

PS COMMITTEE #2  
April 15, 2010

Worksession

MEMORANDUM

April 13, 2010

TO: Public Safety Committee

FROM: Susan J. Farag, Legislative Analyst *SJF*

SUBJECT: **Worksession: FY11 Operating Budget -- State's Attorney**

*Those expected for this worksession:*

The Honorable John McCarthy, State's Attorney for Montgomery County  
Lisa Russo, State's Attorney's Office  
Kathryn Swick, State's Attorney's Office  
Bryan Hunt, Office of Management and Budget

**Major Issue: The Maryland Court of Appeals has ordered certain changes in the provision of State's evidence to defense attorneys, with the most significant changes occurring at the District Court level. In order to comply with this order, the State's Attorney's Office faces the need of additional staff for FY11. Please see discussion below.**

The Executive's recommendation for the State's Attorney's Office is attached at ©1-6.

**Overview**

For FY11, the Executive recommends total expenditures of \$12,442,910 for the State's Attorney, a 0.2% reduction from the FY10 approved budget.

	FY09 Actual	FY10 Approved	FY11 CE Recommended	% Change FY10-FY11
<b>Expenditures:</b>				
<b>General Fund</b>	\$12,684,217	\$12,148,340	\$12,005,870	-1.2%
<b>Grant Fund</b>	\$338,360	\$318,050	\$437,040	37.4%
<b>TOTAL Expenditures</b>	\$13,022,577	\$12,466,390	\$12,442,910	-0.2%
<b>Positions:</b>				
<b>Full-time</b>	113	112	115	2.7%
<b>Part-time</b>	12	12	15	25.0%
<b>TOTAL Positions</b>	125	124	130	4.8%
<b>WORKYEARS</b>	122.4	122.1	119.1	-2.5%

The FY11 CE recommendation is a net -\$23,480. This decrease comes from the addition of five grants (\$323,180), which have service impacts, offset by the following identified same services adjustments:

<b>Identified Same Service Adjustments</b>		
Increase Cost: Restoration of Personnel Costs for FY10 Five Day Furlough		\$229,450
Increase Cost: Restoration of lapse salary of retiring employees		\$149,360
Increase Cost: Information Technology Specialist from DTS to SAO		\$124,910
Increase Cost: Retirement Adjustment		\$87,200
Increase Cost: Annualization of FY10 Personnel Costs		\$72,220
Increase Cost: Group Insurance Adjustment		\$62,390
	<b>Total Increases:</b>	\$725,530
Decrease Cost: Reduce Misc. Operating Expenses		(\$2,170)
Decrease Cost: Annualized FY 11 Return of One Administrative Vehicle in FY10		(\$2,870)
Decrease Cost: Printing and Mail Adjustment		(\$4,440)
Decrease Cost: Reduction in Operating Expenses (Prosecution Mgt)		(\$10,300)
Decrease Cost: Motor Pool Rate Adjustment		(\$11,990)
Decrease Cost: Lapse Special Investigator Position		(\$114,760)
Decrease Cost: Lapse Asst. State's Attorney III Position		(\$150,000)
Decrease Cost: Salary Differential Between Retiring Employees and Replacement Employees		(\$174,740)
Decrease Cost: Termination of Child Victim Advocate I Grant		(\$34,000)
Decrease Cost: Furlough Days		(\$396,730)
Decrease Cost: Termination of Anti-Gang Initiative Grant		(\$74,570)
Decrease Cost: Termination of Drug Court Grant		(\$95,620)
	<b>Total Decreases:</b>	(\$1,072,190)
<b>NET SAME SERVICES ADJUSTMENT TOTAL:</b>		(\$346,660)

## FY11 Expenditure Issues

### Maryland Rules Change Affecting the Provision of Discovery

On March 9, 2010, the Court of Appeals amended the Maryland Rules of Civil Procedure (Rule 4-262 and 4-263), which changes the obligations on the part of the State's Attorney when responding to discovery requests in the District Court. These changes become law on July 1, 2010 and are mandatory (©7-27).

While state law has always required the State's Attorney to provide discovery to the defense in criminal cases, "provide" has been interpreted to mean the materials would be made available for inspection or copying. At the District Court level, the State's Attorney provides defense attorneys with a signed "Authorization for Informal Discovery" form. This signed form allows the defense attorney to go to the local police department's record office and obtain copies of event reports for that particular case. In the majority of cases, any other evidence is made available to the defense outside of the courtroom on the day of trial. At the Circuit Court level, the provision of discovery material is more formal. The State's Attorney gathers all materials, duplicates them, compiles a discovery packet, and notifies the defense that the packet is available

for pick-up. Supplemental discovery packets (items obtained by the State’s Attorney later in the process, such as lab test results, etc.) are made available as these materials are received.

Beginning July 1, the State’s Attorney can no longer respond to District Court discovery requests in an informal manner. The Maryland Rules Committee has defined “provide” as directly mailing, e-mailing, or delivering the required materials to defense counsel. The State’s Attorney must now obtain, compile, duplicate, and deliver the materials to defense attorneys in order to comply with the law.

**Associated Costs:** In a March 3, 2010 letter to the office of Management and Budget, the State’s Attorney outlines the issue and various cost and cost recovery estimates (attached at © 29-33). The State’s Attorney’s Office estimates that total start-up costs for the new mandate would range between about \$180,000 to \$330,000, depending on whether staff were hired as contractual employees (no benefits) or as merit employees (with benefits), and whether they are hired at base salary or at mid-point.

In order to comply with these changes, the State’s Attorney is requesting four new positions to perform the mandated duties, including an Administrative Services Coordinator (Grade 28), and three Administrative Discovery Aides (Grade 12). This request is based on the State’s Attorney’s best estimates of the number of discovery requests it will receive in FY11. An outline of the duties of each position is described on © 30-31. Estimated costs for these positions are as follows:

Position	Number of Positions Requested	Base Salary	Base Salary Plus Benefits	Mid-point Salary	Mid-point Salary Plus Benefits
Administrative Services Coordinator	1	\$64,960	\$91,893	\$86,652	\$117,156
Administrative Discovery Aide	3	\$31,787	\$52,856	\$41,430	\$65,075

Total FY11 salary and benefits costs range from about \$160,000 to \$310,000, depending on whether the positions are hired as contractual employees (no benefits) or as merit employees with benefits. Additionally, operating expenses required to purchase equipment such as an additional copier, printer, and associated software expenses total \$18,354. Some of these expenses would be ongoing.

