

Given his superficial understanding and approach, should there be any surprise that Maryland is one of the top states with juvenile (age 10 to 17) violence arrests?

6. The Glendening-Townsend administration's neglect of administrative duties in connection with juvenile corrections is illustrated in the Baltimore Sun Letter to the Editor originally published April 7, 2002:

Settlement shows offenders that crime really does pay

Lt. Gov. Kathleen Kennedy Townsend and her adviser, Michael Sarbanes, would have readers believe it is a good thing that the state has agreed to a $4.6 million settlement for 890 former juvenile boot camp inmates ("Boot camp deal is struck," March 29). Who are they kidding?

The reality is that Ms. Townsend and Mr. Sarbanes are trying to quickly put their incompetence behind them before the campaign season is in full swing.

Had her administration paid closer attention to the juvenile justice program, any abuse by guards could have been curtailed quickly. Unfortunately, the failure by Ms. Townsend resulted in canceling a potentially effective program before it had a chance to show results and a significant settlement of money that could have been used elsewhere, for schools, for example.

They will continue to spin this story in a positive light, but the truth is that as a result of their ineffectiveness, Ms. Townsend and Mr. Sarbanes have shown these juveniles that crime does pay.

Allen Furth
Annapolis

7. New York City has demonstrated effective violent crime fighting policies under Mayor Rudolph Giuliani where, from 1993 through 1998, overall crime fell by 47 percent and murder fell by 60 percent because of tougher policies and better targeting of resources. They reduced crime through a consistent "broken windows" approach that focused on all types of disorder, including aggressive panhandling, graffiti, and subway fare-beating. (see http://www.heritage.org/ISSUES_2000/chap12.html)

The contrast in approachand the resulting performance by the Glendening-Townsend Administration could not be clearer. While New York City makes progress against violence, Maryland has continued to rank high in criminal violence as shown by the table below:

Rank of Maryland Crime Rates Compared to Other States*

Year	Homicides	Violent Crimes	Robbery
1992	6	4	2
1993	5	6	2
1994	8	8	2
1995	4	4	1
1996	3	3	1
1997	6	6	1
1998	4	5	1
1999	4	4	1
2000	3	3	1
2001	5	2	1
2002	2	2	1

The above shows the annual ranking of Maryland's rates of crime vs. the crime rates of all other states.

For example, Maryland citizens and visitors have had a higher rate of being robbed than any other state - every year since 1995 as reported by the FBI.

Enclosure (1)

Truth in sentencing: a justifiable and fair demand

VIEWPOINT, Montgomery Journal - January 29,2002

http://www.gazette.net/200205/weekend/community_forum/90321-1.html

By MARILYN GOLDWATER

The groundswell of public support for truth in sentencing is testament to the fact that, all too often, the prison sentence handed down by the court has little to do with the time the convicted criminal actually serves.

In Maryland, a criminal sentenced to life in prison is eligible for parole in 15 years. Let's face it, life sentences are not imposed for white-collar crime, but rather for crimes involving some degree of violence or threatened violence. From 1979 to 1995, the state of Maryland paroled 90 "lifers."

An even greater perversity of the criminal justice system lies in the fact that in Maryland, a judge can reduce a sentence at any time and for any reason. To be eligible for a sentence reduction, the convicted criminal must file a request for sentence reconsideration. These requests are routinely filed in criminal cases. According to a computer analysis by The Washington Post, from 1995 through 2000, there were 1,100 sentences reduced.

Maryland has the dubious distinction of being the only state that gives judges such complete latitude with sentence reconsideration. Connecticut judges have wide latitude to change sentences, but only with respect to sentences of three years or less.

In California, judges are given 120 days to reduce a sentence. After that, a judge may grant a sentence reduction, but only in cases where prison officials want to relieve overcrowding or want to reward a convict who cooperates with authorities.

These sentence reductions usually occur years after the crime had faded from the public's mind. The crime remains fresh in the minds of the victims and their families, usually for as long as they live.

A man, who pleaded guilty to murdering a Prince George's County policeman and a store clerk during a robbery was given two life sentences. In 1999, after serving only 16 years, judicial reconsideration of his sentence resulted in his release from prison.

A Montgomery County man, still grieving for his murdered father, was informed that the murderer serving a life sentence was was going to have his sentence reconsidered. Under sentence reconsideration, a man who pleaded guilty to assaulting his wife and child had his conviction erased.

Pointing out that the unrestricted judicial power to reduce prison sentences has eroded the public's confidence in the criminal justice system, victims-rights advocates and state prosecutors have implored the General Assembly to approve legislation to limit judicial sentence reconsideration to one year.

Sen. Walter Baker, Chairman of the Senate Judicial Proceedings Committee weighed in on the side of the legislation, but it was defeated in the House Judiciary Committee in the 2000 and 2001 sessions.

Retired Maryland Court of Appeals Judge John McAuliffe, testifying in favor of the bill, said that he couldn't remember a single case in his 13 years as a judge that he needed to hold for more than a year.

Recently, the legislation to restrict judicial sentence reconsideration to one year gained the strong support of Lt. Gov. Kathleen Kennedy Townsend.

It should be noted that the Court of Appeals has adopted rules to require judges to make certain that the victims are notified of a sentence reconsideration and allowed to testify before a sentence is reduced. That's good, but it's not good enough for me. The new rule still allows judges to reduce a prison sentence at any time for any reason.

Victims and their families need and should have closure. They should not be kept in suspense forever, wondering if some judge will reduce a sentence imposed by the court.

As it stands now, there is no closure when the court imposes a sentence. Victims and their families can never be certain that somewhere in the future that sentence will not be shortened and the convicted criminal will be out on the streets long before he was originally supposed to be.

A year is more than sufficient time for judicial sentence reconsideration. I believe that justice delayed is justice denied. Certainly, placing no time restrictions on a judge's power to shorten a prison sentence comes under the heading of justice delayed.

Marilyn Goldwater is a Bethesda Democrat representing the 16th District in the Maryland House of Delegates.

Crime, Punishment -- Shaped by One Man

By By Lori Montgomery and Daniel LeDuc, Washington Post, February 5, 2001

More than a dozen years after lawmakers across America -- fed up with career criminals who cycled in and out of prison -- began enacting tough laws requiring mandatory sentences, Maryland has its share of laws intended to keep hardened criminals off the streets.

Just last year, state lawmakers approved a mandatory five-year term for violent felons caught with an illegal handgun. It sounded strict. And it sounded as if -- at least for those criminals -- punishment would be certain.

But in Maryland, a "mandatory" sentence need not be mandatory at all.

Those same lawmakers had already created a loophole that allowed judges to review -- and reduce -- any mandatory sentence at the request of convicts. The review process was created in 1999 at the behest of House Judiciary Committee Chairman Joseph F. Vallario Jr. (D-Prince George's), who has made his living as a defense lawyer since 1964.

Since taking the committee's helm in 1993, Vallario has gained almost mythic status as the General Assembly's ultimate arbiter on crime and punishment.

"He's the litmus test," said Montgomery County State's Attorney Douglas F. Gansler (D). "We have our meetings, and that's what we talk about: What can we get Vallario to go along with? It affects our ability to introduce laws for law-abiding citizens."

Under Vallario's leadership, the Judiciary Committee snuffed a 1997 effort to ensure that violent rapists spend at least a few years in prison. It killed a bill last year that would have reined in the power of judges to change sentences years after they are imposed. It voted last year to allow the release of murderers and rapists serving life sentences whom the governor has refused to parole. And it has for three years running, from 1997 to 1999, killed efforts to lower the legal limit that determines when someone is driving drunk.

The battle over drunken driving laws resumed last month when the General Assembly began its annual 90-day session. Lawmakers, threatened with the loss of federal highway funds, are expected to lower the standard for driving under the influence from 0.10 to a 0.08 blood alcohol content. Without a similar federal incentive, an effort to close a loophole that allows drivers to refuse a breathalyzer test with impunity might be in jeopardy.

Even as Gov. Parris N. Glendening (D) and Lt. Gov. Kathleen Kennedy Townsend (D) are for the first time making drunken driving legislation part of their agenda, they worry that Vallario might thwart their efforts. He has not taken a public position on the issue this year.

"Joe Vallario is a strong committee chair and has his opinion as to what is going to be most effective. And he probably has different priorities," Townsend said in an interview.

Goals Clash The House Judiciary Committee includes some of the legislature's most liberal members, and they often defend their actions in the name of protecting the rights of the accused. They share a view held by many judges who oppose mandatory sentences because they believe the circumstances of each crime and defendant should been considered in reaching an appropriate sentence. Such lawmakers dislike increasing penalties for similar reasons: They have a philosophical bent to give judges discretion, rather than to dictate narrow, severe sentences. And they strongly believe in helping to rehabilitate people who commit crimes.

Some prosecutors hold a different view of Vallario's Judiciary Committee. They say the committee frequently creates legal loopholes that give distinct advantages to defense lawyers. And that committee members have been reluctant to create new crimes, to toughen penalties or to force the state's judges to answer for their actions.

In the past five years, the General Assembly has not enacted any major legislation sought by the Maryland State's Attorneys Association, according to Gansler and other state's attorneys. Last year, when they named their lawmaker of the year, the prosecutors chose a Montgomery County Republican senator who had killed her own bill -- the prosecutors' top-priority measure -- after Vallario rewrote it to weaken penalties for existing offenses instead of creating a new crime.

"The chair of any committee will set the tone," said Del. Sharon Grosfeld (D-Montgomery), a Judiciary Committee member. "And the chair of our committee is a defense attorney."

Prosecutors, drunken driving opponents, domestic violence activists and other victims' advocates often grumble about two other lawyer-legislators -- Senate president Thomas V. Mike Miller Jr. (D-Prince George's) and Sen. Walter M. Baker (D-Cecil), chairman of the Senate Judicial Proceedings Committee -- saying the two powerful lawmakers are unfriendly or indifferent to their causes. Baker has been known to warn bill sponsors not to bring a parade of crime victims to public hearings, because their lengthy and emotional testimony is a waste of time on measures familiar to his committee.

But critics save their most strident criticism for Vallario. And some public officials, frustrated by what they see as his stranglehold on the administration of justice, are just as blunt.

"The House Judiciary Committee has been a graveyard for legislation to increase the accountability in the system, to create more uniform sentences and to shine more light on the process," said Sen. Christopher Van Hollen Jr. (D-Montgomery), who was thwarted by Vallario's committee when he sought to increase the minimum sentence for violent rapists from probation to 10 years in prison.

Vallario, who declined to be interviewed for this article, promised to supply a written response when asked to discuss his role as Judiciary chairman. But instead, he released a stack of documents that included copies of bills, committee votes and lists of his legislative proposals, including victims' rights bills, dating to 1983.

