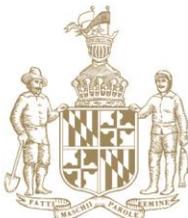


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May 2015

Dear Members of the Harford County Bar:

I thought you might be interested in having a summary of the bills which came before the House Judiciary Committee and which passed the 2015 General Assembly. Many other bills came before the committee, but died without making it to the House floor. A chapter number ("Ch.") indicates the bill has been enacted or signed by the Governor. Passed bills which have not been enacted are still subject to a veto by the Governor. Please note that most of the legislation will not become effective until October 1, 2015.

HIGHLIGHTS

Local Government Tort Claims Act: HB 113 increases the liability limits under the Local Government Tort Claims Act to \$400,000 for an individual claim and \$800,000 for total claims that arise from the same occurrence for damages from tortious acts or omissions. **HB 113** also extends the time period for giving notice of a claim to one year. **HB 113** applies prospectively from its effective date of October 1, 2015.

Maryland Tort Claims Act: HB 114 increases the liability limit under the Maryland Tort Claims Act (MTCA) to \$400,000 to a single claimant for injuries arising from a single incident or occurrence. HB 114 alters the notice requirements of MTCA by authorizing a court, on motion of a claimant who failed to submit a written claim within the one-year time period under MTCA, and for good cause shown, to entertain the claimant's action unless the State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit the claim.

Mandatory Minimum Sentences: HB 121 authorizes a court to depart from specified mandatory minimum sentences for drug-related offenses if the court finds and states on the record that given the history and character of the defendant, and the defendant's chances of successful rehabilitation: (1) the imposition of the mandatory minimum sentence would result in substantial injustice to the defendant; and (2) the mandatory minimum sentence is not necessary for the protection of the public. Under **HB 121**, the drug-related offenses that are included in the repealed mandatory minimum penalties are Criminal Law § 5-602 through § 5-606, which state that

a person may not: (1) distribute, dispense, or possess with the intent to distribute a controlled dangerous substance; (2) manufacture a controlled dangerous substance or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with the intent to use it to produce, sell, or dispense; (3) create, distribute, or possess with the intent to distribute counterfeit substance; (4) manufacture, distribute, or possess equipment designed to render a counterfeit substance; (5) keep a common nuisance; or (6) pass, issue, make or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with the intent to distribute.

Persons Eligible for Relief: SB 477 expands eligibility for a domestic violence protective order by altering the definition of a "person eligible for relief" to include an individual who has had a sexual relationship with the respondent within one year before the filing of the petition. **SB 477** also establishes that if a final protective order is issued for a person eligible for relief under the bill's provisions, the parties may not be directed to participate in professionally supervised counseling or a domestic violence program.

Maryland Second Chance Act of 2015: HB 244 allows a person convicted of a crime eligible for shielding to submit a petition to shield that person's court records from general public view. The eligible crimes are: (1) disorderly conduct; (2) disturbing the peace; (3) failure to obey a reasonable and lawful order; (4) malicious destruction of property in the lesser degree; (5) trespass on posted property; (6) possessing or administering a controlled dangerous substance; (7) possessing or administering a noncontrolled substance; (8) use of or possession with intent to use drug paraphernalia; (9) driving without a license; (10) driving while privilege is canceled, suspended, refused, or revoked; (11) driving while uninsured; and (12) a prostitution offense. The petitioner may only submit one shielding petition over the course of his or her lifetime in either the Circuit Court or the District Court in one county no earlier than three years after the petitioner satisfies the sentence for all convictions for which shielding is requested, including parole, probation, or mandatory supervision. Under **HB 244**, a defendant in a pending criminal proceeding is not eligible for shielding.