**Cost Recovery:** In an effort to mitigate the costs of this new mandate, the State’s Attorney’s Office has also proposed charging fees for the provision of the discovery files. The State’s Attorney’s Office has reviewed the practices in other jurisdictions, which seem to vary widely in their methods of cost recovery. Some jurisdictions have flat fees, some have per-page fees, and some have a combination of both. The State’s Attorney proposal includes a \$20 flat fee, and additional fees for electronic media requests, such as DVDs and police in-car video downloads, etc. The proposed fee structure is as follows:

<b>Discovery Request</b>	<b>Proposed Fee</b>	<b>Estimated Number of Requests</b>	<b>FY11 Total</b>
Initial Flat Fee for Documentation	\$20	7,800 (District Court) 800 (Circuit Court)	\$156,000 \$16,000
DVD Fee	\$25	324 (District Court) 560 (Circuit Court)	\$8,100 \$14,000
Police In-Car Video Fee*	\$75	260 (District Court) 260 (Circuit Court)	\$19,500 \$19,500
<b>Total Cost Recovery*</b>			<b>\$273,700</b>

\*This figure depends on the speed with which the Police Department equips its cars with video equipment and may vary widely.

The State's Attorney lays out two options for hiring staff (detailed on © 33-34). Option A assumes hiring the four requested positions as merit staff at base salary, with a total cost of \$268,818 (includes operating costs). Under this scenario, total expenditures are \$3,881 less than assumed fee collection totals. Option B assumes transferring a position from the Department of Technology Services as the Administrative Services Coordinator. This option would permit the hire of someone who has experience as a project manager, which the State's Attorney's office feels it needs. The position would be able to help the office move toward eDiscovery, i.e. providing discovery using web-based programs for delivery and the collection of fees. Option B would also hire one merit Administrative Discovery Aide and two contractual Administrative Discovery Aides. Under this scenario, total expenditures are about \$63,000 less than assumed fee collection totals.

**Committee members should understand the advantages and drawbacks of each option. Council staff advises that the State's Attorney's estimates of the number of discovery requests are a good starting point from which to determine staffing needs, although actual requests could vary greatly. For that reason, Council staff believes hiring the Administrative Discovery Aide positions as contractual positions for FY11 is most appropriate. This is the most cost-effective option and would allow more flexibility in changing staff size if needed based on the actual number of discovery requests that the State's Attorney's Office actually receives beginning in FY11.**

**Committee members may also wish to discuss the proposed fee structure and how confident the State's Attorney's Office feels about assuming certain fee revenues for electronic media discovery requests. Should the initial documentation discovery request fee be increased to more likely ensure cost recovery?**

## **Personnel Changes**

The Executive's recommended FY11 budget includes three additional full-time positions and three additional part-time positions over the approved FY10 budget. One position has been shifted from DTS to the State's Attorney's Office. This position, a Senior IT Specialist, is new for FY11. The employee was originally hired by DTS to work as a database administrator on the

SAO Case Management System and the duties were exclusively related to the State’s Attorney’s Office. The shift of the position and funding to the State’s Attorney’s Office more appropriately reflects that it is a dedicated position and will facilitate the delivery of services such as creating the Management Information Systems (MIS) reports, defining and maintaining CMS change control management process, ensuring continuity of business processes, performing regular audits, and performing business project management responsibilities.

The other two full-time positions reflect the restoration of two legal assistant positions at the Family Justice Center during FY10. These positions were removed in the approved FY10 budget due to the termination of the Domestic Violence grant, which had ended in December 2008. The two positions were subsequently funded by the State’s Attorney’s general funds until June 30, 2009. The Sheriff’s Office received funding for the positions from the Department of Justice Grant to Encourage Arrest Policies and Enforce Protective Orders. The positions are carried in the State’s Attorney’s Office personnel complement with no workyears because they are offset by the charge to the Sheriff’s Office.

The three part-time positions were added in FY10. The ARRA JAG funds two part-time gang investigators assigned to the Gang Prosecution Unit. They investigate gang related cases and identify those defendants know to be gang members. The positions were originally funded under the Gang Prosecution Grant that ended March 31, 2009. The other position is a part-time victim advocate who works with child victims of physical and sexual abuse. This position is funded by the Child Victim Advocate II Grant funds and started July 1, 2009.

### **Council Staff Recommendation**

**Council staff recommends that funding for four new positions be added to the reconciliation list to provide the staff support necessary to carry out the Court’s new discovery request mandates. This funding is to be offset by the new fees charged by the State’s Attorney’s Office. Depending on what the Committee decides is the best personnel complement, the estimated costs are as follows:**

<b>Option A:</b> 1 Administrative Services Coordinator (merit) 3 Administrative Discovery Aides (merit) Operating Expenses	<b>Cost:</b> \$268,818
<b>Option B:</b> 1 Administrative Services Coordinator (transfer from DTS) (merit) 2 Administrative Discovery Aides (merit) 1 Administrative Discovery Aide (contractual)	<b>Cost:</b> \$210,800
<b>Council Staff Recommendation:</b> 1 Administrative Services Coordinator (merit) 3 Administrative Discovery Aides (contractual)	<b>Cost:</b> 205,638

**Council staff recommends approval of the rest of the CE recommended FY11 operating budget as submitted.**

**This packet contains**

Recommended FY11 Operating Budget	<u>©</u> 1-6
Maryland Court of Appeals Ruling on Discovery Changes	7-27
State's Attorney Letter to the Office of Management and Budget	28-34

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# State's Attorney

## MISSION STATEMENT

The State's Attorney is a constitutionally created independent agency. The mission of the Office of the State's Attorney is to serve the public interest through the fair and honest administration of justice by exercising its responsibilities to: prosecute criminal violations in Montgomery County; educate the public with regard to criminal justice issues; provide training to lawyers for future service; address inequality and promote fairness in the criminal justice system; ensure access to the criminal justice system; promote professional relations with judges and attorneys; and further the efficient use of criminal justice resources.

## BUDGET OVERVIEW

The total recommended FY11 Operating Budget for the Office of the State's Attorney is \$12,442,910, a decrease of \$23,480 or 0.2 percent from the FY10 Approved Budget of \$12,466,390. Personnel Costs comprise 96.2 percent of the budget for 115 full-time positions and 15 part-time positions for 119.1 workyears. Operating Expenses account for the remaining 3.8 percent of the FY11 budget.