Vallario's influence extends far beyond the State House to shape the entire criminal justice system. He sits on the commission that sets sentencing policy for the state. He serves on the judicial panel that creates the rules that judges and lawyers play by. His position as Judiciary chairman lends weight when he lobbies the governor for judicial appointments. His committee sets salary levels for prosecutors in each county. And he wields substantial influence over the compensation paid to judges who rule on his cases.

Vallario's relationship with the Maryland judiciary has helped to preserve a criminal code that critics and legal scholars say is unnecessarily complicated, too deferential to the power of judges and freighted with practices long abandoned in states where lawmakers have made their courts more open, fair and accountable to the public.

In a recent study published in the Northwestern University Law Review, Paul H. Robinson, a law professor who served on the U.S. Sentencing Commission, rated Maryland's criminal code among the five worst in the nation.

Because it relies heavily on judicial findings and a centuries-old pool of shared knowledge known as the common law, Robinson said, the Maryland code is "ambiguous and confusing" and almost impossible to understand without legal training.

"I do not believe you could find a police officer in the state of Maryland who could answer my questions about what the elements of a crime are or are not," Robinson said.

The result is a system that "creates a tremendous amount of discretion and unpredictability" and places enormous power in the hands of judges and lawyers, Robinson said.

"It's very unpredictable whether people who deserve punishment are going to get the punishment they deserve," Robinson said. "Who wants to live in that kind of world? A world where everything is all sort of mushy and you never quite know what the rules are?"

Mandatory Term Undone Last spring, Charles County police executed a search warrant at James Carter's Nanjemoy home. In the bedroom, they found a loaded .380-caliber handgun and 20 glassine bags of crack cocaine among the clothes in Carter's dresser drawer.

Carter pleaded guilty to dealing drugs and illegally possessing a handgun. In May, he accepted a sentence of 12 years in prison. The gun charge carried a mandatory five years, requiring that he serve that time without parole.

In November, however, Carter used the appeals process that Vallario's committee created in the mandatory sentencing law. Carter went before a panel of three judges that, without explanation, cut his sentence to five years.

Ignoring the admonition of the Charles County judge who originally sentenced Carter and denounced him as "a purveyor of poison," the three judges -- Marjorie L. Clagett, of Calvert County, and E. Allen Shepherd and Sheila R. Tillerson-Adams, of Prince George's -- also wiped out the mandatory gun term.

Instead of a projected release date in March 2005, Carter will be eligible for parole this June.

The ability to win a reduction of a mandatory sentence is the unlikely outcome of a years-long effort intended to inject predictability into Maryland's sentencing laws.

During the 1994 election, Glendening campaigned on the premise that the sentences handed out in court should more closely resemble the sentences criminals actually serve. During the 1996 General Assembly session, Glendening's administration drafted legislation to bring "truth in sentencing" to Maryland courts.

Championed by Townsend, Glendening's point person on criminal justice issues, the measure created a task force on sentencing. Its primary goal was to restore "credibility and effectiveness of the current sentencing and correctional process [which] is diminished by common beliefs that prisoners do not serve an adequate portion of their sentence." Its members included judges, defense lawyers, prosecutors and key lawmakers, including Vallario.

In late 1998, the task force forwarded its recommendations to the General Assembly. At Vallario's insistence, a single bill was drafted to accomplish four goals:

First, the task force would become a permanent commission to measure judicial compliance with the state's voluntary sentencing guidelines. Second, judges would be required to file written explanations when they departed from those guidelines. Third, judges would be required to explain in open court how the time a criminal serves can be cut by parole.

The fourth item was added, specifically at Vallario's request, at one of the task force's final meetings. It would change state law so felons ordered to serve mandatory terms in prison would be eligible -- like other criminals -- to have their sentences changed by a panel of three judges.

The provision drew objections from the start. Lawmakers had rejected it in the past. Now, the task force chairman, Judge John F. McAuliffe, feared it would bring down the entire bill.

Glendening's advisers recommended against its endorsement. In the Senate, Van Hollen rewrote the provision to require that any decision to cut a mandatory sentence must be unanimous among the three judges. He then joined the administration and others in trying to strip the three-judge panel from the bill.

As the session entered its frenetic final days, the matter went to a six-person conference committee, of which Vallario was House leader. He let it be known that he would let the sentencing task force die rather than give up the three-judge panel.

"No question about it -- that was the single component of the sentencing bill that Joe Vallario was interested in," said William Katcef, an Anne Arundel County assistant state's attorney who lobbies on behalf of prosecutors in Annapolis.

In the end, Vallario got what he wanted. Prosecutors were unhappy with the new law.

In late April, Baltimore County State's Attorney Sandra O'Connor asked Glendening to veto the measure, calling it part of "Vallario's personal agenda of undermining the state's ability to seek and retain mandatory sentences for its worst criminals."

But to Glendening, the sentencing task force was too important to lose. He signed the bill into law on May 27.

So far, at least seven felons -- including Carter -- have had their sentences reduced by three-judge panels. The court system keeps no records on the practice and cannot say how many involved mandatory terms.

Creating a Crime In 1996, Raymond Charles Haney's speeding Mazda sports car jumped the curb near a suburban Baltimore bus stop and plowed into a crowd. Left dead: A 25-year-old woman. Her two young children. Her 4-year-old niece.

A grand jury indicted Haney, then 32, on charges of automobile manslaughter. But Haney was not drunk, driving down the wrong side of the road or otherwise acting in a "grossly negligent manner," as that charge requires. In Maryland, unlike many states, killing people by accident is not a crime.

So, Haney was convicted of only five misdemeanor traffic offenses: reckless driving, negligent driving, speed greater than reasonable, failure to control speed and failure to drive in a single lane.

He paid a $2,500 fine.

The case sparked an outcry, and lawmakers responded. Their most recent offerings were House Bill 417 and Senate Bill 430, legislation proposed last year to create a crime called homicide by aggressive driving that would carry a maximum fine of $5,000 and the possibility of three years in prison.

Prosecutors had hoped for something simple. The legislation they promoted was a list of 17 traffic offenses -- from illegally passing a school bus to running a stop sign. A driver who committed any two of those offenses and caused an accident in which someone died could be charged with homicide by aggressive driving.

The bill was supported by the Maryland State Police and the state Motor Vehicle Administration. The Senate version of the bill, sponsored by Sen. Jean W. Roesser (R-Montgomery), was just what they hoped for.

The House version was very different. It was drafted just as the Senate version was, and 55 delegates -- from the most liberal to the most conservative -- signed on. But when the Judiciary Committee got hold of the bill, everything changed.

The committee inserted language defining aggressive driving as a "wanton and willful disregard" for the safety of others. That language wasn't much more precise than the current standard for manslaughter -- "grossly negligent" -- which Maryland courts have defined narrowly to mean drunk.

That change created a new standard as vague as the old one, a standard that prosecutors feared would give defense lawyers too much room to maneuver. They could, for example, argue that a case of vehicular manslaughter while intoxicated should be reduced from a felony to a misdemeanor charge. That could lower the penalty from 10 years in prison to three.

In other words, instead of increasing penalties for aggressive drivers who kill, the Judiciary Committee's bill could have lowered penalties for drunk drivers who kill.

Grosfeld, the Montgomery County Democrat who sponsored the bill in the House, said her colleagues were concerned that the original bill was too broad; they could envision themselves driving in ways it described as aggressive.

"They just felt the bill would catch everybody," she said.

On the final day of the General Assembly session, prosecutors launched an attack to kill the legislation they had championed, faxing and calling lawmakers. Grosfeld watched in vain as her efforts went down in flames.

"The bill would have done more harm than good because of amendments offered in committee at the request of the chairman," Grosfeld said. "Certainly, the chairman was working very closely on the redraft."

This year, there are no plans to try again. Proponents say Vallario's committee would thwart them again.

Vallario's Career Vallario, 63, was first elected to the House of Delegates in 1975 and became Judiciary chairman in 1993. He earned his law degree from the now-defunct Mount Vernon School of Law in Baltimore and remains a member of Painters Union Local 1773, a nod to his father's business.

He runs one of the most prolific law firms in Southern Maryland out of an office in Suitland, a volume-oriented practice devoted to drunken driving cases, criminal defense, personal injury claims and private investigation. He is known in legal circles for such slogans as "Blow point-two-oh, go to Joe," a reference to failing a police breathalyzer test.

As a lawmaker, Vallario has gained the support of the state's leading victims' rights organization for his role in enacting laws providing victims with the right to be notified about and to attend court proceedings.

Vallario's Judiciary Committee "is more liberal than it has ever been," said House Speaker Casper R. Taylor Jr. (D-Allegany), in part because it counts 17 Democrats among its 22 members, including nine lawyers, four members of the Legislative Black Caucus (two of whom are lawyers) and five others who hail from the relatively progressive precincts of Baltimore and Montgomery and Prince George's counties.

Judiciary Vice Chair Ann Marie Doory defended the committee's reluctance to stiffen criminal penalties or to create new crimes.

"From time to time, everybody wants to make something a felony. They say prosecutors won't prosecute if it's not a felony," said Doory (D-Baltimore).

"So we ask: How many convictions were there last year under current law? They don't know. There's no rational basis for upping the penalty just to make somebody feel good. We can't make every crime a felony."

On the critical details of criminal procedure, Vallario dominates the body, committee members said.

"His preference leans more toward -- it's not even defendants' rights," Grosfeld said. "We're all concerned about the rights of defendants. [With Vallario], it's more a matter of procedure."

Vallario personally handles scores of drunken driving charges a year, preferring the quick, lucrative cases to the more serious and complicated felony cases. His opposition to bills that would make it easier to convict drunk drivers or to punish them more severely is well established.

Last year, Vallario might have opened a legal loophole for drunk drivers. His HB 676 was presented to the General Assembly as a codification of previous court decisions that defined the circumstances in which prosecutors may present the results of a breath test or blood alcohol test to a judge or jury.

Maryland law calls for the tests to be administered within two hours of arrest. But appellate courts have ruled that a test taken later may be admitted if accompanied by testimony explaining the reason for and the effect of the delay.

Vallario's bill did the opposite, according to three prosecutors and a defense lawyer who have examined the legislation. The law, which unanimously passed both chambers and took effect last year, makes clear that that "evidence of a test . . . is not admissible" in criminal cases "if obtained contrary to the provisions" of the Courts and Judicial Proceedings Article, which lays out the two-hour rule.

That means the key piece of evidence establishing a driver's drunkenness could be thrown out, the lawyers said.

