

JOSEPH F. VALLARIO, JR.
LEGISLATIVE DISTRICT 27A

Chairman
Judiciary Committee

Member
Legislative Policy Committee

Rules and Executive
Nominations Committee

ANNAPOLIS OFFICE
The Maryland House of Delegates
6 Bladen Street, Room 101
Annapolis, Maryland 21401
301-858-3488 410-841-3488

District Office
5210 Auth Road, Sixth Floor
Suitland, Maryland 20746-4325
301-423-8100

THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401

April 2010

Dear Members of the Maryland State Bar Association, Criminal Law Section:

We have prepared a list of passed legislation from the 2010 Legislative Session of the General Assembly that may be of interest to you. A chapter number (“Ch.”) indicates that the bill has been enacted. A bill passed, but not yet enacted, is still subject to a veto by the Governor. Please note that most of the legislation will not become effective until later this year.

Civil Actions and Procedures

Maryland False Health Claims Act of 2010: Ch. 4: (1) authorizes the State to file a civil action to recover treble damages, civil penalties, attorney’s fees, and court costs against a person making a false or fraudulent claim under a State health plan or program; (2) permits a private citizen to initiate the civil action on behalf of the State and requires the court to award a certain percentage of the proceeds of the action to the private citizen; and (3) prohibits retaliatory actions against a whistleblower. The Act applies retroactively to the extent permitted by the limitation periods specified in the Act.

Homestead Exemption - Bankruptcy: HB456/SB782 authorize an individual debtor to exempt in a bankruptcy proceeding up to the amount under the federal homestead exemption (currently \$21,625), adjusted every three years, for owner-occupied residential real property. This exemption: (1) may be claimed if the debtor and specified family members have not successfully claimed the exemption on the property within eight years prior to the filing of the bankruptcy proceeding; and (2) may not be claimed by both a husband and a wife in the same proceeding. The bills apply to any case filed on or after October 1, 2010.

Civil Jury Trials - Amount in Controversy: SB119 proposes a constitutional amendment increasing to over \$15,000 the amount in controversy in which the right to a jury trial may be limited by statute. **SB118** implements the proposed constitutional amendment if the amendment is ratified by the voters. **SB118** applies prospectively to civil actions filed on or after the date of the proclamation by the Governor that the constitutional amendment has been ratified.

Defense of Dwelling or Place of Business – Civil Immunity: SB411 specifies that a person is not liable for damages for a personal injury or the death of an individual who enters the person’s dwelling or place of business if the person reasonably believes that force or deadly force is

necessary to repel an attack by the individual and the amount and nature of the force used is reasonable under the circumstances. A court may award attorney's fees and costs to the person who prevails in a defense under the bill. Immunity does not attach, however, if the person is convicted of a crime of violence, second degree assault, or reckless endangerment as a result of the incident. "Person" does not include a government entity. The bill applies prospectively to a cause of action arising on or after October 1, 2010.

Limitation of Actions - Land Surveyors: HB907/SB531 reduces the time in which a person may seek recovery for damages caused by an error in a survey of land to 10 years after the survey, or within 3 years after the discovery of the error, whichever occurs first. The bills apply prospectively to a cause of action arising on or after October 1, 2010.

Foreign Defamation Judgments - Recognition, Enforceability, and Bases of Personal Jurisdiction: HB193/SB13 authorize a State court to exercise personal jurisdiction, to the extent permitted by the U.S. Constitution, over any person who obtains a judgment in a defamation proceeding outside of the United States against a State resident or a person who has assets in the State. This authority is solely for the purpose of providing declaratory relief or determining whether the judgment may not be recognized under State law. A foreign defamation judgment may not be recognized unless the law of a foreign country as applied provides as much protection as the law under the U.S. and Maryland Constitutions. The bills apply prospectively to cases filed in a court of this State on or after October 1, 2010.

Journalist's Testimonial Privileges – Student: Ch. 140 extends the privileges against compelled disclosure of information or a source of information to postsecondary students engaged in any news gathering or news disseminating capacity recognized by their schools as a scholastic activity or in conjunction with an activity sponsored, funded, managed, or supervised by school staff or faculty. The Act applies prospectively to and only affects a subpoena issued on or after October 1, 2010.