## LINKAGE TO COUNTY RESULT AREAS

While this program area supports all eight of the County Result Areas, the following are emphasized:

- ❖ *Safe Streets and Secure Neighborhoods*

## ACCOMPLISHMENTS AND INITIATIVES

- ❖ *Under the all crimes approach to address gang activity, 363 cases committed by gang members were referred to the gang unit in FY09.*
- ❖ *Two grants were awarded that fund two part time child victim advocates who work with child victims of physical and sexual abuse. The victim advocates guide children through the criminal justice system and serve as liaisons between the State's Attorney's Office and the Tree House Child Assessment Center*
- ❖ *The State's Attorney's Office received funds from the American Reinvestment and Recovery Act (ARRA) to fund two part-time investigators and one full-time analyst in its Anti-Gang Initiative.*

## PROGRAM CONTACTS

Contact Lisa Russo of the Office of the State's Attorney at 240.777.7407 or Bryan Hunt of the Office of Management and Budget at 240.777.2770 for more information regarding this department's operating budget.

## PROGRAM DESCRIPTIONS

### **Circuit Court Prosecution**

The Circuit Court Prosecution program reviews cases for possible filing in the Circuit Court by presenting these cases to the Grand Jury for indictment or filing a Circuit Court information (charging document). After charges are filed, the State's Attorney's Office litigates these cases to disposition. Senior Assistant State's Attorneys provide support and guidance to ongoing police investigations and conduct Grand Jury investigations of major felony cases, drug distribution, gang crimes, internet crimes, and environmental cases. The Family Violence Unit prosecutes crimes of domestic violence, child abuse, and elder abuse. Prosecutors in this unit have specialized training to attack these difficult and often devastating crimes. In addition, appeals and demands for jury trials in District Court cases are litigated in the Circuit Court.

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>5,610,660</b>	<b>46.6</b>
Add: ARRA JAG Recovery Gang Investigator Grant	150,430	2.0
Increase Cost: Restoration of lapse salary of Retiring Employees	149,360	1.0
Add: Drug Court Grant	98,210	1.0
Enhance: Child Victim Advocate Grant	71,940	1.0



	Expenditures	WYs
Decrease Cost: Termination of Anti-Gang Initiative Grant	-74,570	-1.0
Decrease Cost: Termination of Drug Court Grant	-95,620	-1.0
Decrease Cost: Lapse One Assistant State's Attorney III Position	-150,000	-1.0
Decrease Cost: Salary Differential Between Retiring Employees and Replacement Employees	-174,740	0.6
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	273,730	-1.9
<b>FY11 CE Recommended</b>	<b>5,859,400</b>	<b>46.7</b>

### District Court Screening

The District Court Screening program resolves as many cases as possible before the trial date by contacting victims and witnesses to determine what outcome they would like to obtain from the criminal justice system. This program relies on volunteers and is supervised by permanent staff. It provides victim/witness assistance by delivering information about the criminal justice system to victims and witnesses whose cases are expected to go to trial and an on-call service, when possible, to reduce the inconvenience experienced by victims and witnesses.

<b>FY11 Recommended Changes</b>	Expenditures	WYs
<b>FY10 Approved</b>	<b>295,880</b>	<b>3.5</b>
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-3,080	-0.1
<b>FY11 CE Recommended</b>	<b>292,800</b>	<b>3.4</b>

### Juvenile Court Prosecution

The Juvenile Court Prosecution program prosecutes criminal violations committed by juvenile offenders in Montgomery County and performs a preliminary review of all cases in which a juvenile is charged with a violent crime. This includes cases which have been reviewed by the Juvenile Services Administration and then referred to the Office of the State's Attorney. In such cases, formal charges are filed where appropriate and litigated to disposition in the Juvenile Court, attempting to obtain restitution for victims when possible. This program also provides administrative support to Teen Court, a countywide peer adjudication initiative for non-violent juvenile offenses.

<b>FY11 Recommended Changes</b>	Expenditures	WYs
<b>FY10 Approved</b>	<b>1,367,500</b>	<b>13.5</b>
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-126,080	-0.5
<b>FY11 CE Recommended</b>	<b>1,241,420</b>	<b>13.0</b>

### Pre-Trial Mediation

The Pre-Trial Mediation program is designed to resolve non-violent disputes between individuals which might enter the judicial system as criminal cases, or civil claims, or even escalate to violence if not otherwise resolved. Trained volunteers, working in conjunction with a mediation specialist, mediate various issues involved in disputes allowing the parties to reduce to writing an agreement by which all sides will abide. The Bad Check Mediation Program gives merchants and receivers of checks a means for recovering their losses for bad checks passed for goods or services. In appropriate circumstances, criminal charges are filed when funds are not recovered through the mediation. The Rental Return and Restitution Program is an effort to assist the business community. This program provides merchants with a quick and effective way to recover their rental property and fees.

<b>FY11 Recommended Changes</b>	Expenditures	WYs
<b>FY10 Approved</b>	<b>114,530</b>	<b>2.5</b>
Enhance: Mediation and Conflict Resolution Grant	500	0.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	28,070	0.0
<b>FY11 CE Recommended</b>	<b>143,100</b>	<b>2.5</b>

### Victim/Witness Court Assistance

This program assists victims in criminal cases that have been designated as "victim-intensive" by virtue of the vulnerability of the victim or the type of crime. Victims receive direct court assistance from a Victim/Witness Coordinator. The Coordinator guides the victim through the judicial process, provides assistance where necessary, and makes referrals to other County agencies as needed. In all other cases, Assistant State's Attorneys provide information and assistance to victims and witnesses. This program is staffed with permanent and volunteer personnel.

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>334,320</b>	<b>5.5</b>
Decrease Cost: Termination of Child Victim Advocate I Grant	-34,000	-0.5
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	30,660	-0.2
<b>FY11 CE Recommended</b>	<b>330,980</b>	<b>4.8</b>

### **Major Fraud and Special Investigations**

The Major Fraud and Special Investigations program investigates allegations of major fraud, such as thefts, by attorneys from their clients, complex financial crimes, and other serious criminal cases for which the Police Department is unable to provide investigative resources.

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>547,560</b>	<b>5.0</b>
Decrease Cost: Annualized (FY11) Return of One Administrative Vehicle in FY10	-2,870	0.0
Decrease Cost: Lapse One Special Investigator Position	-114,760	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-6,010	-0.1
<b>FY11 CE Recommended</b>	<b>423,920</b>	<b>3.9</b>

### **Prosecution Management**

Prosecution Management staff coordinate case loads; schedule docket assignments; receive visitors; direct phone calls; and enter and audit data in the Criminal Justice Information System (CJIS) for the Circuit, District, and Juvenile Courts.