An attorney for the Judiciary Committee said the lawyers misread the law. The intent of lawmakers was clearly to preserve the admissibility of the test, the counsel said. And the counsel noted that a representative of the prosecutors' association reviewed the bill several times without complaint.

Last March, Vallario waged another parliamentary battle, this time on behalf of a bill that would have allowed murderers and rapists sentenced to life in prison to be released without the signature of the governor, who has refused to parole anyone sentenced to life. The bill would have made nearly 300 felons immediately eligible for release.

At the time, Vallario defended the bill, a priority of the Legislative Black Caucus. Before Glendening's edict, he said, many criminals accepted life terms on the understanding that they would be considered for parole after as little as eight years. Despite Vallario's efforts, the bill died in the House on a 68 to 72 vote.

And in 1997, Vallario introduced legislation because he said he was upset with the prosecutor in Charles County.

Leonard Collins Jr., the state's attorney in that county southeast of Washington, felt that drug dealers were taking advantage of Maryland law to shop for more lenient judges. That law allows some criminal suspects to receive a new trial in Circuit Court if they are unhappy with the result of their District Court trial.

Other county prosecutors had complained about the process, but Collins took action, telling drug dealers they could either plead guilty in District Court or demand a trial in Circuit Court. But he refused to try them twice.

Vallario's practice often takes him Charles County.

"It is my feeling that in District Court in the area where I practice at, Southern Maryland, there is an abuse going on," Vallario told the Senate Judicial Proceedings Committee. "And the abuse is either you plead guilty or we're gonna take you to the Circuit Court. I think it's wrong."

He made that comment at a hearing on HB 420, which he introduced.

"This is a li'l ole bill that comes from down our way," Vallario told the committee.

His bill changed state law so Circuit Courts no longer have jurisdiction over misdemeanor drug cases. With the deference granted committee chairmen in Annapolis, the bill passed both chambers unanimously.

"Whenever I get vain," Collins says now, "I remind myself I'm enforcing Joe Vallario's laws."

Quashed in Committee Piles of proposals for judicial reform greeted the Judiciary Committee last month when members returned to Annapolis for their 2001 legislative session. They included bills to limit the power of judges to reduce criminal sentences; to change the legal definition of intoxication from 0.10 blood alcohol to 0.08; and to ban open alcohol containers in vehicles.

In years past, Vallario's committee has killed them all.

Taylor, the House Speaker, continues to appoint Vallario to lead Judiciary because he is "a very qualified chairman with the credentials to appropriately conduct a committee," Taylor said.

"Does he have his own biases? We all do," Taylor said. "But I have had nobody in seven years complain to me about Joe Vallario."

Enclosure(2)

http://www.sunspot.net/news/opinion/baled.crime11feb11.story?coll=bal%2Dcrime%2Dutility

Justice breakdown demands anger, action

Outrageous acts: A number of public officials share in the criminal justice system's failures.

Baltimore Sun, February 11, 2001

TWO YEARS AGO, in an editorial called "Getting Away with Murder," we urged Gov. Parris N. Glendening, Court of Appeals Chief Judge Robert M. Bell and then-Mayor Kurt L. Schmoke to lead corrective action in Baltimore's broken criminal justice system.

But our repeated calls for high-level intervention fell on deaf ears.

Those leaders shuffled their responsibility off to a Criminal Justice Coordinating Council that had no legal authority and was given no clear direction. The council tinkered around the edges of the problems, reducing backlogs at Baltimore Circuit Court and convincing the heads of the local criminal justice bureaucracies to settle some of their worst turf fights.

But the system itself is largely unchanged -- flawed because it is antiquated, underfunded and deluged by a constantly rising tide of cases. Criminals still walk because police and prosecutors can't build cases that persuade juries to convict. Add to that a lack of cooperation and no sense of common mission among individual players in the criminal justice system.

Some headway was achieved after the election of Martin O'Malley as mayor. Aggressive policing last year produced the first significant dip in the city's appalling murder rate since 1990.

Still, it's too easy to get away with murder in Baltimore City, to contribute to the mayhem in our streets without fear of punishment. And frustrations are running high.

Mayor O'Malley recently exhibited his anger in a profanity-laced tirade against State's Attorney Patricia C. Jessamy. "We have a prosecutor who is afraid," the mayor fumed. "Maybe she should get the hell out."

Ordinary citizens, too, are exasperated. They are upset about criminals. But they are also losing faith in the courts' ability to deliver justice -- and law enforcers' methods.

Baltimore juries have demonstrated their uneasiness by rejecting crucial prosecution evidence because it was not viewed as credible. Whenever suspects walk free, victims are overwhelmed with anger and some witnesses fear retaliation. Other witnesses protest innumerable postponements by not showing up or recanting.

As juries' antagonism toward officials has become more pronounced, some police officials and prosecutors have started to fight back. They break rules and skirt the law, hoping such deplorable tactics will enable them to win convictions.

Here are a few recent examples:

Officers changed reports and destroyed evidence in trying to bolster the case against an 18-year-old criminal who was charged with killing a police officer in a high-speed crash.

The tampering backfired. Jurors cited their mistrust of police after they acquitted the accused, who allegedly was fleeing a shooting scene, wearing body armor and found with a gun.

The state's attorney's refusal to divulge certain evidence to defense attorneys threatened to torpedo the prosecution of drug figures accused of slaying five women. The wrangling has sharpened years of allegations that prosecutors habitually conceal pertinent information from defense attorneys, hoping to gain an edge at trial.

Mayor O'Malley and Police Commissioner Edward T. Norris keep pressing for prosecution of an officer caught in an internal sting, even though much of the case may have collapsed.

These guerrilla tactics are an extreme expression of the sense of helplessness that is palpable among police officers, judges and prosecutors. Everyone recognizes the Baltimore City's criminal justice system is in deep trouble. But in the absence of leadership from Governor Glendening and Chief Judge Bell, no one knows how to repair it.

Additional money alone is not enough. An infusion of $1.2 million last year into the State's Attorney's Office heightened expectations that could not be met.

Quick fixes do not work, either. In fact, they may produce unanticipated consequences which further injure law-abiding citizens' sense of justice.

'Erectile Dysfunction' Court

A case in point is a reform experiment which was touted by Mayor O'Malley as an easy way to speed up justice in Baltimore's overburdened courts. The experiment has not only failed but it has caused new problems and tensions.

Mr. O'Malley got his revelation-like reform idea in 1996, while visiting New York as a member of the City Council. If Baltimore only created an arraignment court, 50 percent of misdemeanors could be shaken out within the first 24 hours after arrest, he promised.

After Mr. O'Malley was elected mayor, the new court became an early goal of his administration. It was such a no-brainer, the mayor proclaimed, that when Maryland's chief judge expressed skepticism, he scornfully sent a stick-figure drawing to him to show how simple the idea was.

Six months have now passed since the experimental Early Disposition Court was launched. It has flopped so badly that officials say its initials -- ED -- stand for "Erectile Dysfunction."

Mayor O'Malley puts the blame on State's Attorney Jessamy. "Her plea offers are too high on minor things," he contends.

Mr. O'Malley is totally wrong.

Ms. Jessamy's office is not at fault. In case after case, prosecutors are making ridiculously low penalty offers. Even so, most defendants keep rejecting guilty pleas that would blemish their record. Instead, they play the court game. They figure that delays will ultimately undo prosecution if they first have the case diverted to the District Court -- or if they request a jury trial in the Circuit Court.

A defendant's chances of beating the rap altogether -- without the liability of a criminal record entry -- are so good that an Early Disposition Court judge says: "As a criminal defendant, you have to be nuts to take an ED plea. Wait for a couple of weeks and chances are witnesses won't show up or officers won't."

This is a very realistic assessment. While no statistics are available on the number of cases expiring because of missing key witnesses, prosecutors last year had to dismiss 1,178 cases because charging police officers did not show up.

Here is what happened to 42 cases in the Eastside Early Disposition Court's hearing last Monday:

Ten defendants were told their misdemeanor cases had been dismissed. Some were incredulous about their unexpected luck. One man was so confused he stormed to the bench, seemingly hoping to make a guilty plea.

Eighteen other defendants rejected the prosecutors' plea offers, opting instead for a regular District Court hearing or for the possibility of a jury trial.

Nine defendants failed to appear. Bench warrants were issued for their arrest.

Only five defendants accepted the prosecutor's offer of guilty pleas. Three of them were given probation before judgment for crack or marijuana possession. A 67-year-old man got probation for having oral sex with a streetwalker in the parking lot of an East Baltimore funeral home.

The fifth defendant, an admitted long-time drug addict with an extensive prior record, received a suspended 60-day jail sentence.

At another ED court hearing that same day, prosecutors recommended probation before judgment for a woman who was seen selling heroin to more than a dozen people. Even so, her charge had been downgraded to only possession with intent to distribute.

She was willing to accept the prosecution's offer of probation. But the judge, noting the defendant was caught with 25 heroin capsules, said the offer was too lenient. The judge wanted to give her nine months in jail. The defendant rejected that. She asked for a postponement to the District Court.

She knows she will have a different judge and if the case is ever tried, witnesses may not show up.

Last month, 680 out of 1,246 Eastside ED court defendants rejected offers of guilty pleas in favor of gambling on postponements. Only 110 defendants accepted a negotiated plea.

Despite this failure to get rid of minor cases before they clog the dockets, the ED court has not been without some impact. The prosecutors' lowball plea offers, even when rejected, have caused a chain reaction. Misdemeanor sentences have become substantially lighter in both the District and Circuit courts, angering those who think crimes should not be without meaningful punishment.

Because of the lenient ED court plea offers, narcotics possession has effectively been decriminalized in Baltimore City. There has been no publicity about this. But virtually anyone can now get away with probation if convicted of drug offenses that are downgraded to possession.

Disconnected juries

The jury system is among the basic tenets of Anglo-Saxon jurisprudence. But as delivery of criminal justice in Baltimore becomes more and more erratic, juries are under attack as never before.

Potential jurors, who are culled from voter registration rolls and from among persons possessing drivers' licenses, are always asked whether they might be prejudiced because they -- or people close to them -- have been victimized by crime.

Potential jurors, who are culled from voter registration rolls and from among persons possessing drivers' licenses, are always asked whether they might be prejudiced because they -- or people close to them -- have been victimized by crime.

That's not the right question to ask in today's Baltimore.

Potential jurors should also be asked whether they -- or close friends or family members -- have had an unpleasant encounter with the police or the criminal justice machinery. Do they, for example, think they or someone they know were wrongfully charged in a case that resulted in dismissal in the increasingly impotent court system?

That relevant question is never asked.