Public Safety - Law Enforcement Officers - Body-Worn Digital Recording Device and Electronic Control Device: HB 533 allows a law enforcement officer to intercept an oral communication with a "body-worn digital recording device" or an "electronic control device" capable of recording video and oral communications if (1) the officer is in uniform, prominently displaying the officer's badge or other insignia; (2) the officer is conforming to standards for the use of either type of device capable of recording video and oral communications established by the Police Training Commission or the Department of State Police; (3) the officer is a party to the oral communication; (4) the officer, if reasonable under the circumstances, has been identified as a law enforcement officer to the other parties to the oral communication before the oral interception; and (5) the oral interception is being made as part of a videotape or digital recording. **HB 533** is an emergency bill and would take effect once enacted by the Governor.

Public Safety - Deaths Involving a Law Enforcement Officer Reports: HB 954 requires each local law enforcement agency, by March 1, 2016, and by March 1 of each subsequent year, to provide the Governor's Office of Crime Control and Prevention with information for the previous calendar year about each "officer-involved death" and "death in the line of duty" that involved a law enforcement officer.

COURTS AND JUDICIAL PROCEEDINGS

Circuit Court Real Property Records Improvement Fund: HB 54 requires the State Court Administrator to assess a surcharge of \$11 on cases filed in the Court of Appeals and the Court of Special Appeals. HB 54 also requires the assessment of a \$30 surcharge for civil cases filed in the circuit courts and a surcharge of \$6 for civil cases reopened in the circuit courts. A surcharge may not be assessed to reopen a case brought by a petitioner under the protective order statutes. The Chief Judge of the District Court must assess a maximum surcharge of \$3 per summary ejectment case and \$8 for all other civil cases. The surcharges must be deposited into the Circuit Court Real Property Records Improvement Fund. The Fund supports the costs of the land records offices of the clerks of the circuit courts. Also, since Fiscal 2008, the Fund has been supporting the Judiciary's major information technology projects, including the Maryland Electronic Courts initiative.

Appeals- Supersedeas Bond: HB 164 specifies that the amount of a supersedeas bond that must be posted in a civil action to stay enforcement of a judgment granting any type of relief during the entire course of all appeals or discretionary reviews may not exceed the lesser of \$100,000,000 or the amount of the judgment for each appellant, regardless of the amount of the judgment appealed.

Active Armed Forces Member - Exemption From Payment of Fees for Certain Court Records: SB 61 (Ch. 4) requires a clerk of a court to provide without charge a copy of specified papers or records requested by an active armed forces member or by the United States government if the copy is to be used in connection with a claim of the member against the United States government.

Court Personnel- Altering References from Master to Magistrate: HB 346 alters references from the term "master" to be "magistrate" in specified provisions of law.

TORT REFORM

Prelitigation Discovery- Insurance Coverage Prerequisites for Disclosure: SB 146 reduces the information a claimant who alleges damages as a result of a vehicle accident must provide to an insurer before the insurer is required to disclose the applicable limits of insurance coverage to the claimant.

Civil Actions - Disclosure of Information - Repeal of Certification Requirement: SB 145 requires that on written request of a plaintiff, an insurer or a person that has a self-insurance plan must provide the plaintiff with the defendant's last known home and business addresses, if known. SB 145 repeals statutory provisions requiring a plaintiff to file a certification meeting specified requirements before an insurer or self-insured person is required to provide this information to the plaintiff.

Immunity From Liability- Emergency Medical Care for Drug Overdose: HB 368/SB 546 extend civil immunity under the Good Samaritan Act for acts of ordinary negligence to specified rescue and emergency care personnel administering medications or treatment approved for use in response to an apparent drug overdose. HB 368/SB 546 apply to a member of any State, county, municipal, or volunteer fire department, ambulance and rescue squad, or law enforcement

agency, or a corporate fire department, if the member is (1) licensed or certified by the State Emergency Medical Services Board as an emergency medical services provider and is authorized to administer the medications and treatment under protocols established by the board or (2) certified to administer the medications and treatment under protocols established by the Secretary of Health and Mental Hygiene or the Maryland State Police Medical Director.