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>910,550</b>	<b>8.0</b>
Shift: Senior Information Technology Specialist from DTS to the Office of the State's Attorney	124,910	1.0
Decrease Cost: Reduction in Operating Expenses	-10,300	0.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-23,240	-0.3
<b>FY11 CE Recommended</b>	<b>1,001,920</b>	<b>8.7</b>

### **Administration**

Staff provide central services in areas of budget, personnel, automated systems management, general office management, and public information. In addition, staff coordinate efforts and initiatives with other criminal justice agencies.

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>795,910</b>	<b>6.0</b>
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-6,230	-0.2
<b>FY11 CE Recommended</b>	<b>789,680</b>	<b>5.8</b>

### **District Court Prosecution**

The District Court Prosecution program prosecutes criminal cases including misdemeanor arrests, citizen complaints, and serious or incarcerable traffic offenses. The State's Attorney's Office has also implemented a Domestic Violence docket in District Court to ensure that assault cases of a domestic nature and violations of protective orders are given special attention.

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>2,489,480</b>	<b>31.5</b>
Enhance: STOP Grant for Domestic Violence	2,100	0.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-131,890	-1.2
<b>FY11 CE Recommended</b>	<b>2,359,690</b>	<b>30.3</b>

# BUDGET SUMMARY

	Actual FY09	Budget FY10	Estimated FY10	Recommended FY11	% Chg Bud/Rec
<b>COUNTY GENERAL FUND</b>					
<b>EXPENDITURES</b>					
Salaries and Wages	9,352,928	8,909,490	8,915,460	8,678,770	-2.6%
Employee Benefits	2,669,921	2,728,710	2,615,330	2,848,730	4.4%
<b>County General Fund Personnel Costs</b>	<b>12,022,849</b>	<b>11,638,200</b>	<b>11,530,790</b>	<b>11,527,500</b>	<b>-1.0%</b>
Operating Expenses	661,368	510,140	409,250	478,370	-6.2%
Capital Outlay	0	0	0	0	—
<b>County General Fund Expenditures</b>	<b>12,684,217</b>	<b>12,148,340</b>	<b>11,940,040</b>	<b>12,005,870</b>	<b>-1.2%</b>
<b>PERSONNEL</b>					
Full-Time	111	109	109	112	2.8%
Part-Time	10	10	10	10	—
Workyears	119.4	118.1	118.1	113.6	-3.8%
<b>REVENUES</b>					
SAO Investigation Reimbursement	0	0	30,000	0	—
Discovery Materials	14,022	12,000	12,000	14,000	16.7%
Bad Check Mediation Fee	7,635	7,500	7,500	6,000	-20.0%
Rental Return Restitution Fee	4,205	4,000	4,000	3,300	-17.5%
Teen Court Fees	6,325	6,000	6,000	6,000	—
<b>County General Fund Revenues</b>	<b>32,187</b>	<b>29,500</b>	<b>59,500</b>	<b>29,300</b>	<b>-0.7%</b>
<b>GRANT FUND MCG</b>					
<b>EXPENDITURES</b>					
Salaries and Wages	291,882	271,530	423,170	374,220	37.8%
Employee Benefits	42,729	46,520	56,470	62,820	35.0%
<b>Grant Fund MCG Personnel Costs</b>	<b>334,611</b>	<b>318,050</b>	<b>479,640</b>	<b>437,040</b>	<b>37.4%</b>
Operating Expenses	3,749	0	0	0	—
Capital Outlay	0	0	0	0	—
<b>Grant Fund MCG Expenditures</b>	<b>338,360</b>	<b>318,050</b>	<b>479,640</b>	<b>437,040</b>	<b>37.4%</b>
<b>PERSONNEL</b>					
Full-Time	2	3	3	3	—
Part-Time	2	2	2	5	150.0%
Workyears	3.0	4.0	4.0	5.5	37.5%
<b>REVENUES</b>					
Child Victim Advocate Grant	0	0	0	36,420	—
ARRA JAG Recovery Gang Investigator Grant	0	0	140,000	150,430	—
Child Victim Advocate Grant	32,450	34,000	55,590	35,520	4.5%
Drug Court Grant	85,935	95,620	95,620	98,210	2.7%
Gang Prosecution Unit	59,025	0	0	0	—
Mediation and Conflict Resolution	28,100	26,500	26,500	27,000	1.9%
STOP Grant for Domestic Violence	77,930	87,360	87,360	89,460	2.4%
Montgomery County Anti-Gang Initiative	54,920	74,570	74,570	0	—
<b>Grant Fund MCG Revenues</b>	<b>338,360</b>	<b>318,050</b>	<b>479,640</b>	<b>437,040</b>	<b>37.4%</b>
<b>DEPARTMENT TOTALS</b>					
<b>Total Expenditures</b>	<b>13,022,577</b>	<b>12,466,390</b>	<b>12,419,680</b>	<b>12,442,910</b>	<b>-0.2%</b>
<b>Total Full-Time Positions</b>	<b>113</b>	<b>112</b>	<b>112</b>	<b>115</b>	<b>2.7%</b>
<b>Total Part-Time Positions</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>15</b>	<b>25.0%</b>
<b>Total Workyears</b>	<b>122.4</b>	<b>122.1</b>	<b>122.1</b>	<b>119.1</b>	<b>-2.5%</b>
<b>Total Revenues</b>	<b>370,547</b>	<b>347,550</b>	<b>539,140</b>	<b>466,340</b>	<b>34.2%</b>