Keystone Kops

When a fleeing sports utility vehicle rammed into Officer Kevon M. Gavin's police cruiser at 104 miles an hour and killed him, many Baltimoreans were shocked. If it wasn't murder, it certainly was vehicular manslaughter, they thought.

Last month, though, a jury acquitted 18-year-old budding career criminal Eric D. Stennett of all charges. Never mind that even the defense attorney implied to jurors his client was guilty of something. Never mind that the defendant had been wearing body armor and had a gun linked to a shooting that started the chase.

Instead, jurors focused on inconsistencies in the prosecutors' case. Jurors were appalled that police officers, hoping to strengthen evidence, had doctored original reports and that the wrecked patrol car, a key piece of evidence, had been destroyed by police.

Jurors were so mistrustful of the police and prosecutors that they even suspected the killed officer had been drinking. The autopsy showed a somewhat elevated blood alcohol level, a perfectly normal phenomenon as a body decomposes.

Baltimore City juries are notoriously unpredictable. They are particularly skeptical about police officers and their testimony.

Who can blame them?

Consider the way police handled another celebrated case, the one that triggered Mayor O'Malley's coarse outburst against State's Attorney Jessamy.

When police planted bogus crack on a bench in Druid Hill Park Sept. 4, it was to catch a dirty cop. They had one particular target in mind: Officer Brian Sewell, a six-year veteran.

Almost everything that can go wrong did go wrong with this sting. But because it was the signature operation of Commissioner Norris' new internal Integrity Unit, it was not called off.

Things got off to a bad start. Officers answering the 911 call reporting the suspected drugs could not find the glassine bag. After a second call was made, Officer Sewell was present but did not pick up the bogus crack. Another officer did. This so confused the investigators they realized only 10 days later that the bogus drugs were part of evidence Officer Sewell had presented against a burglary suspect he had arrested within 15 minutes of the sting. Since Officer Sewell swore he had seen the suspect place the glassine bag on the park bench, he was charged with lying.

More irregularities soon cropped up. **It was discovered that police communications recordings of 911 and 311 calls lacked time stamps, making it impossible to prove the sequence of events.**

The problems worsened after the sting squad's secret office was burglarized on Christmas Eve. One of the items taken was Officer Sewell's folder. After the burglary, the state's attorney's office was belatedly informed that in addition to 13 pictures originally presented as evidence up to 11 more pictures had existed.

The State's Attorney's Office was dealing with two thorny questions. Some of the evidence was missing. Prosecutors also realized the Police Department had violated fundamental professional trust by not initially revealing all the facts about evidence in the investigation. This led to a nagging question that still has not been answered: Why wasn't the sting videotaped, since that kind of surveillance is standard operating procedure in far less important investigations?

The burglary caused additional fallout. It was viewed as an inside job. The detectives involved in the Sewell case were among those suspected of involvement.

After State's Attorney Jessamy was confronted not only with missing evidence but the lack of credible witnesses, she decided not to prosecute. Mayor O'Malley was appalled and accused Ms. Jessamy of lacking "guts." That's about the nicest thing he said about her.

There is something terribly wrong when a criminal justice system is so dysfunctional that only guerrilla action brings results. But that seems to be happening here.

Consider the case of Maryland Public Defender Stephen E. Harris. He openly humiliated Public Safety Secretary Stuart O. Simms recently for the state's failure to handle bail review hearings in Baltimore in a constitutionally acceptable way.

After Mr. Harris sued Mr. Simms, the mortified Cabinet secretary accused the public defender of bad faith and breach of collegiality. But Mr. Harris' suit worked. The changes he had unsuccessfully sought through the voluntary Criminal Justice Coordinating Council suddenly became a top priority item and are being implemented.

Similarly, Mayor O'Malley resorted to profanities to show his unhappiness about Ms. Jessamy, the city's chief prosecutor. He decided niceties would not do the job. "You bet I'll launch my rockets again," he later declared defiantly.

Sociologists have all kinds of fancy words for this kind of behavior. An activist judge summarized those theories in plain language: "When people begin to lose faith, they start looking for alternative ways to achieve the result."

This kind of desperate Machiavellian move is not without dangers. When ends are deemed to justify the means, all kinds of questionable practices become tempting.

When Mayor O'Malley suggested that Ms. Jessamy deputize him to prosecute Officer Sewell, what was his message? Was it that the state's attorney was wrong or lacked courage in her decision not to prosecute? Or was the go-getting mayor in fact cynically implying that he could turn the traditional antagonism of Baltimore juries to his advantage and get an errant cop convicted on tainted evidence?

If the latter is the case, Mr. O'Malley, as a lawyer and former prosecutor, should be ashamed.

Neither police nor the prosecutors will regain their credibility as long as randomly selected Baltimoreans believe evidence is fabricated or produced in less than honest investigations.

Similarly, we don't quite understand Ms. Jessamy's battle-weary attempts to conceal pretrial evidence from defense attorneys, when her office's practices threatened to undo such a major case as the killing of five innocent East Baltimore women in a fight among drug figures.

A discovery court was specifically set up more than a year ago to settle such disputes. Nevertheless, pretrial feuds continue to imperil important cases. Ms. Jessamy must put an end to this dangerous gamesmanship.

It is understandable that city authorities feel helpless in dealing with a criminal justice environment where juries are hostile and cases often fall apart because witnesses disappear or are intimidated. However, the authorities' frustration is no justification for tactics that are so indecent that those tactics, and not the defendant's guilt or innocence, become the main focus of a trial.

City officials, from State's Attorney Jessamy and Commissioner Norris to Mayor O'Malley, can and must stop such warped practices.

In the larger criminal justice drama, though, they are only bit actors. Unless Governor Glendening, Chief Judge Bell and the General Assembly can be persuaded to rectify the dysfunctional criminal justice system, nothing will happen.

If the statewide officials believe only Baltimore is affected by these problems, they are wrong. Evidence increasingly shows criminal justice is falling apart in different ways in other parts of Maryland, as well.

Annapolis is the arena where all city officials must lobby harder. But how can anyone really expect any action from the Glendening administration when most of Baltimore City's own legislators don't demand the appalling criminal justice crisis be solved and when even the greatest tragedies and injustices do not outrage most Baltimoreans?

In the end, things will change only if all of us demand fundamental improvement, taking that on as our personal crusade.

We're asking readers to contact public officials who can make the difference. Tell them you're angry and want change. Send us copies of your messages and we'll print a selection on this page. Mail them to Outrage, c/o The Sun Editorial Page, P.O. Box 1377, Baltimore, MD 21278-001. Or you can e-mail us at letters@baltsun.com or send a fax to 410-332-6977.

Enclosure(3)

http://www.sunspot.net/news/custom/guns/bal-guns30jan30.story?coll=bal%2Dcrime%2Dutility

Tough gun law, timid enforcement

Courts: Nearly three decades after Maryland set strict penalties for gun crimes, the law has had little impact in Baltimore. Three out of four people charged with handgun violence serve less than the mandatory five years.

Caitlin Francke, Sun, Jan 30 2000

The case against Donnell Harris seemed rock-solid: When Baltimore prosecutors charged Harris with carjacking two men and shooting one of them, they were armed with a confession from his accomplice, testimony from the two victims and a cache of .38-caliber bullets found at Harris' house.

But when Harris pleaded guilty, he was sentenced only to inpatient alcohol treatment. He left after a month.

Days later, Harris and another man shot and killed a teen-ager and stuffed the body in the trunk of a car.

Like most gun-wielding criminals in Baltimore, Harris did not receive the mandatory five-year, no-parole sentence required by state law for those who use a gun to carry out their crimes.

In this city, where 300 or more people have been killed every year for the past decade, the tough gun law that was designed to help stop shootings and homicides is virtually ignored.

An analysis by The Sun of nearly 3,000 court records and interviews with criminologists, defense lawyers, prosecutors and judges reveals that fewer than one in four people charged with gun crimes will get the required five -year prison sentence.

The gun law was passed in 1972 after then-Gov. Marvin Mandel became alarmed by shootings near city schools. One student was killed. Searches by police turned up more than 125 handguns in students' hands.

The law was designed specifically to eradicate gun violence by setting up mandatory penalties for violent offenders.

During a two-year period ending last year, 1,660 people were hauled into Baltimore's Circuit Court to face the strict handgun charges for hundreds of armed robberies, attempted murders, carjackings and homicides. In each case, the defendants, by law, faced prison terms of at least five years.

The Sun's analysis shows what happened instead. Between Jan. 1, 1997, and March 31, 1999:

- **Eighty percent of the tough gun charges were dropped or placed in the inactive file by prosecutors**, many times in an effort to win guilty pleas on the companion -- often lesser -- charges.
- **Of the 1,000 people convicted on those related gun charges, more than half did not go to prison for five years, the minimum sentence they should have received under the law.**
- Scores of defendants were released after pleading guilty, sentenced to the amount of time they had already spent in jail awaiting trial.
- One-third of those charged with using guns on city streets -- about 530 people -- were freed without a trial even though a grand jury or prosecutors found there was probable cause to believe they had committed the crimes.

Light sentences and abandoned cases, analysts say, have likely contributed to the city's persistently high rate of shootings and homicides.

The city's violent street culture "is way worse than being in the infantry in Vietnam," says Harvard University criminologist David Kennedy. "When we're dealing with chronic offending groups who have been arrested 10 times, you've got to use authority. You can't counsel people out of this."

Baltimore State's Attorney Patricia C. Jessamy gives two reasons why the gun law has rarely been enforced here: **To take all such cases to trial would overwhelm an already clogged system.** And, she says, reluctant or recanting witnesses handicap many cases.

"The vast majority of our shooting cases involve one bad boy shooting another," Jessamy says. "The culture [is] built on street vengeance and retaliation, and not giving assistance and support and testimony to police and prosecutors."

"There are some innocent victims, but they are not the vast majority … not by any stretch of the imagination."

In Kennedy's 18-month analysis of the city's murder culture, he found evidence that supports Jessamy's view. His study showed that the city's violent crime is concentrated among a relatively small number of people.

Each suspect in a homicide had been arrested more than nine times, and each victim had been arrested more than eight times. Sixty percent of the slayings involved people tied to the drug trade.

But many familiar with the legal system say Jessamy's "bad boy" reasoning does not excuse the scattershot prosecution of gun violence by her office and by her predecessors, which, they say, has helped turn parts of this city into urban war zones.

While Jessamy says her office is targeting the city's most violent criminals, hundreds more continue to slide through the system.

Warren A. Brown, one of the city's most active defense attorneys, said in a recent interview that he was so troubled by the light sentences his clients were getting that he approached prosecutors last spring to warn them.