Maryland False Claims Act: HB 405/SB 374 (1) prohibit a person from knowingly making a false or fraudulent claim for payment or approval by a governmental entity; (2) authorize a governmental entity to file a civil action against a person who makes a false claim; (3) establish civil penalties for making a false claim; (4) permit a private citizen to file a civil action on behalf of a governmental entity against a person who has made a false claim; (5) require the court to award a certain percentage of the proceeds of the action to the private citizen initiating the action; and (6) prohibit retaliatory actions by a person against an employee, contractor, or grantee for disclosing a false claim or engaging in other specified false claims-related activities.

CRIMINAL

A. New Crimes

Assault - First Responders: HB 236/SB 705 expand provisions prohibiting felony second degree assault to include intentional causing of physical injury to another person by a person who knows or has reason to know that the victim is a firefighter, an emergency medical services provider, a rescue squad member, or any other first responder engaged in firefighting or providing emergency medical care or rescue services.

B. Revised Provisions Related to Crimes

Use and Possession of Marijuana and Drug Paraphernalia: SB 517 establishes a civil penalty of up to \$500 for the smoking of marijuana in a public place. SB 517 also eliminates any penalty for possession of marijuana-related paraphernalia.

Crime of Violence - Home Invasion: SB 67 adds felony home invasion to the definition of a "crime of violence" under § 4-401 of the Criminal Law Article and § 5-101 of the Public Safety Article.

Identity Fraud - Name of the Individual: HB 529/SB 549 expand the identity fraud statute by repealing the requirement that a person act in the name of a victim to unlawfully receive a benefit, credit, good, service, or other thing of value in order to be guilty of the offense. Accordingly, a person is guilty of identity fraud if the person knowingly, willfully, and with fraudulent intent, possesses, obtains or helps another to possess or obtain, personal identifying information of an individual without that individual's consent for the purpose of receiving a benefit, good, service, other thing of value, or access to health care or information.

Immunity Alcohol or Drug- Related Medical Emergencies: HB 1009/SB 654 expand and clarify the statutory immunity provision in the Criminal Procedure Article § 1-210 concerning the seeking or providing of assistance for a medical emergency after ingesting or using alcohol or drugs and may be used as a mitigating factor in a criminal prosecution of (1) the person who experienced the medical emergency or (2) any person who sought, provided, or assisted in the provision of medical assistance.

C. Criminal Procedure

Failure to Appear in Court: HB 120 authorizes a judge to set a bond when issuing a bench warrant for a defendant who has failed to appear after being admitted to bail or released on recognizance. Under HB 120, a judicial officer must mark the bench warrant "satisfied" and the court must reschedule the hearing or trial if a person against whom a bench warrant has been issued posts a bond that has been set by the judge.

Criminal Procedure - Seizure and Forfeiture: SB 528 makes several changes to statutes pertaining to seizure and forfeiture of property in connection with violations of the controlled dangerous substances laws. SB 528 removes the following from the statutorily specified list of property and items subject to forfeiture in a controlled dangerous substances case: money of \$300 or less used or intended to be used in connection with the unlawful manufacture, distribution, dispensing, or possession of a controlled dangerous substance or controlled paraphernalia. However, any amount of money that is directly connected to the unlawful distribution of a controlled dangerous substance may still be seized. SB 528 repeals the statutory provision that money or weapons that are found in close proximity to a contraband controlled dangerous substance, controlled paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled dangerous substances are contraband and are forfeitable. The burden of proof for determining whether property may be forfeit is altered by requiring that the State prove, by a preponderance of the evidence, that the violation of the controlled dangerous substance law was committed with the owner's actual knowledge. A seizing authority must send written information regarding the seizure and the property to the owner of the property within 30 days of the seizure.