# FY11 RECOMMENDED CHANGES

	Expenditures	WYs
<b>COUNTY GENERAL FUND</b>		
<b>FY10 ORIGINAL APPROPRIATION</b>	<b>12,148,340</b>	<b>118.1</b>
<b>Other Adjustments (with no service impacts)</b>		
Increase Cost: Restoration of Personnel Costs for FY10 Five Day Furlough	229,450	0.0
Increase Cost: Restoration of lapse salary of Retiring Employees [Circuit Court Prosecution]	149,360	1.0
Shift: Senior Information Technology Specialist from DTS to the Office of the State's Attorney [Prosecution Management]	124,910	1.0
Increase Cost: Retirement Adjustment	87,200	0.0
Increase Cost: Annualization of FY10 Personnel Costs	72,220	0.0
Increase Cost: Group Insurance Adjustment	62,390	0.0
Decrease Cost: Reduce Misc. Operating Expenses	-2,170	0.0
Decrease Cost: Annualized (FY11) Return of One Administrative Vehicle in FY10 [Major Fraud and Special Investigations]	-2,870	0.0
Decrease Cost: Printing and Mail Adjustment	-4,440	0.0
Decrease Cost: Reduction in Operating Expenses [Prosecution Management]	-10,300	0.0
Decrease Cost: Motor Pool Rate Adjustment	-11,990	0.0
Decrease Cost: Lapse One Special Investigator Position [Major Fraud and Special Investigations]	-114,760	-1.0
Decrease Cost: Lapse One Assistant State's Attorney III Position [Circuit Court Prosecution]	-150,000	-1.0
Decrease Cost: Salary Differential Between Retiring Employees and Replacement Employees [Circuit Court Prosecution]	-174,740	0.0
Decrease Cost: Furlough Days	-396,730	-4.5
<b>FY11 RECOMMENDED:</b>	<b>12,005,870</b>	<b>113.6</b>
<b>GRANT FUND MCG</b>		
<b>FY10 ORIGINAL APPROPRIATION</b>	<b>318,050</b>	<b>4.0</b>
<b>Changes (with service impacts)</b>		
Add: ARRA JAG Recovery Gang Investigator Grant [Circuit Court Prosecution]	150,430	2.0
Add: Drug Court Grant [Circuit Court Prosecution]	98,210	1.0
Enhance: Child Victim Advocate Grant [Circuit Court Prosecution]	71,940	1.0
Enhance: STOP Grant for Domestic Violence [District Court Prosecution]	2,100	0.0
Enhance: Mediation and Conflict Resolution Grant [Pre-Trial Mediation]	500	0.0
<b>Other Adjustments (with no service impacts)</b>		
Decrease Cost: Termination of Child Victim Advocate I Grant [Victim/Witness Court Assistance]	-34,000	-0.5
Decrease Cost: Termination of Anti-Gang Initiative Grant [Circuit Court Prosecution]	-74,570	-1.0
Decrease Cost: Termination of Drug Court Grant [Circuit Court Prosecution]	-95,620	-1.0
<b>FY11 RECOMMENDED:</b>	<b>437,040</b>	<b>5.5</b>

## PROGRAM SUMMARY

Program Name	FY10 Approved		FY11 Recommended	
	Expenditures	WYs	Expenditures	WYs
Circuit Court Prosecution	5,610,660	46.6	5,859,400	46.7
District Court Screening	295,880	3.5	292,800	3.4
Juvenile Court Prosecution	1,367,500	13.5	1,241,420	13.0
Pre-Trial Mediation	114,530	2.5	143,100	2.5
Victim/Witness Court Assistance	334,320	5.5	330,980	4.8
Major Fraud and Special Investigations	547,560	5.0	423,920	3.9
Prosecution Management	910,550	8.0	1,001,920	8.7
Administration	795,910	6.0	789,680	5.8
District Court Prosecution	2,489,480	31.5	2,359,690	30.3
<b>Total</b>	<b>12,466,390</b>	<b>122.1</b>	<b>12,442,910</b>	<b>119.1</b>

## CHARGES TO OTHER DEPARTMENTS

Charged Department	Charged Fund	FY10		FY11	
		Total\$	WYs	Total\$	WYs
<b>COUNTY GENERAL FUND</b>					
Police	County General Fund	86,430	0.5	87,140	0.5
Police	Grant Fund MCG	83,050	1.0	95,210	1.0
Sheriff	Grant Fund MCG	0	0.0	138,700	2.0
<b>Total</b>		<b>169,480</b>	<b>1.5</b>	<b>321,050</b>	<b>3.5</b>

## FUTURE FISCAL IMPACTS

Title	CE REC.					
	FY11	FY12	FY13	(\$000's)		
	FY14	FY15	FY16			
This table is intended to present significant future fiscal impacts of the department's programs.						
<b>COUNTY GENERAL FUND</b>						
<b>Expenditures</b>						
<b>FY11 Recommended</b>	<b>12,006</b>	<b>12,006</b>	<b>12,006</b>	<b>12,006</b>	<b>12,006</b>	<b>12,006</b>
No inflation or compensation change is included in outyear projections.						
<b>Motor Pool Rate Adjustment</b>	<b>0</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>12</b>
<b>Restore Personnel Costs</b>	<b>0</b>	<b>397</b>	<b>397</b>	<b>397</b>	<b>397</b>	<b>397</b>
This represents restoration of funding to remove FY11 furloughs.						
<b>Subtotal Expenditures</b>	<b>12,006</b>	<b>12,415</b>	<b>12,415</b>	<b>12,415</b>	<b>12,415</b>	<b>12,415</b>

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MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 to add a definition of the word "provide" to section (b); to require that requests pursuant to subsections (d) (2) and (f) (1) and section (e) be made in writing; to require that discovery and inspection be completed pretrial if practicable; to allow the court to grant a delay or continuance if pretrial compliance with a discovery request was impracticable; to add a new section (j) clarifying that requests for discovery, motions for discovery, and any responses thereto are to be filed with the court; and to make stylistic changes, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Applicability

This Rule governs discovery and inspection in the District Court. Discovery is available in the District Court in actions that are punishable by imprisonment.

(b) Definitions

In this Rule, the terms "defense," "defense witness," "oral statement," "provide," "State's witness," and "written statement" have the meanings stated in Rule 4-263 (b).

Cross reference: For the definition of "State's Attorney," see Rule 4-102 (k).

(c) Obligations of the Parties

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(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

(1) Without Request

Without the necessity of a request, the State's Attorney shall provide to the defense all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged and all material or information in any form, whether or not admissible, that tends to impeach a State's witness.

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(2) On Request

On written request of the defense, the State's Attorney shall provide to the defense:

(A) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(B) Written Statements of State's Witnesses

As to each State's witness ~~whom~~ the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, those written statements of the witness that relate to the offense charged and are (i) signed by or adopted by the witness or (ii) contained in a police or investigative report, together with the name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009(b), the address of the witness;

(C) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(i) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

(ii) pretrial identification of the defendant by a State's witness;

(D) Reports or Statements of Experts

As to each State's witness the State's Attorney intends

to call to testify as an expert witness other than at a preliminary hearing:

(i) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(ii) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(iii) the substance of any oral report and conclusion by the expert;

(E) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(F) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

(e) Disclosure by Defense

On written request of the State's Attorney, the defense shall provide to the State's Attorney:

(1) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert; and

(2) Documents, Computer-generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On written request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a

lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(i) Procedure

To the extent practicable, the discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial. ~~A request for discovery and inspection and response need not be in writing and need not be filed with the court.~~ If a request was made before the date of the hearing or trial and the request was refused or denied, or pretrial compliance was impracticable, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

(j) Requests, Motions, and Responses to be Filed with the Court

Requests for discovery, motions for discovery, and any responses to the requests or motions shall be filed with the court.