SLAPP Suits: HB1250/SB990 expand the protections from strategic lawsuits against public participation (SLAPP suits) by including a suit that (1) inhibits the exercise of federal or State constitutional rights of free speech (rather than the current limited application of SLAPP status to suits in which there is an intent to inhibit those rights); and (2) is based on communications regarding any issue of public concern. The bills apply prospectively to a cause of action arising on or after October 1, 2010.

Real Property - Abatement of Nuisance – Prostitution: SB399 classifies real property used for prostitution as a nuisance subject to an abatement action similar to the statutory provisions regarding abatement of a drug nuisance. If a tenant fails to comply with a court order to abate the nuisance, the court may order restitution of possession of the property to the owner or operator. If the property owner fails to comply with an order to abate a prostitution-related nuisance, the court may issue a contempt order. If an owner-occupant fails to comply with a court order to abate the nuisance, the court may, in addition to issuing a contempt order, order the owner-occupied property to be vacated for up to one year. The court may award court costs and attorney's fees to a community association that prevails in an action against a tenant or owner-occupant.

Design Services - Indemnity Agreements – Void: HB168 adds architectural, engineering, inspecting, and surveying services to the list of services for which indemnity agreements are considered void and unenforceable as a matter of public policy under State law. The bill applies prospectively to a cause of action arising on or after October 1, 2010.

Insurance

Insurance - Coordination of Benefits - Health Insurance and Personal Injury Protection: HB1073/SB704 prohibit health insurers, nonprofit health plans, and health maintenance organizations from requiring that personal injury protection benefits under a motor vehicle liability insurance policy be paid before benefits under the health insurance policy. The bills apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after October 1, 2010.

Vehicle Laws - Required Security - Minimum Amounts: HB825 increases the minimum security required on a motor vehicle liability insurance policy for bodily injury or death of a single individual from \$20,000 to \$30,000, and for more than one individual from \$40,000 to \$60,000. The bill takes effect January 1, 2011, and applies to all vehicle liability insurance policies issued, delivered, or renewed in the State on or after that date.

Domestic Violence

Protective Order – Extension: HB534/SB867 authorize a judge to extend the terms of a final protective order for up to two years if, during the term of a protective order, a judge finds by clear and convincing evidence that the respondent named in the protective order has committed a subsequent act of abuse against a person eligible for relief named in the protective order. Prior to extending a final protective order, the court must give notice to the respondent and all affected persons eligible for relief and hold a hearing.

Denial or Dismissal of Peace Order or Protective Order Petition - Shielding of Records: HB1149/SB935 authorize a respondent in a domestic violence proceeding to file a written request to “shield” (i.e. remove from public inspection) all court records relating to a domestic violence or peace order proceeding if the domestic violence or peace order petition was denied or dismissed at any stage of the proceedings. “Shielding” means: (1) with respect to a record kept in a course house, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and (2) with respect to electronic information about a proceeding on a website maintained by the Maryland Judiciary (i.e. “Case Search”), removing the information from the public website.

Domestic Violence - GPS Tracking System Pilot Program for Offenders: Local bills, **HB665** and **HB1336** require, respectively, Prince George’s and Washington Counties to implement global positioning satellite (GPS) tracking system pilot programs that authorize the court, as a condition of a defendant’s pretrial release on a charge of violating a protective order, to require the supervision of the defendant by means of active electronic monitoring. The bills also require that on entering a judgment of conviction for failing to comply with the relief granted in a protective order, if a court suspends the imposition or execution of sentence and places the

defendant on probation, the court may order that the defendant be supervised by means of active electronic monitoring for the duration of the protective order. The bills take effect October 1, 2010, and terminate September 30, 2012.

Child Abuse and Neglect

Child Abuse and Neglect – Disclosure of Information: HB1141/SB948 require the director of a local department of social services or the Secretary of Human Resources to disclose, on request, specified information regarding child abuse or neglect if: (1) the information is limited to actions or omissions of the local department, the Department of Human Resources (DHR), or an agent of DHR; (2) the child named in a report has suffered a fatality; and (3) the State’s Attorney’s Office has consulted with and advised the local director or Secretary that disclosure would not jeopardize or prejudice a related investigation or prosecution.