Financial Crimes Against Vulnerable and Elder Adults - Petition to Freeze Assets: HB 737 /SB 288 authorize a State's Attorney to file a petition to freeze assets of a defendant charged with exploitation of a vulnerable or elder adult if (1) the petition is filed within 60 days of the defendant being charged with the offense; (2) the alleged value of the lost or stolen property in the criminal charge is \$10,000 or more; (3) the amount of money subject to the petition does not exceed the value of the alleged value of the lost or stolen property in the criminal charge; and (4) the State's Attorney sends a notice of intent to file the petition to each financial institution in possession of money subject to the petition.

DNA Evidence- Postconviction Review: SB 583 expands the group of persons who may file petitions for postconviction DNA testing or database/log searches to an individual convicted of a crime of violence, as defined under § 14-101 of the Criminal Law Article. **SB 583** expands the offenses eligible for postconviction DNA testing and requires the State preserve scientific identification evidence.

Marijuana and Drug Paraphernalia- Medical Necessity: SB 456 requires a court to dismiss a specified possession of marijuana charge if the court finds that the person used or possessed marijuana because of medical necessity. In addition, **SB 456** requires a court to dismiss a possession of drug paraphernalia charge related to marijuana because of medical necessity.

D. Expungement and Shielding

Expungement- Conviction of a Crime That Is No Longer a Crime: HB 124/SB 651 expand

eligibility for expungements to persons convicted of a crime that is no longer a crime. While there are several acts that were once but are no longer crimes, the most likely former crime to which **HB 124/SB 651** applies is the use or possession of less than 10 grams of marijuana. Chapter 158 of 2014 (effective October 1, 2014) reclassifies the use or possession of less than 10 grams of marijuana from a criminal offense to a civil offense (decriminalization).

Expungement of Records: HB 304/SB 652 repeal provisions of law stating that a person is not entitled to expungement if the (1) petition for expungement is based on a certain entry of probation before judgment, a *nolle prosequi*, a stet, a *nolle prosequi* or stet with the requirement of drug or alcohol treatment, a conviction for one of a list of specified crimes, a finding of not criminally responsible, or the grant of a pardon by the Governor and (2) the person to whom the petition applies has subsequently been convicted of a crime (other than a minor traffic violation) or is a defendant in a criminal proceeding. Under **HB 304/SB 652**, a person is not entitled to expungement if the petition for expungement is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, and the person is a defendant in a pending criminal proceeding or was convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime within three years after the entry of the probation before judgment.

E. Victims' Rights

Human Trafficking - Affirmative Defense: SB 520 establishes an affirmative defense of duress if the defendant committed the act of prostitution as a result of being a victim of an act of another who was charged with human trafficking under federal law or Criminal Law Article § 11-303. A defendant is prohibited from asserting the affirmative defense unless the defendant notifies the State's Attorney of the defendant's intention to assert the defense at least 10 days prior to trial.

Victims of Crime - Notification Regarding DNA Profile: HB 501/SB 427 require an investigating law enforcement agency, upon written request, to give the victim of a crime of violence, or the victim's representative, timely notice as to (1) whether an evidentiary DNA profile was obtained from evidence in the case; (2) when any evidentiary DNA profile developed in the case was entered into the DNA database system; and (3) when any confirmed match of the DNA profile, official DNA case report, or DNA hit report is received. The requirement does not apply when it would impede or compromise an ongoing investigation or when the victim's representative is a suspect or a person of interest in the criminal investigation. **HB 501/SB 427** also require the State Board of Victim Services to develop pamphlets to notify victims and their representatives about how to request information regarding an unsolved case.

Sexual Assault Survivors' Right to Know Act: HB 382 requires that a health care provider who performs a "sexual assault evidence collection kit" exam to provide the victim of sexual assault with contact information for a law enforcement agency that the victim may contact about the status and results of the kit. **HB 382** requires a law enforcement agency that receives a "sexual assault evidence collection kit" to provide within 30 days after a request by a victim (1) information about the status of the kit analysis and (2) all available results of the kit analysis except results that impede or compromise an ongoing investigation.

F. Public Safety and Corrections

Correctional Officers - Polygraph Examination: HB 200/SB 189 require an applicant for a position as a State correctional officer be subject to a polygraph examination before being appointed to the position.