"There is a mentality out there [on the streets] that is created by the way these cases are meted out that says, 'It ain't all that bad,' " Brown says.

"As a professional defense attorney, I am going to keep trying to get these deals for my clients. As a resident of this city, it's frightening. "It sends a bad message out there that we are not taking guns seriously."

Jessamy says she is doing all she can to crack down on gun violence with limited staff. Two years ago, she secured federal funds to create a unit dedicated solely to handgun violence, the Firearms Investigation Violence Enforcement unit.

That division has convicted more than 400 people for gun crimes in the past two years and is widely praised for its success. More than one-quarter of the convictions resulted in prison terms of 10 years or more. But the unit has only five prosecutors.

Since taking office, Jessamy has not taken meaningful steps to solve the witness problem, a common one for urban prosecutors, interviews and records show. Her office does not have a system to maintain contact with witnesses; nor do her prosecutors routinely enforce laws requiring them to come to court.

Jessamy says she has been hobbled by lack of funds. She has not been able to hire additional investigators to help prosecutors monitor witnesses and is asking the city and state for about $6 million to increase staff. Police help, she said, but they are often swamped with other duties.

"People don't want to be found," Jessamy said. "If we had more people to develop relationships with these people earlier on, kind of keep their hands on them … it would help."

She has nine investigators to track down witnesses and work with her 160 prosecutors. Philadelphia has 37 for 260 prosecutors; Chicago has 150 investigators for 935 prosecutors.

What has emerged with the recent rise in criminal cases is a move-the-docket culture in the city courthouse that numbs judges, prosecutors and defense lawyers to the violence outlined neatly in court files.

In one case, a man convicted of battling with a police officer while armed with a loaded .44-caliber revolver was sentenced to the seven months he had served awaiting trial. Prosecutors asked for 10 years, but Judge David B. Mitchell refused, saying the man had "only one gun in his possession."

In another, Judge Clifton J. Gordy remarked that an 18-month sentence was "a pretty good plea" in a shooting case undercut when the victim did not come to testify.

In Harris' case, the armed carjacker was sentenced to the 18 months he served awaiting trial and alcohol treatment -- and then went on to kill a man.

"I feel like the system murdered my son," says Therese Burrell, the mother of Dameon Burrell, Harris' second victim.

"They had a criminal right in their hands, and they chose to send him right back onto the street and not even give him the sentence the law states that he is supposed to get."

Burrell, 34, said she believes her son, who had been arrested twice on marijuana possession charges, was involved with drugs -- activity she tried to prevent by giving him extra pocket money so he would not "hustle."

Last year, Harris was sent to jail for the rest of his life for murdering Dameon Burrell.

Harris' first victim, Roger Mixon, is also devastated. He went to court several times to testify, only to see the case delayed. Finally, prosecutors told him they had worked out a deal that would send Harris to prison for 13 years, 10 without parole.

He was never told about the real sentence.

"We came to court to try to get [Harris] in jail. That guy [Burrell] would probably still be living now," Mixon says. "You got witnesses against a guy, and you let him right back out on the streets?"

Asked about the cases discussed in this article, Jessamy; her deputy, Sharon A. H. May; and her assistant, E. Francine Stokes, responded on behalf of the prosecutors.
May says that in the Harris case, prosecutor Jan Alexander wanted Harris in prison for 12 years but the defense persuaded the judge that Harris needed treatment for alcohol abuse.
Circuit Judge Mabel E. H. Hubbard, now retired, says she did not remember the case. But she says it would be "unusual" for her to give such a short jail term for a violent crime.
"If I gave somebody a 12-year sentence, suspend all but 18 months, I had absolutely no expectation that he would slap someone on the shoulder after that, let alone kill somebody," Hubbard says. "I take my best guess."
That is not what the authors of the law intended.
The law was meant to stop gun violence by creating escalating penalties for people caught carrying or using guns.
Defendants are usually charged with "using a handgun" as part of an armed-robbery or attempted-murder case. The idea was for defendants to receive a conviction on the crime and a separate conviction for using the gun.
First-time offenders must serve no less than five years without parole. If caught again, defendants must have a five - to 20-year sentence tacked onto the end of any other prison term.
The law is clear: The sentences are mandatory. The sentences can't be suspended. Five years, no parole.
"No court shall enter a judgment for less than the mandatory minimum sentence," the law states.
But nearly 30 years later, the law has not been effective in curbing violence in Baltimore. It is a standard charge issued by police and grand juries, but almost never used in the courtroom except as a plea-bargaining chip.
One result is that federal prosecutors have decided to take on more and more city gun cases in a project called DISARM.
In the past five years, prosecutors have used the tough federal laws to go after about 275 defendants, most from Baltimore. In 1999 alone, federal prosecutors indicted 96 people from Baltimore. The average sentence received was about 7.8 years.
Consider how Baltimore prosecutors handled a case against a man nicknamed "Brew."
At 18, Vernon Wright seemed an ideal candidate for the state's mandatory gun sentence, court records suggest.
On Feb. 20, 1998, armed with a .22-caliber revolver loaded with nine bullets, Wright went looking for someone to rob.
He found Charles Davis, 46, who worked two jobs to support his family. He ran a paint store during the week and delivered pizzas for Little Caesar's on weekends.
When Davis walked to his car that February night, $12 in his pocket from his pizza delivery for a house in the 1100 block of Elbank St., Wright was waiting for him. The teen pointed his gun at Davis, screaming, "Give me your money! Don't look at me!"
Davis quickly gave him the cash. But Wright wanted more, grabbing at Davis' pockets. Davis fought back. The two struggled, and Wright shot Davis once in the right calf. Davis wrenched the gun away, and the teen vanished down the block.
His leg bleeding, Davis returned to the pizza store on York Road. He called police, and a month later he identified Wright from police photographs.
When the case went to court, Davis was ready to testify. Wright faced a maximum sentence of 20 years and a minimum sentence of five years.
Davis said that each time he went to the courthouse, the case was delayed.
"It finally came down to, 'We'll call you if we need you.' They never called, and the next thing I knew, the trial was over," Davis says.
In April, prosecutor Andrea Mason dropped the gun charge with the mandatory five-year sentence, and Wright was sent to prison for three years after pleading guilty to armed robbery.
Davis says he spoke with Mason before the guilty plea and relayed to her that he didn't think a 20-year prison term was the best way to resolve the case. But he said he wasn't told about the actual sentence until later.
"It's a pretty crummy sentence," Davis says. "It hardly fits the crime. That's almost like a vacation."
The prosecutors' explanation for the low sentence?
May, the deputy state's attorney, says Davis was "reluctant" to testify because "he did not want to lose time from work." Stokes says Mason thinks she told Davis about the sentence when they talked before the guilty plea.
Told of May's comments, Davis responded: "Excuse me? I went down three days in a row, and nothing happened. I think they have gotten it slightly wrong. They were not very cooperative or accommodating."
The attempted-murder case against Antonio Fowlkes is an example of what happens when a victim is reluctant to testify against his assailant. It is also an example of how prosecutors often don't do all they can to bring the victim or witnesses to court.
On Dec. 2, 1996, Fowlkes shot 19-year-old Keith Patterson with a .38-caliber handgun after a neighborhood dispute. As bullets flew, Patterson leapt from a stoop and started to run away, but a bullet hit him in the buttocks.
Fowlkes and his accomplices vanished into the neighborhood, but several witnesses told police he was the shooter, court records say. He was arrested three weeks later.
Patterson twice failed to show up to testify. Prosecutor Stephanie L. Royster had sent him a letter and summonses to appear in court, but her efforts to secure his testimony stopped there.
When he didn't come to court, Royster could have postponed the trial and ordered him picked up by police -- but Judge Clifton J. Gordy wanted the case off his docket.
So Fowlkes' fate was decided in June 1997 in nine minutes of hushed conversation among the prosecutor, the defense lawyer and the judge.
"Make me an offer he can't refuse," the judge told Royster, referring to the defense attorney.
She asked for two years on attempted murder. Defense attorney David R. Eaton counter offered with 18 months.
"Sold," Gordy said. Eighteen months it was, with credit for the six months Fowlkes had served awaiting trial.
But Gordy was concerned.
"Now, does it have to be attempted murder?" Gordy asked. "I gave a guy seven years, suspend all but 18 months on attempted murder? That's kind of like hard to justify on the campaign trail."
"How about assault?" the defense attorney suggested.
Laughter.
Sold.
The prosecutor dropped the mandatory five-year gun sentence, and Fowlkes pleaded guilty to first-degree assault and illegally carrying a handgun.
Fowlkes, then 18, was soon back on the streets -- and back in trouble.
Late at night on July 26, 1999, prosecutors say, Fowlkes was armed again. On an East Baltimore side street, Fowlkes and another man got into a gun battle.
Twenty yards away, Carlton Valentine; his brother, Arnell Davis; and their cousin, Wayne Johnson, were sitting on the steps of Valentine's home at 821 N. Bradford St., drinking beer and trying to escape the stifling summer heat.
Hearing the shots, the three scrambled off the steps and lay flat on the sidewalk. "It was like the O.K. Corral," Davis says. "The bullets were flying." When the shooting momentarily ceased, the men tried to rush indoors. But more bullets whizzed down the street. One hit Valentine in the back.
"He told me, 'Brother, I'm shot. I got shot in the back,' " Davis, a forklift operator, recalls. "Wayne was screaming for help. I said, 'Man, we're going to get those guys.' "
Valentine, an auto mechanic and father of four, died at Johns Hopkins Hospital 50 minutes later.
Davis, who identified Fowlkes for police as one of the shooters, was furious when told of Fowlkes' previous conviction.
"There shouldn't be no plea bargains," Davis says. "It's bad when you can't sit on your own steps."
In an interview, Judge Gordy says that campaign concerns had nothing to do with his decision in Fowlkes' first case and that the comment was made "in a moment of levity which no one took seriously, including me."
He says the 18-month sentence was a "pretty good plea" since the victim did not come to court. Fowlkes had been awaiting trial for about six months, and Gordy says he did not want to delay the case more because of the defendant's right to a trial within 180 days of arraignment. All parties agreed to the sentence, he says.
"It looked like to me the choice of a postponement, which is a nasty word now, and it was then to me, or a dismissal. I obviously wasn't inclined to postpone the case, nor was the state able to proceed," Gordy says. "I feel horrible now, but I didn't have these facts in front of me. Hindsight is always beneficial."
Sometimes there is little that police, prosecutors or judges can do to persuade witnesses to testify. In all the cases cited by The Sun, victims or witnesses identified the assailants to police, but some stopped cooperating

between the police station and the courtroom.

Some witnesses are afraid of retaliation. Some want to settle the score themselves. Some simply get lost in the empty months after police close a case with an arrest and before prosecutors pick it up to take it to court.