Child Abuse and Neglect - Reports and Records - Disclosure to Division of Parole and Probation: HB1330/SB892 require the disclosure of a report or record concerning child abuse or neglect to the Division of Parole and Probation if, as a result of a report or investigation of suspected child abuse or neglect, the local department of social services has reason to believe that an individual who lives in or has a regular presence in a child’s home is registered on the offender registry based on the commission of an offense against a child.

Child Protection - Reporting of Children Living with or in the Regular Presence of Registered Child Sexual Offenders: HB811/SB559 authorize an individual to notify the local department of social services or the appropriate law enforcement agency if the individual has reason to believe that a parent, guardian, or caregiver of a child allows the child to reside with or be in the presence of an individual, other than the child’s parent or guardian, who: (1) is a registered child sexual offender; and (2) poses a substantial risk of sexual abuse to the child, based on additional information. The bills require local departments to take specific actions upon the receipt of a report and conduct investigations if specified criteria are met.

Criminal History Records Check – Employees and Employers in Facilities and Other Individuals that Care for or Support Children: Ch. 18 adds employees and employers at a licensed home health or residential service agency, which is authorized to provide home or community-based health services for minors, to the list of entities that must apply for a national and State criminal history records check. The Act also expands the requirement to include employees and employers of privately operated recreation centers and programs.

Guardianship Review Hearings - Consultation with Child: HB161 requires a juvenile court, in guardianship review hearings, to consult on the record with the child in an age-appropriate manner at least every 12 months.

Family Law

Child Support Guidelines – Revision: HB500/SB252 revise the schedule of basic child support obligations used to calculate child support amounts under the State’s child support guidelines. The bills expand the current schedule to include monthly incomes of up to \$15,000 and the

minimum order of child support of \$20 to \$150 is altered to apply to incomes from \$100 to \$1,200. Furthermore, the bills establish that the adoption or revision of the guidelines is not a material change of circumstances for the purpose of a modification of a child support award. The bills take effect October 1, 2010.

Maryland Uniform Interstate Family Support Act – Revision: Ch. 122 makes technical changes to provisions of the Maryland Uniform Interstate Family Support Act (UIFSA) to conform to federal requirements. The most significant changes include: (1) expanding the ability of the state to exercise personal jurisdiction over a nonresident individual if the individuals resided with the child in the state; (2) specifying that if the Attorney General determines that a support agency is neglecting or refusing to provide services to an individual, the Attorney General is authorized to provide services directly to the individual; (3) clarifying that in situations where a request to determine which of multiple child support orders that have been issued for the same obligor and the same child controls, the requesting party is responsible for providing notice to each party whose rights may be affected by this determination; (4) establishing that a party to a proceeding under UNIFSA may not object to documentary evidence transmitted electronically from another state based on the means of transmission; and (5) clarifying that neither spousal immunity nor immunity based on the relationship of parent and child is available in a UNIFSA proceeding.

Juvenile Law

Lead Testing – Authorized: HB1011 authorizes the juvenile court, after a delinquency petition has been filed but before adjudication, to order the child to undergo blood lead level testing. Before trial, a court exercising criminal jurisdiction in a case involving a child is also authorized to order a blood lead level test. The results of the test must be provided to the child, the child's parent or guardian, the child's attorney, and the State's Attorney.

Escape from Juvenile Facility: Ch. 123 alters the elements of the crime of escape in the first degree and escape in the second degree to include a prohibition against escape from a privately operated, hardware secure facility for juveniles committed to the Department of Juvenile Services.