Statewide Accounting of Sexual Assault Evidence Kits: HB 462/SB 498 (Ch. 37) require that a statewide inventory of sexual assault evidence kits be conducted by a specified law enforcement agency or other State or local agency on or before January 1, 2016 and that the Attorney General will forward the report to the General Assembly with recommendations for addressing backlogs of untested kits on or before December 1, 2016.

Justice Reinvestment Coordinating Council: HB 388/SB 602 (Ch. 42) establish the Justice Reinvestment Coordinating Council in the Governor's Office of Crime Control and Prevention. The Council will develop a statewide framework of sentencing and corrections policies to further reduce the State's incarcerated population, reduce spending on corrections, and report its findings to the Governor and General Assembly.

Transport of Weapons on School Property- Retired Law Enforcement Officers: HB 1032 provides prohibition on carrying or possessing a specified weapon on public school property doesn't include a retired law enforcement officer who is a parent, guardian or visitor of a student.

DOMESTIC VIOLENCE

Protective Order and Peace Order Petitions: HB 390/SB 270 authorize the filing of a protective order petition or a peace order petition if (1) the abuse or underlying act is alleged to have occurred in the State, or (2) the petitioner or the person eligible for relief is a resident of the State, regardless of where the abuse or underlying act is alleged to have occurred. **HB 390/SB 270** also specify that it is the intent of the General Assembly that an order for protection issued by a court of this State must be accorded full faith and credit by a court of another state to the extent required by federal law.

Domestic Violence - Additional Relief: HB 225/SB 269 expand the relief that may be awarded in a final protective order by authorizing the judge, when issuing a final protective order, to include any other relief that the judge determines is necessary to protect a person eligible for relief from abuse. **HB 225/SB 269** allow a judge to authorize a final protective order that allows for various forms of relief: (1) in certain cases, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief; (2) award temporary custody of a minor child of the respondent and a person eligible for relief; (3) establish temporary visitation with a minor child of the respondent and a person eligible for relief under certain conditions; (4) award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support; (5) award temporary use and possession of a vehicle jointly owned by the respondent and a person eligible for relief to the person eligible for relief under certain conditions; (6) order the respondent to participate in professionally supervised counseling or a domestic violence program (such order may also apply to any or all of the persons eligible for relief); (7) order the respondent to pay filing fees and costs of the proceeding; or (8) award temporary possession of any pet belonging to the person eligible for relief or the respondent.

2-Year Protective Order: HB 224/SB 315 expand circumstances under which a court may

issue or extend the term of a final protective order for a maximum duration of two years. Specifically, **HB 224/SB 315** authorizes the court to: (1) issue a final protective order for a maximum of two years if the protective order is issued by consent of the respondent within one year after the expiration date of a prior final protective order issued against the same respondent on behalf of the same person eligible for relief; and (2) extend a final protective order for a maximum of two years if the respondent named in the protective order consents to the extension.

Permanent Protective Orders- Conspiracy or Solicitation to Commit Murder: HB 263 adds the crimes of conspiracy or solicitation to commit murder to the list of crimes that may include an issuance of a permanent final protective order. A court is required to issue a permanent final protective order against an individual if (1) the individual was previously a respondent against whom a final protective order was issued and (2) the individual was convicted and sentenced to serve a term of imprisonment of at least five years and has served at least 12 months of the sentence for attempted murder in the first or second degrees, first or second degree assault, first or second degree rape, first or second degree sexual offense, or attempted rape or sexual offense in the first or second degree. One of the specified crimes must have been the act of abuse that led to the issuance of the original final protective order.

DIVORCE

Grounds for Limited Divorce: HB 165 repeals the requirements that the separation must be voluntary and without a reasonable expectation of reconciliation for a limited divorce and repeals the court's authority to require and prescribe the parties to participate in good faith efforts to achieve reconciliation.