Dontaya Preston, 21, has escaped two attempted-murder charges -- and two potential life sentences -- in the past three years because his alleged victims refused to come to court.

Preston is described in court records as a drug dealer who uses a gun to settle scores, even pointing one, police say, in the face of a neighbor who came to the aid of his girlfriend when the pair were arguing.

On an October night in 1996, a man named Pernell Beckette was standing on a dimly lighted corner just south of North Avenue.

Word on the street was that Beckette had stolen a drug dealer's stash. The punishment was swift, severe and bloody.

Bullets ripped through the air. One. Then another. And another. And another, slamming into Beckette's back and neck as he tried to flee. Police found him bleeding on the concrete, left for dead.

After he recovered, Beckette broke the code of silence on the street. He told police who shot him. He picked out the shooter from police mug shots. Then he vanished.

Police searched for months, even traveling to New York, desperate to make a case against Preston, known on the streets as "Beefcake."

Nearly a year later, with no witness to testify, prosecutor Sylvester Cox had to place the charges in the inactive file.

Preston had also been charged with assault and resisting arrest for fighting with the police officer who picked him up on the Beckette case. So prosecutors forged ahead with that case.

Preston pleaded guilty to assault for trying to wrench the officer's gun away from him during a struggle on the floor of an all-night store. He was given a sentence that amounted to the time he had already served.

The Sun recently found Beckette, 38, living with relatives on Long Island, N.Y., still with all six bullets lodged in his flesh. One "floats" around his neck, he said.

He is unrepentant about his decision not to testify.

"I didn't follow suit with that," Beckette says matter-of-factly when asked about the case. "I was just hoping that they would prosecute him for [another] murder."

He says he worried there would be retaliation against his family, who still live in the neighborhood.

"I know who shot me but, like I said, I didn't want it to backlash."

Preston was accused of shooting another man, Nawann Blandon, records say. Prosecutor Twila Driggins did not take the case to trial because the victim could not be located.

Preston's attorney, Robin Zoll, says no one will ever know who shot Blandon because he did not come to court.

"Who knows?" Zoll says. "The victims don't come to court in many of these cases. In all but one of the attempted-murder cases I have had in the past year, the victims did not come to court."

"One explanation for this may be that they do not want to be part of the court process but would rather settle their scores on the street."

Preston is awaiting trial on two felony drug cases and assault.

Police call Larry Haynes "an animal." With a rap sheet dozens of pages long, he has snaked through Baltimore's justice system time and again.

In 1997 alone, police allege, Haynes threatened his girlfriend at gunpoint in September, shot a man after a bar argument in October, had a loaded .22-caliber revolver in the trunk of a car in November and shot another man in December.

But Haynes has never been sent to jail for longer than a year.

Why? Witnesses recanted or did not show up for trial. Prosecutors dropped charges, or judges refused to give tough sentences.

Police say Haynes' string of violent crimes began in February 1995. Two women said Haynes and another man burst into a house in the 1000 block of Castle St., brandishing a "real big gun," and made off with $39. Officers spotted Haynes running down Castle Street, jamming his .44 revolver into his waistband.

Officer Kenneth Jeffries gave chase. The two struggled. Haynes pushed the revolver inside Jeffries' vest and tried to pull the trigger. But the hammer of the gun got tangled in the straps of the vest, and it never went off.

Jeffries finally ripped the weapon out of Haynes' hands. After his arrest, Haynes had a message for him.

"I didn't get ya' this time, but I got something for your ass next time," he told Jeffries, according to court records.

Soon the armed-robbery case began to unravel. The two women recanted their allegations to a defense lawyer, then vanished before prosecutors could question them further. Prosecutors had to drop the charges, including two counts of the mandatory five-year-penalty gun charge.

A jury convicted Haynes in September 1995 of resisting arrest and illegally carrying the revolver.

He faced as much as 23 years behind bars. Prosecutor William D. McCollum asked Judge Mitchell to send Haynes to jail for at least 10.

"What we are dealing with here is a violent assault, assault involving weapons of mass destruction, weapons that are carried for the sole purpose of intending serious harm or death," McCollum argued.

But Mitchell was not swayed. "There was only one gun in [his] possession," the judge said.

The sentence? The seven months he had already served.

A year later, Haynes was back in trouble. He was accused of robbing and shooting three men on Oct. 26, 1996, as they lay face down on an East Baltimore street. Paul Preston and his friends were hit in their heads, backs and arms.

One stray bullet hit a 14-year-old girl as she walked down Port Street with a friend. All survived. Six weeks later, Preston identified Haynes for police.

The case was scheduled for trial nearly a year after the shooting. It was the first time Preston had seen Haynes since that night on Port Street. He told the prosecutor, Royster, that he wasn't sure Haynes shot him.

So Royster felt she had to cut a deal. In August 1997, she dropped the most serious charges, which could have sent Haynes to prison for life. Haynes pleaded guilty to carrying a handgun and second-degree assault.

He was sent to jail for a year, with credit for the eight months he had already served.

In a recent interview, Preston said he "wasn't sure right off the bat" whether it was Haynes who shot him. Haynes was heavier after time in prison and had a different haircut, he said. But after the guilty plea, Preston said he learned from "word on the street" that Haynes was the man who shot him. "I wish now I had [testified]."

In November 1997, Haynes was accused of shooting a man in a dispute over a beer, but that case was not prosecuted when the victim did not appear. The next month, he was charged in another shooting, but prosecutors dropped that case when the victim changed his story.

Mitchell declined to comment on the first case, saying he had no memory of it. He referred instead to statements he made in court.

Jack B. Rubin, who has defended Haynes against several criminal charges, said when prosecutors don't have witnesses to prove their case, they have to drop it.

"If these allegations are true, of course he's dangerous," Rubin says. "But the presumption is that he's not. No prosecutor can make a case without evidence."

For those trying to quell the city's violence, men like Haynes are all too familiar.

"He's basically an animal that plays with no rules, he doesn't follow any, and the system protects him," says Jeffries, the police officer who battled with him. "It happens every day, and after a while you become numb to it. If you were to take it personally, it would give you a heart attack.

"He'll do it again."

Originally published on Jan 30 2000

Enclosure(4)

Bail denied for Moore brothers

Extradition hearing set in Philadelphia for suspects in killing; `No jubilation' for family; Prothero's relatives express frustration with justice system

By Dan Thanh Dang And Dennis O'Brien Sun Staff

As the family of a slain Baltimore County police officer gathered at a somber celebration of his youngest daughter's second birthday, two brothers charged in the fatal shooting were denied bail in Philadelphia yesterday.

Richard Antonio Moore, 29, and Wesley John Moore, 24, were being held in the lockup at Philadelphia police headquarters, awaiting transfer to that city's Curran Fromhold Correctional Facility. An extradition hearing has been set March 6.

The Moores appeared on video monitors for arraignment hearings that started about 6 p.m. and lasted about five minutes each.

After answering a few questions about his public defender, Richard Moore asked only one question of a court commissioner: "What if I was to fight extradition?"

That action would mean a delay in bringing him back to Maryland to stand trial in the death of Sgt. Bruce A. Prothero, who was shot Feb. 7 as he chased four men who fled from a Pikesville jewelry store after a daylight robbery.

The arrest of the Moore brothers Saturday afternoon ended an intensive 12-day manhunt and brought widespread relief to a grieving Baltimore County Police Department . Two other suspects had been arrested earlier.

The Prothero family expressed frustration yesterday over a justice system that fails to keep violent offenders in jail. Police and court records show that all four suspects have lengthy criminal histories ranging from drug possession to attempted murder.

"Too often people are apprehended and out on the street the next day," said Rick Prothero as he wrapped an arm around Bruce's tearful wife at a county Fraternal Order of Police news conference in Carney. "It has been frustrating for us as family of a police officer.

"We are certainly not the only family that has lost a son, a brother, a husband and a father," Rick Prothero said. "We are victims, but there are lots of victims of this kind of thing. Our family felt some instant relief, some momentary joy maybe, but no jubilation."

The aftermath of the shooting has been a "roller coaster" ride of emotions, Prothero family members said.

There was concern that the suspects would not be caught. There was gratitude for the overwhelming support Ann Prothero and her five children received from police officers and the public.

There also was fear that the men would cause more harm while they were at large.

Added to all that, they said, was immense sorrow over their loss mixed with moments of happiness and anger.

Yesterday, 2-year-old Hannah's birthday party brought another surge of feelings.

"Reality is not reality at my house yet," Ann Prothero said. "But we have to go on. It doesn't feel like it will, but it will. [Bruce] would want me to think of the kids."

She added, "My husband's job was to help keep people who do these heinous crimes off the street. The fact that they're out there in public, not behind bars. It is unacceptable."

The other two suspects in the Prothero killing, Donald Antonio White Jr., 19, and Troy White, 25, both of Baltimore, are being held without bail at the Baltimore County Detention Center. The Whites, also charged with first-degree murder, are not related.

The Moore brothers had remained free even as police crisscrossed the Baltimore area searching for them. Tips came from as far as Virginia and Pennsylvania, police said.

"We had spottings right and left," said Cpl. Vicki Warehime, a county police spokeswoman. "We acted on every tip that was given to us."

County police tactical officers combed a North Point neighborhood Tuesday, where the Moores' mother, Mary Moore, lives. On Wednesday night, a police helicopter with searchlights scanned an Essex community where Wesley Moore once lived. Two hours before the Moores' arrest in Philadelphia, county homicide detectives were back in North Point, interviewing residents about the suspects' whereabouts.

Officers in the North Point precinct also received tips that the brothers had been spending a lot of time near Dundalk.

But the breakthrough, police sources said, came after Baltimore City and county officers executed several arrest warrants early Saturday in the Cherry Hill neighborhood in southern Baltimore near Richard Moore's old Baltimore County neighborhood in Lansdowne.

The tip led them to a crime-ridden neighborhood in North Philadelphia. About 3: 30 p.m. Saturday, a fugitive task force of FBI agents, U.S. marshals, and Baltimore County and Philadelphia police raided a three-story brick rowhouse in the 2200 block of N. 19th St.

The brothers immediately "laid down and surrendered and did what they were told," said David Ebron, 66, their great-uncle with whom they had stayed since Thursday.

Ebron said that when the brothers showed up at his door, they did not mention that they were in trouble with the law.

He said he learned that police were searching for them in a letter he received Friday from a niece in Baltimore.

Ebron said he did not have a chance to talk with Richard or Wesley Moore before heavily armed police banged on his door Saturday afternoon.