Sex Offenders

Sexual Offenders - Lifetime Supervision: HB473/SB280 require the lifetime supervision of some sexual offenders for a crime committed on or after October 1, 2010. For a person who is required to register because the person was at least 13 years old but not more than 18 years old at the time of the act, the term of lifetime sexual offender supervision begins when the person's obligation to register in juvenile court begins and expires when the person's obligation to register expires, unless the juvenile court finds after a hearing that there is a compelling reason for the supervision to continue for a specified time. The bills authorize a court to sentence a person convicted of a certain third degree sex offense to lifetime supervision and require a risk assessment before that sentence is imposed. The bills also eliminate the role of the Maryland Parole Commission to administer or enter agreements for extended parole supervision of sexual offenders and eliminate extended supervision for a period less than life. The bills prohibit a

person subject to lifetime supervision from knowingly or willfully violating the conditions of the supervision; in addition to other penalties, a person imprisoned for a violation of lifetime supervision is not entitled to diminution credits and continues to be subject to lifetime supervision upon release until discharge from supervision, as specified. A court may remand the person to a correctional facility pending the hearing or a determination on a charge of violation of a condition of lifetime sexual offender supervision.

The sentencing court shall hear and adjudicate a petition for discharge from lifetime sexual offender supervision. The court may not deny a petition for discharge without a hearing. Further, the court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. The judge who originally imposed the lifetime sexual offender supervision shall hear the petition. If the judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act in the matter. The sentencing court or juvenile court must impose special conditions of lifetime sexual offender supervision at the time of sentencing or imposition of the registration requirement in juvenile court and advise the person of the length, conditions, and consecutive nature of that supervision. Before imposing the special conditions, the court must order a presentence investigation. The sentencing court may adjust the special conditions of such lifetime supervision in consultation with the person's sexual offender management team. Finally, the bills require notice to victims or a victim's representative of hearings relating to lifetime sexual offender supervision.

Sex Offenders - Notification and Registration: HB936/SB854 substantially revise Maryland's sex offender registration law in an effort to comply with the federal Sex Offender Registration and Notification Act (SORNA) and increase penalties for certain sex offenses committed against minors. Among their provisions, the bills:

- replace references to the four existing categories of sexual offenders with the three tiers of categorization under SORNA;
- specify that a Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life;
- require a sex offender to register in each county where the sex offender habitually lives and define the term "habitually lives" to include any place where a person visits for longer than five hours per visit more than five times within a 30-day period;
- require a sex offender who is homeless to register in person within a specified period of time with the local law enforcement unit in the county where the registrant habitually lives and to reregister weekly while habitually living in the county;
- generally narrow all registration, changes of information, and notification deadlines to three days;
- require new in-person reporting requirements relating to institutions of higher education;
- require local law enforcement notifications for any registrant when a change of residence occurs;
- require new notifications and timeframes relating to a change of name, leaving the United States for residence or work in a foreign country, or a temporary residency and require new notifications by local law enforcement units to the Department of Public Safety and Correctional Services (DPSCS) of such changes;

- add information that must be included in a registration statement, such as a copy of the registrant's passport or immigration papers, Social Security number (and purported Social Security numbers), locations where all vehicles are kept, and landline and cell telephone numbers;
- require DPSCS to post on the Internet certain identifying information about each registrant, including the registrant's name and crime;
- prohibit registration information provided to the public by DPSCS from including certain personal information including the sexual offender's Social Security number, driver's license number, and certain medical information;
- require a registrant who establishes a new electronic mail address or other online identity to provide written notice of the new online identity to the sexual offender registry;
- provide for the retroactivity of certain provisions of the Act;
- establish a listing of juvenile sex offenders that is maintained by DPSCS and is accessible only by law enforcement personnel for law enforcement purposes; and
- increase the maximum and mandatory minimum penalties for a person convicted of rape in the second degree of a child under the age of 13 years, or sexual offense in the second degree against a child under the age of 13 years, to life imprisonment and 15 years, respectively.

Criminal Law – Sexual Offense Against Children – Jessica's Law Enhancement: HB254/SB622 increase the penalties for a person 18 years of age or older convicted of second degree rape or second degree sexual offense of a victim younger than the age of 13. The bills increase the mandatory minimum sentence from 5 years to 15 years imprisonment and increase the maximum term of imprisonment from 20 years to imprisonment for life. The bills alter the notification requirement if the State intends to seek the mandatory minimum sentences to reflect the increased penalties.