Grounds for Divorce- Mutual Consent: SB 472 authorizes a court to grant an absolute divorce on the ground of mutual consent, without a waiting period, if (1) the parties do not have any minor children in common; (2) the parties execute and submit to the court a written settlement agreement signed by both parties that resolves all issues relating to alimony and the distribution of property; (3) neither party files a pleading to set aside the settlement agreement prior to the divorce hearing required under the Maryland Rules; and (4) both parties appear before the court at the absolute divorce hearing. Under **SB 472**, if the court decrees an absolute divorce on the ground of mutual consent, the court may merge or incorporate the settlement agreement into the divorce decree and modify or enforce the settlement agreement as authorized by statutory provisions.

Application for Divorce- Residency Requirement: HB 1185 reduces from one year to six months the amount of time that a party to an application for divorce must reside in the State before the application may be filed.

CHILD ABUSE AND NEGLECT

Waiver of Reunification Efforts (Anayah's Law): HB 171/SB 150 allow a local department of social services to ask the court to find that reasonable efforts are not required to reunify a child with the child's parent if the local department concludes that a parent or guardian has subjected the child to the following aggravated circumstances: (1) the parent or guardian has engaged in or facilitated chronic or severe physical abuse, chronic and life threatening neglect, sexual abuse, or torture of the child, a sibling of the child, or another child in the household; (2) the parent or

guardian knowingly failed to take appropriate steps to protect the child after a person in the household inflicted sexual abuse, severe physical abuse, life-threatening neglect, or torture on the child or another child in the household; (3) the child, a sibling of the child, or another child in the household has suffered severe physical abuse or death resulting from abuse by the parent or guardian or another adult in the household and all persons who could have inflicted the abuse or caused the death remain in the household; and (4) or the parent or guardian has abandoned the child.

JUVENILE LAW

Transfer Determinations- Confinement in Juvenile Facilities: HB 618/SB 172 alter the authority of the court to determine whether a child may be held in a secure juvenile facility pending a reverse waiver determination by requiring, rather than authorizing, a court exercising criminal jurisdiction or the District Court, at a bail review or preliminary hearing involving such a child, to order the child held in a secure juvenile facility unless (1) the child is released on bail, recognizance, or on other conditions of pretrial release; (2) there is not available capacity in a secure juvenile facility, as determined by DJS; or (3) the court finds that detention in a secure juvenile facility would pose a risk of harm to the child or others, and states the reasons for the finding on the record.

Transfer to Juvenile Court- Petition for Expungement: HB 131/SB 87 create an exception to the procedures for filing expungement petitions by requiring that a petition for expungement of a criminal charge that has been transferred to the juvenile court be filed in the court of original jurisdiction from which the order of transfer was entered (the adult criminal court).

DRUNK DRIVING

Drunk Driving Accidents Resulting in Death - Sanctions for Administrative Per Se Offenses: HB 430 increases the administrative *per se* sanctions that must be imposed on a person who is stopped or detained on suspicion of committing an alcohol-related driving offense if the test indicates a blood alcohol concentration (BAC) of 0.08 or greater and the person was involved in a motor vehicle accident that involved the death of another person. **HB 430** authorizes the Motor Vehicle Administration to suspend or issue a restrictive license and to allow for participation in the Ignition Interlock System Program by a person whose license is suspended or revoked under the Act.

CHILD SUPPORT

Maryland Uniform Interstate Family Support Act- Revision: HB 1289 revises the Uniform Interstate Family Support Act to include the 2008 amendments, which establish procedures for processing of international child support cases. According to the Uniform Law Commission, these amendments will improve enforcement of child support orders abroad and help ensure children residing in the United States receive the financial support due from their parents wherever their parents reside.

More information about these bills and other legislation can be found at the Maryland General Assembly's webpage, www.mgaleg.maryland.gov. If you have additional questions, please email me at Susan.McComas@house.state.md.us.

Very truly yours,

Susan K. McComas
Delegate, District 34A