~~(j)~~ (k) Discovery Material Not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

~~(k)~~ (l) Retention; Inspection of Original

The party generating discovery material shall retain the original until the expiration of any sentence imposed on the defendant and, on request, shall make the original available for inspection and copying by the other party.

~~(l)~~ (m) Protective Orders

On motion of a party or a person from whom discovery is sought, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

~~(m)~~ (n) Failure to Comply with Discovery Obligation

The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 to add to section (b) a definition of "provide" and to add a new subsection to section (k) clarifying that requests for discovery, motions for discovery, motions to compel discovery, and any responses thereto are to be filed with the court, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

(a) Applicability

This Rule governs discovery and inspection in a circuit court.

(b) Definitions

In this Rule, the following definitions apply:

(1) Defense

"Defense" means an attorney for the defendant or a defendant who is acting without an attorney.

(2) Defense Witness

"Defense witness" means a witness whom the defense intends to call at a hearing or at trial.

(3) Oral Statement

"Oral statement" of a person means the substance of a statement of any kind by that person, whether or not reflected in an existing writing or recording.

(4) Provide

Unless otherwise agreed by the parties or required by Rule or order of court, "provide" information or material means (A) to send or deliver it by mail, e-mail, facsimile transmission, or hand-delivery, or (B) to make the information or material available at a specified location for purposes of inspection if sending or delivering it would be impracticable because of the nature of the information or material.

~~(4)~~ (5) State's Witness

"State's witness" means a witness whom the State's Attorney intends to call at a hearing or at trial.

Cross reference: For the definition of "State's Attorney," see Rule 4-102 (k).

~~(5)~~ (6) Written Statement

"Written statement" of a person:

(A) includes a statement in writing that is made, signed, or adopted by that person;

(B) includes the substance of a statement of any kind made by that person that is embodied or summarized in a writing or recording, whether or not signed or adopted by the person;

(C) includes a statement contained in a police or investigative report; but

(D) does not include attorney work product.

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due

diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

The name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of

each State's witness whom the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, together with all written statements of the person that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has

reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's

witness;

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

(e) Disclosure by Defense

Without the necessity of a request, the defense shall provide to the State's Attorney:

(1) Defense Witness

The name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the testimony of that witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a State's witness is not required until after the State's witness has testified at trial.

(2) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(3) Character Witnesses

As to each defense witness the defense intends to call to testify as to the defendant's veracity or other relevant character trait, the name and, except when the witness declines

permission, the address of that witness;

(4) Alibi Witnesses

If the State's Attorney has designated the time, place, and date of the alleged offense, the name and, except when the witness declines permission, the address of each person other than the defendant whom the defense intends to call as a witness to show that the defendant was not present at the time, place, or date designated by the State's Attorney;

(5) Insanity Defense

Notice of any intention to rely on a defense of not criminally responsible by reason of insanity, and the name and, except when the witness declines permission, the address of each defense witness other than the defendant in support of that defense; and

Committee note: The address of an expert witness must be provided. See subsection (e) (2) (A) of this Rule.

(6) Documents, Computer-generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney

intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213, and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date.

(i) Motion to Compel Discovery

(1) Time

A motion to compel discovery based on the failure to provide discovery within the time required by section (h) of this Rule shall be filed within ten days after the date the discovery was due. A motion to compel based on inadequate discovery shall be filed within ten days after the date the discovery was received.

(2) Content

A motion shall specifically describe the information or material that has not been provided.

(3) Response

A response may be filed within five days after service of the motion.

(4) Certificate

The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(j) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(k) Manner of Providing Discovery, ~~Material Not to be Filed with Court~~

(1) By Agreement

Discovery may be accomplished in any manner mutually agreeable to the parties. The parties shall file with the court a statement of their agreement.

(2) If No Agreement

In the absence of an agreement, the party generating the discovery material shall (A) serve on the other party copies of all written discovery material, together with a list of discovery materials in other forms and a statement of the time and place when these materials may be inspected, copied, and photographed,

and (B) promptly file with the court a notice that (i) reasonably identifies the information provided and (ii) states the date and manner of service. On request, the party generating the discovery material shall make the original available for inspection and copying by the other party.

(3) Requests, Motions, and Responses to be Filed with the Court

Requests for discovery, motions for discovery, motions to compel discovery, and any responses to the requests or motions shall be filed with the court.

~~(3)~~ (4) Discovery Material Not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(1) Retention

The party generating discovery material shall retain the original until the earlier of the expiration of (i) any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court.

(m) Protective Orders

(1) Generally

On motion of a party or a person from whom discovery is sought, the court, for good cause shown, may order that specified

disclosures be denied or restricted in any manner that justice requires.

(2) In Camera Proceedings

On request of a party or a person from whom discovery is sought, the court may permit any showing of cause for denial or restriction of disclosures to be made in camera. A record shall be made of both in court and in camera proceedings. Upon the entry of an order granting relief in an in camera proceeding, all confidential portions of the in camera portion of the proceeding shall be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

(n) Sanctions

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new and is derived in part from former Rule 741 and the 1998 version of former Rule 4-263.



STATE'S ATTORNEY  
JOHN J. MCCARTHY

## State's Attorney for Montgomery County

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DEPUTY STATE'S ATTORNEYS  
LAURA CHASE  
JOHN M. MALONEY

March 31, 2010

Joseph Beach  
Director, Department of Finance  
Office of Management and Budget  
101 Monroe Street  
Rockville, Maryland 20850

Dear Mr. Beach:

As we discussed at our meeting on Friday, I am providing you with detailed information concerning my immediate need to hire staff in order to comply with some onerous changes to the law in Maryland. I have no option but to fully comply.

My staff has analyzed relevant numbers, reviewed our current business process, consulted with other jurisdictions and then outlined our findings in the request memo. The numbers are estimates based on the review and extrapolations of known statistics, various snapshot examinations, and much practical hands-on experiences. Although the law is technically an "unfunded mandate", it is possible for us to assess fees to recover all costs of staff and equipment. As was apparent from our conversation the other day, our cost recovery plan will include accounting and billing and tracking tasks that will be incorporated into the responsibilities of the newly acquired staff.

I have provided Option A (Basic Hires) and Option B (Transfer DTS program coordinator position) as basic options, outlining costs and recovery figures. In either instance, we can fully fund our request by assessing fees. The request for additional personnel is made with a full understanding of the financial difficulty this county is experiencing. The request is made responsibly without adding to county spending. As a safety net, in the unlikely event that we have underestimated our cost recovery capabilities, we can re-evaluate and adjust fees to recuperate funds based on actual numbers. We will work diligently to refine the process as we go along with the stated goals of increasing efficiency and decreasing costs.