Violation by Child Sexual Offender of Pretrial or Posttrial Release No Contact Order ("Alexis's Law"): HB60 prohibits a person charged with committing a sexual crime against a minor from violating a condition of pretrial or posttrial release that prohibits the person from contacting the victim. Violators are guilty of a misdemeanor, punishable by up to 90 days imprisonment. The bill authorizes a police officer to make a warrantless arrest if the officer has probable cause to believe that the person has violated a condition of pretrial or posttrial release as prohibited under the bill.

Correctional Services – Child Sexual Offenders – Diminution Credits: HB289 prohibits the earning of diminution credits to reduce the term of confinement of an inmate who is serving a sentence in a State or local correctional facility for committing first or second degree rape or first or second degree sexual offense against a victim under 16 years of age.

Correctional Services – Repeat Child Sexual Offenders – Diminution Credits: HB599 prohibits the earning of diminution credits in a State or local correctional facility to reduce the term of confinement of an inmate who is serving a sentence for committing third degree sexual offense against a child under the age of 16 after being previously convicted of committing a third degree sexual offense against a child under the age of 16.

Registered Sex Offenders – Restrictions on Pretrial Release and Inclusion on Rap Sheet: **HB1046** prohibits a District Court Commissioner from authorizing the pretrial release of a defendant who is a registered sex offender. A judge is authorized to release such a defendant on suitable bail, on any other conditions reasonably assuring that the defendant will not flee or pose a danger to others, or both bail and such other conditions. A State record of arrest and prosecution (“RAP” sheet) that is accessible to judicial officers making pretrial release determinations must prominently indicate, when applicable, that the subject of the report is a registered sex offender or subject to a term of lifetime sexual offender supervision. The bill also specifies that, under the Maryland Rule governing the review of a commissioner’s pretrial release order, when such a defendant is presented to the court, the judge must order a continued detention if the judge determines that bail or other conditions of release would not protect against flight or a danger to others. There is a rebuttable presumption that such a defendant will flee or pose such a danger. The bill makes the imposition of lifetime sexual offender supervision a reportable offense to the Criminal Justice Information System (CJIS) Central Repository.

Sexual Offender Advisory Board: **HB931/SB856** alter the composition of the Sexual Offender Advisory Board by adding specified government officials and other members with expertise in sexual abuse and related crimes. The bills expand the duties of the board to include developing criteria for measuring a person’s risk of reoffending, studying the issue of civil commitment of sexual offenders, and considering ways to increase cooperation among states with regard to sexual offender registration and monitoring. The bills take effect June 1, 2010, and require that the first annual report of the board be submitted by December 31, 2010.

Assisted Living and Nursing Home Residents Protection Act of 2010: **SB776** requires the Sexual Offender Advisory Board (SOAB) in the Department of Public Safety and Correctional Services (DPSCS) to review the policies and procedures relating to: (1) ensuring the protection of residents of nursing homes and assisted living facilities where sexual offenders reside or may reside; (2) notifying residents, employees, and residents’ family members of the presence of sexual offenders residing in nursing homes or assisted living facilities; (3) employing sexual offenders in nursing homes or assisted living facilities; and (4) requiring law enforcement notification to nursing homes and assisted living facilities if a sexual offender resides in the home or facility. The review must include the applicable laws of other states and jurisdictions. SOAB must report to the General Assembly by December 1, 2011, on its findings and recommendations. The bill terminates December 31, 2011.

Child Pornography – Matter Reflecting Belief That a Minor is Depicted in a Certain Manner: **HB1053** expands the State’s prohibition against child pornography by prohibiting a person from knowingly promoting, advertising, soliciting, distributing, or possessing with the intent to distribute any matter, visual representation, or performance in a manner that reflects the belief, or that is intended to cause another to believe, that it depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct.

Criminal Law

Maryland Gang Prosecution Act of 2010: **SB517** makes several changes to the criminal gang statute, including: (1) adding several offenses to the list of underlying crimes that serve to prove

criminal gang activity; (2) requiring a sentence for a second or subsequent offense of criminal gang participation or a violation resulting in the death of a victim to run consecutively to any sentence for an underlying crime on which the conviction was based; and (3) adding a prohibition against being a gang kingpin.