That evening, Baltimore County and Philadelphia police drove away with two green plastic bags after conducting an hourlong search at Ebron's home.

Yesterday, county police praised the work of Baltimore and Philadelphia police and federal authorities in tracking down the suspects and arresting them without incident.

"Again, we want to say we couldn't have done this without the help of all the other law enforcement agencies," Warehime said.

Originally published on Feb 21 2000

Enclosure (5)

Sentences Without Finality

Judges Can Cut Terms for Whatever Reason -- or No Reason

Lori Montgomery and Daniel LeDuc, Washington Post

February 4, 2001; Page A1

Judgment day for Christopher Kelly unfolded according to plan. Kelly had pleaded guilty to shooting Willie Calloway in a fight over money. On sentencing day, the dead man's family settled into the courtroom benches, hungry for revenge.

They heard the prosecutor deliver a solemn monologue about helping "this family heal." The judge responded by sentencing Kelly to five years in prison, then ordered the bailiff to take him away in handcuffs. The Calloways went home satisfied: Kelly would do time behind bars.

But in Maryland, some judgments are never final. And on this particular April morning in 1995, the sentencing hearing at the Prince George's County Courthouse was an event staged to placate the grieving family.

A month earlier -- in an agreement that the judge ordered sealed from public scrutiny -- the prosecutor and defense attorney stipulated that Kelly would receive a five -year prison term on sentencing day, but they agreed that he would be brought back to the courtroom within 60 days so that the judge could "reconsider" that sentence.

Oblivious to the deal, the Calloway family was absent in May when Kelly returned to Judge Darlene G. Perry's courtroom. She changed his sentence to probation, and he walked out a free man.

"Good luck to you," Perry offered. Kelly had spent 71 days in jail.

Why would a judge turn a killer loose? The answer is uncertain: Maryland judges cannot be held accountable by the public for their actions. In an era when stiff sentences are touted as a deterrent to crime, Maryland operates a system in which the sentence handed down when the public is paying attention can be dramatically altered later.

Using a 50-year-old court rule in a manner that is unique in the nation, **Maryland judges can reduce the sentences they hand out at any time for any reason -- or for no reason at all**. There is no law that permits judges to do this. Their authority derives from a procedural rule developed by judges without public debate.

Though a resentencing hearing almost never draws public attention, the rule granting judges the power to reconsider sentences has become a routine part of Maryland's criminal justice system. Defense attorneys ask Circuit Court judges to reconsider many of the approximately 11,000 sentences they hand down each year, even sentences reached through plea bargain agreements.

The rule says judges cannot use this post-sentencing authority to increase a sentence. The term can only go down.

Every year, hundreds of criminal sentences are reduced, and dozens of felons are released from prison on orders of a Maryland judge, according to a Washington Post analysis of court and prison data. In some cases, the reconsideration hearing is held years after the original trial, often without the victim's knowledge.

As a result, the killer of a police officer was freed after a judge quietly slashed his life sentence -- nine years after the crime. A rapist found guilty by a jury had his conviction erased -- after he served two years in prison. And a man who agreed to a 30-year sentence for shooting someone in the back six times went off to prison knowing that -- as part of his plea bargain -- the judge would later cut his sentence to just five years.

Critics say some judges impose harsh sentences to pacify crime victims clamoring for long prison terms, intending all along to reduce the punishment later.

"The whole concept of reconsideration is institutionalized hoodwinking of the public, the press and of victims of crime," said Montgomery County State's Attorney Douglas F. Gansler (D). "This is the type of procedure that breeds cynicism among the public in the justice system."

In Prince George's County, where computerized court records specifically note sentence reductions, The Post found that Circuit Court judges have reduced sentences in more than 1,100 cases since 1995 -- more than 10 percent of all convictions. Violent criminals were nearly as likely to win sentence reductions as drug and property offenders.

The practice proved more difficult to analyze elsewhere because other counties do not clearly label cases in which sentences were reduced through reconsideration. By comparing court dockets and sentencing records, The Post estimates that 9 percent to 12 percent of serious criminals in the other counties it examined might have won a sentence reduction. In Charles County, for example, about one in 11 sentences might have been reduced in the past five years. In Howard County, the estimate is about one in 10.

In Montgomery County, the available computerized court records do not identify sentences reduced through reconsideration.

In some cases, the beneficiaries of reconsideration have gone on to commit new crimes: **In February 1999, convicted armed robber Donta Terrorus Paige killed a young woman in Denver during a burglary -- four months after Prince George's Circuit Court Judge Joseph S. Casula reduced his 10-year prison term so he could be admitted to a Colorado drug treatment program. In April 1999, convicted robber Kevin Ward kidnapped and raped a woman after Montgomery Circuit Court Judge Ann S. Harrington reduced his six-year term to 18 months.**

Despite the outrage generated by the early release of those repeat offenders, Maryland judges defend the reconsideration rule. They say it helps them to adjust for changing circumstances, to encourage good behavior in prison and to reward successful efforts at rehabilitation.

"I believe very strongly that somebody who has a motion for modification pending is going to be a better prisoner," said Joseph F. Murphy Jr., chief judge of the Maryland Court of Special Appeals, who has practiced law in Maryland for 30 years as judge, defense lawyer and prosecutor.

"As long as it's not abused, a motion for modification serves an important goal," Murphy said. "It can be abused. But so can presidential pardons."

Prosecutors counter that appellate courts and parole commissioners can perform most of those functions. They say victims are often shocked when they discover that a convict who victimized them is up for a sentence reduction hearing and are outraged at being forced to relive the crime and the sentencing. The rule removes all sense of finality from a sentencing decision, prosecutors say, and undercuts the credibility of Maryland courts.

"It's kind of the dirty little secret of the criminal justice system," said Robert L. Dean, a former Montgomery County state's attorney who serves as chief felony prosecutor in Prince George's County.

With the Maryland General Assembly now meeting in its annual 90-day session, changing the reconsideration rule is a top priority for the Maryland prosecutors' association. To succeed, it must win over **Del. Joseph F. Vallario Jr. (D-Prince George's), who is chairman of the House Judiciary Committee and a high-powered defense lawyer** who has opposed efforts to restrict the use of sentencing reconsideration.

Last year, Del. Anthony G. Brown (D-Prince George's) introduced a bill that would have limited judicial reconsideration to one year after sentencing except in extraordinary circumstances.

Brown drafted the bill after reading a newspaper article about the release from prison of Kenneth James Lodowski, who was originally sentenced to die for the 1983 robbery-murder of an off-duty Prince George's police officer, Carlton X. Fletcher, and a Greenbelt mini-mart clerk.

After Lodowski's conviction was overturned on appeal, he pleaded guilty to murder in 1987 and received two consecutive life terms. Five years later, Circuit Court Judge Jacob Levin reconsidered the sentences and combined them into a single 25-year term. Levin gave no reason in court records for the reduction, and Lodowski was released in January 2000 after serving 16 years for the two slayings.

Lodowski's freedom infuriated police in Prince George's, who couldn't understand how the killer of a police officer got out of prison so fast. Police representatives joined victims of violence in supporting Brown's proposal to limit the judicial power of reconsideration.

But Vallario, Maryland judges and the state bar association all opposed Brown's bill. In mid-March, Vallario's committee killed it on an 11 to 9 vote.

How the System Works

In the imperfect world of crime and punishment, judges have always had the power to correct their mistakes. In Maryland, that power was codified in 1950, when the state's judges adopted their own version of a federal procedural rule creating a formal system of sentence review.

In the half-century since, the federal courts and Maryland have come to apply that rule in very different ways.

Today, under the federal rule, judges may reduce a sentence only at the request of prosecutors, usually to reward a criminal for help with an investigation. The federal rule is rarely used, according to defense experts and judges.

Under the Maryland rule, judges may reduce a sentence only at the request of defense attorneys seeking mercy for their clients. The Maryland rule is invoked almost every day -- by some lawyers, in every case they lose.

Enclosure (6)

It works like this:

Within 90 days of receiving a sentence of prison or probation, a defendant files a motion asking the judge to reconsider the sentence. Usually, the defense attorney asks the judge to postpone action on the motion until some date when the defendant can present evidence that, for example, he has gone back to school, quit drinking or completed a course in anger management.

There are no deadlines for a decision on the motion and no formal criteria to mark a case as deserving. If a judge grants the motion, the defendant may file another motion requesting reconsideration of the new, lesser sentence. Prosecutors and victims, however, have no right to appeal.

In an interview, Chief Judge Robert M. Bell of Maryland's highest court, the Court of Appeals, said federal sentencing guidelines are so strict that federal judges have little discretion in original sentencing and thus even less to reconsider their decisions. But Maryland judges want to retain flexibility with a goal toward rehabilitating defendants.

"When there are proposals to limit discretion, we generally oppose them," Bell said.

Maryland trial judges have been remarkably successful in retaining jurisdiction over their cases after sentencing. In most states, trial judges lose jurisdiction over cases after a year or less. In Virginia, it's 21 days or whenever a defendant leaves a county jail for state prison. In the District, judges have the power to reconsider sentences, but they use it primarily to benefit criminals sent to prison while awaiting placement in drug treatment programs, prosecutors said.

In states where the rules are more flexible, local convention prevents judges from cutting sentences except in the rarest circumstances, according to a Post survey of judges, prosecutors and defense lawyers from every state in the nation. In interviews, most said they were astonished by what one Delaware prosecutor called the "abuses" of judicial power in Maryland.

"That's the craziest thing I've ever heard," Susan Gaertner, president of the County Attorneys Association in Minnesota, said after hearing the Maryland system described. "I don't see how this could go further against the grain of truth in sentencing."

Montana Assistant Attorney General Elizabeth Horsman said Maryland's system "would never fly here. . . . Whenever you have discretion, you have the opportunity for greased palms. If your dad knows the judge or someone is greasing the skids -- it's just ripe for corruption."

David Raybin, a Tennessee defense lawyer and former chairman of that state's judicial rules commission, was boggled by the practice.

"Why would judges want to clog up the docket with crap like that?" Raybin said. "Our judges jealously guard their jurisdiction, too. But once they make a decision on a case, then it's time to move on. There has to be some finality to the thing."

Victims Left Out

Maryland crime victims have a legal right to be present when there is a criminal hearing in their case -- including a reconsideration hearing that might set someone free.

"The statutes and the regulations . . . are in place to prevent somebody from walking into a grocery store and seeing the guy in the next aisle when he's supposed to be in prison," said Murphy, of the Maryland Court of Special Appeals.

Despite that, judges commonly resentence criminals without the knowledge of their victims. And victims who are not present have no legal right to have the original sentence restored.

Teresa Baker was a test case.