Because time is of the essence with full compliance mandated by July 1, I am requesting immediate approval for these positions.

Respectfully submitted,

John J. McCarthy  
State's Attorney

A recent amendment to Maryland Rule 4-262 and 4-263 changes obligations on the part of the State's Attorney that require the State's Attorney to take on additional ministerial tasks in criminal cases. The new obligations become law on July 1, 2010 and are mandatory.

### **SUMMARY OF REQUEST**

Due to the imposition of new mandatory requirements under the law, the State's Attorney is required to compile and produce materials in a significant portion of the criminal and traffic cases filed each year. In order to comply with the law, the State's Attorney will need staff to accomplish the ministerial tasks as well as a Program Coordinator to manage the team, integrate the new requirements into current business processes, move in the direction of eDiscovery and eFiling and eBilling, and continually improve efficiencies as developments in other agencies (police, corrections) and other systems (state court and county court systems, computerized integrated justice systems, etc) allow for such. The cost for the staff to support these functions can be entirely offset by the collection of fees associated with the process.

### **BACKGROUND**

Maryland law has always required that the State's Attorney "provide discovery" to the defense in criminal cases. "Provide" has been interpreted to mean that materials would be made available for inspection or copying. As a matter of local practice, compliance with this requirement has been informal. The term "discovery" refers to all police reports, business records, defendant and witness statements, expert reports, photos, audio or video recordings, seized items, scientific testing results, criminal records, and exculpatory evidence of any kind. In cases with jurisdiction in the District Court, the State's Attorney currently complies with this law by providing defense attorneys with a signed "Authorization for Informal Discovery" form. This signed form allows the defense attorney to go to the local police department's record office and obtain copies of event reports (police report summarizing the event) for that particular case. In the majority of cases in district court, any other evidence is made available to the defense outside of the courtroom on the day of trial. In cases with Circuit Court jurisdiction, the State's Attorney gathers all discovery materials, duplicates the materials, compiles a discovery packet, and notifies the defense that the packet is available for pick-up. Supplemental discovery packets (items obtained by the State's Attorney later in the process such as lab test results, expert reports, DVD duplications, etc) are made available as these materials are received, duplicated and compiled for pick-up, some of which the defense is charged a fee.

### **SCOPE OF CHANGES**

Beginning July 1, 2010, the State's Attorney can no longer respond to discovery requests in District Court cases informally. The Maryland Rules Committee has defined "provide" as directly mailing, emailing or delivering the required materials to defense counsel. Furthermore, discovery "... shall be completed before the

hearing or trial.” The State’s Attorney must now obtain, compile, duplicate, and deliver the materials to defense attorneys in order to comply with the law.

The scope of the discovery rules has also changed. The new rules are broader in their disclosure requirements. Providing a single police report, in most cases, is not full compliance with the discovery obligations of the State. In years past, there was not as much material to provide and basic report documentation was sufficient in most cases. In recent years, however, sophisticated technology is available to law enforcement and the community as a whole, thereby dramatically changing the form and volume of materials involved in criminal investigations and presented in court. Evidence in criminal cases routinely includes digital documents, Emergency Center Communications recordings, audio/video recorded statements, surveillance tapes, and complex scientific evidence. Additionally, the Montgomery County Police and the municipal police departments are all in varying stages of utilizing cameras in their cruisers that provide video/audio recordings of traffic stops, field sobriety testing, prisoner transport, and other events that are required to be provided as discovery under the Maryland Rules. All of this evidence must be obtained, reviewed, converted into usable formats, redacted where required, copied, and provided to the defense prior to trial.

## **REQUEST**

The State’s Attorney requests an Administrative Services Coordinator (Grade 28) and 3 additional full-time Administrative Discovery Aides (Grade 12). The team must be functional by early June 2010 to accomplish the tasks that are mandated by law.

### **Administrative Services Coordinator**

The duties of the Administrative Services Coordinator include the following: supervision of the newly formed Discovery Compliance Unit; integration of our current discovery business process into a fully functioning process that is immediately compliant with new law; integration of discovery process through JustWare Case Management System; exploration, integration and transition to eDiscovery to include coordination with all law enforcement agencies to obtain materials electronically; exploration, integration and transition to eFiling as it becomes available to include coordination with the Maryland Courts (in the works now) and County Courts; participation in County work groups on behalf of the State’s Attorney on IJIS, JJIS, CJIS, eJustice, CRIMS, etc.

### **Administrative Discovery Aides**

The duties of the Administrative Discovery Aides include the following: receipt of discovery requests; location and compilation of discovery packets, conversion and duplication of materials, collection of fees, and tracking and providing the materials to the defense. The State’s Attorney estimates that the average traffic case will take 10 minutes to complete these new tasks, the average District Court criminal case 20 minutes to complete new tasks, and the average Circuit Court case 40 minutes to complete tasks (only 20 minutes of which counts as new

tasks because we are currently performing a portion of the tasks in Circuit Court cases).

Although there are over 40,000 District Court filings per year in 2008 (still awaiting 2009 numbers, but all indications are that arrests were up), there were 16,092 criminal filings, 3,723 DWI charges, 1,928 incarcerable criminal citations, and 23,739 incarcerable traffic tickets), the State's Attorney estimates that we will be required to provide discovery in 19,050 cases (approximately 3,750 incarcerable traffic matters and approximately 15,300 incarcerable criminal matters). Likewise, of the 1900 cases estimated to be filed in the Circuit Court, the State's attorney estimates that discovery will need to be provided in approximately 1500 cases.

The total WYs estimate for the Admin Discovery Aide positions is 3.23 (see attached worksheet).

### **COST RECOVERY PROPOSAL**

If provided adequate resources to do so, the State's Attorney plans to assess reasonable fees for processing, producing and providing discovery to cover costs associated with this process. These fees will go directly into the Montgomery County General Fund, not directly to the State's Attorney.