Assault - Law Enforcement Officers and Parole and Probation Agents: HB365/SB255 expand the current statutory prohibition on intentionally causing physical injury to another if the person knows or had reason to know that the victim was a law enforcement officer engaged in the performance of the officer's official duties to include parole and probation agents engaged in official duties.

Human Trafficking – Prohibitions: HB283/SB261 extend the application of the human trafficking statute by applying current statutory penalties to individuals who act in support of or benefit from human trafficking; change specified human trafficking violations from misdemeanors to felonies; and expand the current prohibition on human trafficking to include forced participation in a “sexually explicit performance” and interference with possession of immigration documents.

Unauthorized Computer Access for Sabotage of State Government, Public Utilities, or Other Energy Infrastructure: HB778 prohibits a person from engaging in currently prohibited activities pertaining to unauthorized access to computers and related material with the intent to interrupt or impair the functioning of (1) State government, (2) a service provided in the State by a public service company, or (3) natural gas or electric service provided in the State by someone other than a public service company. If the aggregate amount of the loss is \$50,000 or more, a violator is guilty of a felony and subject to maximum penalties of 10-years imprisonment and/or a \$50,000 fine. If the aggregate loss is valued at less than \$25,000, a violator is guilty of a misdemeanor and is subject to maximum penalties of five-years imprisonment and/or a \$25,000 fine.

Trespass on Posted Property and Wanton Trespass on Private Property – Penalties: HB818/SB670 increase the maximum misdemeanor penalties applicable to the crimes of trespass on posted property and wanton trespass on private property. For a first violation, the bills retain the current law maximum penalty of 90 days imprisonment and/or a \$500 fine. For a second violation occurring within two years after the first violation, a violator is subject to maximum penalties of six months imprisonment and/or a \$1,000 fine. A violator who commits a subsequent violation within two years after the preceding violation is subject to maximum penalties of imprisonment for one year and/or a \$2,500 fine for each violation

Prohibitions on Wearing, Carrying or Transporting Firearms – Exceptions: HB905/SB22 establish an exception to the prohibition against wearing, carrying, or transporting a handgun by a person who is carrying a court order to surrender the weapon if the handgun is unloaded, the person has notified law enforcement that the handgun is being transported in accordance with the court order, and the person transports the handgun directly to the law enforcement unit. A similar exception is provided for the transportation of an assault pistol or machine gun for surrender to a law enforcement unit. The bills prohibit a local government from prohibiting a person from transporting a handgun, rifle, or shotgun under the same circumstances. The bills establish that,

notwithstanding any other law, a respondent against whom a protective order has been issued and who is carrying a court order to surrender a firearm may transport a firearm for surrender to law enforcement, as described above

Narcotic Drugs – Enhanced Penalties: HB517 adds, as an eligible condition for a third-strike mandatory minimum 25-year sentence for specified offenses relating to manufacturing, distributing, possessing with intent to distribute, or dispensing a narcotic drug, a minimum 180-day confinement based on a conviction for a prior drug conspiracy or for a similar offense under the laws of another state or federal law.

Salvinorin A and Salvia Divinorum – Distribution to and Possession by Individual Under 21 Years of Age: HB1145/SB17 prohibit the distribution of Salvia to, or possession of Salvia by, an individual under age 21. In a prosecution for a violation of distribution of Salvia to an individual under age 21, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification that positively identified the purchaser or recipient as at least 21 years of age. A violator is guilty of a misdemeanor and subject to a fine. A violation of the prohibition against a person under the age of 21 possessing Salvia is a code violation, subjecting an adult violator to the issuance of a citation and fine. A minor who violates the prohibition against possession of Salvia is subject to juvenile court procedures and dispositions, including referral to substance abuse education or rehabilitation. The bills' provisions do not prohibit an accredited academic or medical institution or research facility from conducting research on Salvia. The bills take effect June 1, 2010.

Criminal Procedure

Criminal Injuries Compensation Board – Right to Hearing: Chs. 69 and 70 subject a claim filed with the Criminal Injuries Compensation Board (CICB) to review under applicable provisions of the Administrative Procedure Act. If a claimant requests a hearing after the board has issued proposed findings of fact, conclusions of law, or orders, the board must hold a hearing in accordance with the Administrative Procedure Act before issuing final findings of fact, conclusions of law, or orders.