On May 8, 1991, her son was killed by Robert Henry Short Jr. Court records indicate that John Baker, 37, had attacked Short for threatening his niece. Short took the beating, then went for his gun. John Baker was walking away when Short shot him six times in the back.

Short, then 37, pleaded guilty to second-degree murder six months later. In open court, St. Mary's County Circuit Court Judge Marvin S. Kaminetz noted that John Baker posed no threat to Short when he was slain. For that reason, Kaminetz told the courtroom, he was sending Short to prison for 30 years.

In private, with the judge's approval, the defense attorney and prosecutor had already struck a different deal: Short would come back to court in a few years and have his 30-year sentence cut to five years.

In April 1995, that's just what happened. Though Teresa Baker had signed papers asking prosecutors to notify her of any such hearing -- and though prosecutors are required by law to make such notification -- nobody called John Baker's mother.

Four days later, Teresa Baker arrived home to find a message on her answering machine from a parole board clerk, advising her that Short was due to be released in two weeks. He had served less than four years.

Baker returned the call. "I said, 'I thought he was supposed to get 30 years.' The lady said, 'No, he didn't have but five years on his record.'

"When I got that call, shock wasn't the word for it," Baker said. "It rendered me numb."

Furious, Baker hired Russell Butler, a lawyer who works with the Stephanie Roper Foundation for crime victims' rights, and sued for standing in the case. On May 16, 1995, Kaminetz agreed that Baker's right to notification had been violated.

The judge held a brief hearing that same day, set aside Short's new sentence and heard testimony from Baker. Then he cut Short's term to conform with the deal that had been agreed to in 1991.

In an interview, Kaminetz said he had little choice. The prosecutor and the defense attorney had agreed to the deal, which was crafted to calm a vengeful feud developing between Short's and Baker's families.

The long sentence in open court made the Bakers feel vindicated, Kaminetz said. And the promise of a quiet reduction a few years later made it easier for Short to swallow.

"There was real bad blood here. And one of the reasons Short agreed to this -- he thinks he shouldn't have gone to jail at all -- but I think he thought he was safer there than out on the street," the judge said.

"I feel terrible" about the prosecutor failing to notify Teresa Baker, Kaminetz said. "But they made me feel like we were doing something very good: protecting the public."

Baker said she has never recovered from her son's death, nor from the treatment she received from the Maryland court system.

"It's one thing to be made a victim by the man who killed my son," she said. "But it's a whole different ballgame to be victimized by a justice system I thought was there for me."

Judges Keep Control

Maryland judges say there are good reasons for a trial court to retain control over sentences. Foremost is encouraging rehabilitation, particularly for first-time offenders. Kaminetz offered the example of sentencing a drug offender to six years in prison, then discovering that drug treatment is available only to inmates with sentences of five years or less.

The promise of a shorter sentence has helped compel testimony from some inmates, judges say. And it has pushed inmates to devote time in prison to constructive pursuits, such as work and school.

"It's flexibility aimed at the rehabilitation of the person in front of you," Chief Judge Bell said. "If your aim is retribution, this thing doesn't make sense."

Reconsideration also allows judges to adjust for changing circumstances. In 1995, for example, Gov. Parris N. Glendening (D) announced that he would no longer allow killers and rapists sentenced to life in prison to be released on parole.

"People otherwise eligible for parole are suddenly no longer eligible," Judge Murphy said. "Well, a judge might want to make an adjustment for that."

Most disturbing to prosecutors is the practice of "announcing": A judge delivers harsh punishment when attention is focused on a crime to satisfy victims and send a message to the community. But the judge apparently has no intention of making the criminal serve that sentence and quietly reduces it months or even years later.

That is a practice that doesn't seem fair to Judge Andrew L. Sonner, who serves on the Court of Special Appeals, and is chairman of the Maryland Commission on Criminal Sentencing and a former Montgomery County state's attorney.

"It always annoyed me to see certain judges, when everyone was there – victims, police, prosecutors, press -- they'd hand out one sentence," Sonner said. "And months, sometimes years later, they'd come in and modify it."

In recent years, prosecutors have tried to place deadlines on reconsideration decisions. But their pleas to the courts' rules committee, to the Maryland sentencing commission and to the House Judiciary Committee have gone unheeded.

Indeed, one Maryland judge recently reprimanded a lawyer for failing to seek a reconsideration of sentence for his client. The right of a convict to have his sentence reexamined is so fundamental, the judge ruled in response to a post-conviction motion, that the defense attorney who failed to file a reconsideration motion was incompetent.

Enclosure (6)

The ruling came in the 1989 case of Monroe Page, who robbed a Severna Park restaurant and beat the bookkeeper, Cynthia Cucina, to death with a piece of Formica countertop.

Anne Arundel County Circuit Court Judge Eugene M. Lerner called the crime "horrible, senseless, despicable [and] atrocious" as he passed sentence. When Lerner said the crime "cries out for the maximum penalty" and sentenced Page to life in prison, the defense attorney saw no point in requesting reconsideration.

Last March, Anne Arundel Circuit Court Judge Ronald A. Silkworth ordered Lerner to reexamine the sentence anyway -- 11 years after the crime.

"In this case, [the defendant had] nothing to fear from a modified sentence," Silkworth wrote in his opinion. Page's attorney provided ineffectual counsel, Silkworth ruled, a violation of Page's rights that cried for legal remedy.

On Sept. 13, Lerner held a hearing on Page's request for reconsideration. He denied it. Page, now 36, is still serving a life term. The hearing churned up awful memories for the bookkeeper's family.

"After it's all supposed to be over, you're getting slapped again," said Cynthia Cucina's husband, Richard. "It's torture to put people through that."

The Calloways discovered that their son's killer had never been sent to prison when they asked to be notified if he came up for parole. They learned why he was released when their attorney had Judge Perry's case file unsealed.

The file revealed that a month before judgment day, the judge, the defense attorney, the killer, even the prosecutor -- who the Calloways thought would avenge their son's death -- all had agreed that Christopher Kelly would stand up in public, receive his prison term, then return to court later to receive a new sentence of probation.

To make sure there was no mistake, the judge issued a special order to the county jailers: "He is not to be sent to" state prison.

Kelly's attorney has since died. Judge Perry has retired and moved away, and the court system does not have a forwarding address. The only party to the sealed agreement still available is prosecutor James N. Papirmeister, who has left the state's attorney's office to work as a defense lawyer.

In an interview, Papirmeister said that the Kelly case was "a stone-cold loser." The police work was bad, and there were signs that Kelly had acted in self-defense.

"So I negotiated to get him a manslaughter count and some jail time," Papirmeister said. "I knew it wasn't much, but it was better than I would get after a trial."

The deal was kept secret, Papirmeister said, because the Calloways had brawled with Kelly in the courthouse and the judge was concerned that there might be violence if they knew the true sentencing plan.

The Calloways' attorney filed a motion to force the judge to put Kelly back in jail. Perry held a hearing, but she refused to undo what had been done. The judge told the dead man's mother, Mattie Calloway, to give up, go home and raise her grandchildren, because there was nothing more she could do for her son.

"I just keep thinking, 'Where is the justice?' " Mattie Calloway said later. "That judge was supposed to be the voice of my dead child. Where was the justice for him?"

Miller Kills Bill to Curb Judges' Power

By Lori Montgomery

Washington Post, March 28, 2002; Page B01

Maryland Senate President Thomas V. Mike Miller Jr. has killed a bill that would have limited the power of Maryland judges to lower criminal sentences, overruling a Senate committee and handing an embarrassing defeat to Lt. Gov. Kathleen Kennedy Townsend on one of her top legislative priorities.

Miller (D-Prince George's) said yesterday that he told Sen. Walter M. Baker (D-Cecil), chairman of the Judicial Proceedings Committee, to hold the bill in procedural limbo despite the committee's decision nearly two weeks ago to send it to the Senate floor. Miller also told Baker to meet with the state's judicial leaders this summer to work out a version of the bill that the judges find acceptable.

Baker and the bill's sponsor, Sen. Larry E. Haines (R-Carroll), balked at Miller's demand. But after Miller angrily berated the pair at the State House in Annapolis this week, Baker and Haines agreed to hold the bill. Yesterday, Miller pronounced it dead.

"I don't want judges being legislators, and judges have a right to expect that legislators don't seek to be judges," Miller said.

The unusual public maneuvering highlights the enormous power of Miller and other General Assembly leaders to manipulate the legislative process outside the written rules of procedure. It also sends a troubling signal to Townsend (D), who will have to deal with Miller and others in the General Assembly if she wins election this fall as governor.

Yesterday, Townsend's deputy chief of staff, Michael Sarbanes, declined to criticize Miller's unilateral action against a measure for which Townsend has lobbied aggressively.

"Clearly, it would be better if there was a chance for the full Senate to vote on it," Sarbanes said. "But she knew going in this was a tough issue and a very controversial issue. There's a lot of passion."

The measure would limit the power of judges to change the sentences they impose in criminal cases. Currently, Maryland is unique in the nation in allowing judges to reduce criminal sentences at any time for any reason.

The state's judges say they use that power primarily to encourage petty criminals and drug offenders to reform. Criminals are more likely to complete drug treatment programs or high school classes, judges say, if the courts can hold out the promise of a lower sentence.

The Washington Post reported last year that judges have reduced the sentences of murderers and rapists -- often without the knowledge of the victims.

Haines and other legislators introduced bills to bar judges from changing a sentence more than 15 months after it is imposed. Similar measures were defeated in the past two legislative sessions, but this year Townsend's support gave the sponsors fresh hope.

Miller, a criminal defense lawyer, remained vehemently opposed to the measure.

Judges "know their business," Miller said. "As long as they provide . . . the victims an opportunity to be there, judges feel they can make an honest decision about people's lives."

Miller added: "Is there a possibility of abuse? Obviously, yes. But has this been misused in such a fashion to cause a termination of the entire process of reconsideration? I don't think that case has been made."

Miller would not discuss in detail his unusual exercise of power in killing the bill. He said a majority of committee members would have voted to do so if Baker had let them take a second vote. But Miller said Baker runs his committee by a quirky set of rules that allow bills to be reconsidered only if the entire committee agrees.

"It's undemocratic by its very description," Miller said.

So Miller said he was forced to kill the bill by fiat. He said that action in no way reflects poorly on Townsend, whom Miller has publicly endorsed for governor.

"Even the lieutenant governor can fall in love with a bad bill," Miller said.

In theory, the measure could be revived in the House. But Judiciary Committee Chairman Joseph F. Vallario Jr. (D-Prince George's) said yesterday that he would not allow his committee to vote on the measure unless the Senate approves it first.

"There's no sense in wasting time on a dead bill," Vallario said.