A review of other jurisdictions and jurisdictions across the county reveal widely diverse methods at cost recovery for prosecutors' offices providing discovery. Some jurisdictions have flat fees, some have per page fees, and some have a combination of both. Most do not charge the Public defender for basic documentation discovery, but do assess fees for duplication of video and audio. The MCSAO proposal contemplates the simplest proposal, a flat fee for documentation up to a certain amount, additional reduced flat fees in excess of the original amount, and set fees for copies of DVDs, tapes, CDs, and photos. The plan contemplates that standard cases will be assessed a \$20.00 fee for the initial discovery request to be processed and provided to the defense. Additional fees will be assessed for duplication or transfer of media such as video recorded statements, 911 calls, digital photo downloads, or copies of police in-car video in Circuit Court cases (see attached DRAFT notice). The Public Defender will be exempt from some initial discovery fees (an Attorney General Opinion that predates this change offers some guidance on the issue and suggests that we should not charge the Public Defender a fee for copies of required documents), but the Public Defender can be charged for copies of tapes, CDs, DVDs, and In-car video downloads. The MCSAO will require that a \$20.00 check accompany the original discovery request. The audio and video discovery will be made available for viewing or copies available for set fees.

## FINANCIAL BREAKDOWN COSTS

### Personnel

Grade 28 Administrative Services Coordinator:

Minimum:

Salary: 64,960.00

Salary & Benefits: 91,893.71

Midpoint:

Salary: 86,652.00

Salary & Benefits approx 117,156.25

Grade 12 Administrative Discovery Aide:

Minimum:

Salary: 31,797

Salary & Benefits: 52,856.94

Midpoint:

Salary: 41,430

Salary & Benefits: 64,075.52

### Equipment

Copier/Scanner: \$7300/yr (potential to eliminate with eDiscovery and direct downloads from police when available)

Computers-County Workstations (GX7555):  $1576 \times 4 = \$6304.00$  (one time cost)

Reflex7 Duplicator: \$550.00 (one time cost)

Software for duplication, conversion, authoring

Epson 50 Label Printer: \$200.00

Cables and connectors: \$100.00

Postage = 0;; we have reached an agreement with the Public Defender that they will pick up discovery at our office in bulk so no mailing will be necessary; will assess costs to defense in addition to discovery fee.

Paper and/or DVDs:  $7800 \times .50 = \$3,900$

TOTAL: \$18,354

## COST RECOVERY

MCSAO estimates that 7800 of the 19,050 discovery requests will be filed by private attorneys in the District Court.

MCSAO estimates that 800 of the 1500 discovery requests will be filed by private attorneys in the Circuit Court.

If a flat fee of \$20.00 is collected from 7800 private attorneys in District Court cases, yearly intake is estimated to be \$156,000.

If fees are collected for additional discovery involving DVDs, CDs, video tapes, cassette tapes, pictures, for 324 cases in District Court (a conservative estimate provided by the District Court Division Chief for cases in District Court), an additional recovery of \$8100.00/year will occur.

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7800 (District Court) x \$20.00 fee standard = \$156,000  
800 (Circuit Court) x \$20.00 fee standard = \$16,000  
TOTAL fees for initial documentation discovery: \$172,000

324 (District Court) x \$25.00 fee DVD (interviews, etc) = \$8100.00  
560 (Circuit Court) x \$25.00 fee DVD (interviews, 911, photos) = 14,000 (collect now already, but will be increasing).  
\* 260 x \$75.00 fee police in-car video download = 19,500/38,000  
TOTAL (conservative) fees for various media duplication = 41,600

*\*TBA involves a new initiative and numbers depend on speed with which the police department equips cars.*

**TOTAL Cost Recovery = 273,700**

As an aside, some fees are currently collected for audio/video copying in private attorney Circuit Court cases. We can potentially increase that by charging the Public Defender for copies of some audio and video recorded discovery. Additionally, the requests for \*Police In-Car video downloads will increase. The technology is new and gradually being installed in police cars. Currently, we are experiencing requests for about 5 a month. State Police charge \$125.00 and the Municipalities charge \$75.00 per download. We can begin collecting for the MCPD downloads. At a minimum fee of \$75.00 per download, 1 request per week yields 3900.00 per year. It is reasonable to believe that a large number of alcohol and drug related charges will generate a number of these requests. A hyper-conservative estimate of 5 requests per week generates \$19,500 per year. A realistic estimate of 10 per week by mid-year will generate \$38,000 per year. In 2009, \$14,000.00 was collected in discovery copying fees.

It is anticipated that discovery requests will continue to rise, requests for police in-car video will assuredly rise, and technology will gradually allow us to move away from xeroxing, mailing and manual labor and in the direction of paperless eDiscovery transfer and payment exchange, thereby reducing our expenses. It will be possible to adjust the fees to recoup unanticipated or additional cost associated with the production of discovery in the event we have grossly miscalculated.

#### OPTION A

- (1) Hire an Administrative Services Coordinator
- (2) Hire 3 Administrative Discovery Aides

Salary & Benefits: 91,893.71  
Salary & Benefits: 52,856.94 x 3

TOTAL SALARY COSTS: \$250,464.53  
Equipment: \$18,354  
TOTAL COST: \$ 268,818.53

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(3) Collect Fees: \$272,700.00

FEES COLLECTED minus COSTS = \$3881.47 over expenditures

OPTION B

(1) Immediately transfer a position from DTS and allow us to employ a qualified employee from DTS as a permanent MCSAO employee and serve as Administrative Services Coordinator. We need someone who has a working knowledge of criminal justice---police, SAO, courts, PLUS all of the county information systems---CJIS, IJIS, JJIS, CRIMS, and JustWare of course, PLUS has experience supervising projects and making them work. This is not an IT technical task person, rather it is someone with experience as a project manager. There are numerous projects involving the office, police and other county agencies and the state and local courts to make it make sense. It is necessary to have qualified staff representing SAO best interest in dealing with all of these projects. We anticipate moving in the direction of eDiscovery, i.e., "providing" discovery using web-based programs for delivery and collection of fees. This will be the responsibility of the Program Coordinator to work towards getting us there and transitioning or eliminating staff. This involves detailed work with other law enforcement agencies, our county network folks, our own IT staff, and private providers to develop, install and manage an eDiscovery system that meets our needs and is compatible with our case management system and our county network eDiscovery and direct access to police documents and media seems unattainable in the near future without such a person leading the way from within our office.

(2) Hire 3 Administrative Discovery Aides. We need to hire two immediately and could possibly defer hiring the third for a few months. One or two of these *could* be contract positions, allowing us to keep personnel costs lower.

Administrative Services Coordinator.....Transfer from DTS Salary & Benefits: 91,893.71

Administrative Discovery Aide #1.....Salary & Benefits: 52,856.94

Administrative Discovery Aide #2 ..... Salary: 31,797/no benefits

Administrative Discovery Aide #3 ..... Salary: 31,797/no benefits/15898.5 half year

TOTAL SALARY COST: \$192,446.15

Equipment: \$18,354.00

(3) Collect Fees : \$273,700.00

FEES COLLECTED minus ALL COSTS = \$62,899.85 over expenditures