Petition for Writ of Actual Innocence – Notice of Filing and Hearing: HB128/SB135 limit the availability of a petition for a writ of actual innocence to a person who was charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime. The emergency bills require a petitioner for a writ of actual innocence to notify the State in writing of the filing of the petition. The State has the right to file a response to the petition within 90 days of receiving notice or under a set time period ordered by the court. The victim or the victim's representative (victim/representative) must be notified of the hearing on the petition and has the right to attend a hearing on the petition.

Board of Trustees of the Public Defender – Modification: HB122/SB97 repeal a provision of law that requires the Public Defender to serve at the pleasure of the Board of Trustees of the Office of the Public Defender and instead establish a six-year term of office and authorize the Board of Trustees, by a vote of at least seven members, to remove the Public Defender from

office only under specified circumstances. The bills alter the composition of the board and specify the manner in which members are to be appointed.

Office of the Public Defender – Eligibility of Services – Request for Employment Status and Income Information: HB121 authorizes the Office of the Public Defender (OPD) to submit requests to the Department of Labor, Licensing, and Regulation (DLLR) and the Comptroller’s Office for information regarding the employment status and income of individuals applying for the services of OPD. Each request must be accompanied by a signed authorization in a form acceptable to the responding agency. DLLR and the Comptroller’s Office are required to comply with the requests. The bill specifies that requests and responsive information may be exchanged by facsimile transmission.

Motor Vehicles and Vessels

Traffic Cases - State Police Helicopters and Ambulance, Fire, and Rescue Companies: HB1389 requires a \$7.50 surcharge (currently added to the court costs in a traffic case in which points are assessed as the result of a conviction) to be imposed in additional traffic cases. The bill applies the surcharge applicable to traffic offenses in which a probation before judgment disposition is granted and nonmoving violations. The Comptroller must credit the collected surcharges to the Volunteer Company Assistance Fund until \$20 million is credited to the fund. Then the collected surcharges are credited to the State general fund.

Victims’ Rights – Fatal Vehicular Accident – Suspension of License: HB1156/SB189 establish the authority of the Motor Vehicle Administration to suspend, for up to six months, the license of a driver convicted of a moving violation that contributed to a fatality and establish the rights of the victim’s representative to be notified of the license suspension hearing and to give an oral or written statement for consideration at the hearing.

Option to Request Trial: HB829/SB560 establish that a traffic citation for a nonincarcerable offense must contain a notice that a person must, within 30 days after receipt: (1) pay the full amount of the preset fine; or (2) request a trial date or a hearing for sentencing and disposition in lieu of trial. Failure to do either means that the Motor Vehicle Administration will be notified and is authorized to suspend the person’s driver’s license. The bills take effect January 1, 2011.

Operating a Vessel While Under the Influence of or Impaired by Alcohol or Drugs - Testing: SB475 establishes that a person who operates or attempts to operate a vessel on State waters is deemed to have consented to take a test to determine alcohol concentration or drug or controlled substance content if the person is detained by a police officer who has reasonable grounds to believe that the person has been operating or attempting to operate a vessel while under the influence of or impaired by alcohol, drugs, or a controlled dangerous substance. A court is authorized to prohibit a person convicted of drunk or drugged boating from operating a vessel on State waters for up to one year if the person refused to take a test or the result of a test indicated an alcohol concentration of 0.08 or more. The bill also requires a vessel operator who is involved in an accident resulting in death or life-threatening injury to another person, and is detained by a police officer, who has reasonable grounds to believe that the person has been operating or attempting to operate a vessel while under the influence of alcohol or drugs, to

submit to breath and/or blood tests to determine whether the operator is under the influence or impaired by alcohol or drugs.

Judges and Courts

Civil Cases – Maryland Legal Services Corporation Fund: SB248 increases the surcharge in a civil case filed in circuit court from a maximum of \$25 to a maximum of \$55. In the District Court, the maximum authorized surcharge in a summary ejectment case increases from \$5 to \$8; and, in any other case, from \$10 to \$18. Surcharges collected are required to be deposited into the Maryland Legal Services Corporation (MLSC) Fund. The bill also requires the executive director of MLSC to prepare an informational budget and to submit the budget to the General Assembly each year. The bill terminates after June 30, 2013.

District Court – Mailings – Notice of Dismissal, Nolle Prosequi, or Stet: Ch. 160 requires a clerk of the District Court to mail notice of a dismissal, nolle prosequi, or stet to a defendant and the defendant’s attorney of record if both the defendant and the defendant’s attorney of record are not present in court when the dismissal or nolle prosequi is entered or the charge is steted. The clerk is prohibited from mailing notice if the defendant’s whereabouts are unknown or if either the defendant or the defendant’s attorney of record is present in court when the dismissal or nolle prosequi is entered or the charge is steted.

Baltimore City – Orphans’ Court Judges: HB417, a constitutional amendment, prescribes additional qualifications for judges of the orphans’ court in Baltimore City. An orphans’ court judge in Baltimore City is required to be a member in good standing of the Maryland Bar who is admitted to practice law in the State. The amendment continues the requirements that an orphans’ court judge in Baltimore City be a citizen of the State and a resident of Baltimore City for the 12 months preceding the election.

Law Enforcement and Corrections

Law Enforcement Officers – Unsubstantiated Complaints – Admissibility: Chs. 87 and 88 specify that, under the Law Enforcement Officers’ Bill of Rights, evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the investigation resulted in an exoneration of the officer or an unsustainable or unfounded finding or the hearing board acquitted the officer, dismissed the action, or made a not guilty finding.

Preemployment Polygraph – Examinations for Correctional Officer Applicants: HB1402 authorizes the Division of Correction (DOC) to require an individual to pass a polygraph examination before being appointed to serve as a correctional officer in a State correctional facility. The bill also exempts an applicant for employment as a correctional officer of a State or local correctional facility from the prohibition against an employer requiring or demanding, as a condition of employment, prospective employment, or continued employment, that an individual submit to or take a polygraph examination.

Department of State Police – Firearm Applications – Authority of Secretary: Ch. 130 allows the transfer of a firearms application by a licensee or a law enforcement agency to the

Secretary of State Police by electronic means approved by the Secretary, in addition to fax machine or certified mail.

Mental Health – Local Correctional Facilities – Incarcerated Individuals with Mental Illness: HB1335/SB761 require the managing official at a local correctional facility to, upon release, provide an inmate diagnosed with a mental illness access to a 30-day supply of medication for his or her mental illness. Part of the supply may be provided by prescription if the inmate is provided sufficient medication on release to remain medication-compliant until the prescription can be filled. The requirement only applies to an inmate who has been incarcerated in a local correctional facility for at least 60 days, and only if a treating physician determines that the possession of medication will be in the best interest of the inmate. A local correctional facility, facility employee, or agent may not be held liable for issuing or prescribing medication to an inmate on his or her release. The bills do not apply to pretrial inmates.

Missing Offenders – Blue Alert Program: HB1473 requires the Department of State Police (DSP) to establish a Blue Alert Program to provide a system for rapid dissemination of information to assist in locating and apprehending a “missing offender.” A local law enforcement officer or agency who apprehends a missing offender must immediately notify DSP and the agency that filed the missing offender report of that fact.

Baltimore City Police Department Death Relief Fund – Procedures and Benefit Amount: HB226/SB173 increase, from \$5,000 to \$10,000, the amount of benefit payable from the Baltimore City Police Department Death Relief Fund, due to the death of an officer or civilian employee under specified circumstances. The bills also make changes regarding board of trustee membership and filing of the annual report.

Trusts and Estates

Maryland General and Limited Power of Attorney Act (Loretta's Law): HB659/SB309 establish the Maryland General and Limited Power of Attorney Act, incorporating existing statutory provisions governing powers of attorney into the Act. The bills provide two statutory form powers of attorney and an optional form for use by an agent to certify facts concerning a power of attorney. One of the statutory forms provides an agent with broad authority as specified on the form, while the other statutory form allows a principal to specifically indicate which of the various powers are given to an agent. A principal may delegate to one or more agents the authority to do any act specified in the statutory forms, though the acts specified in the statutory forms may not be deemed to invalidate or limit the validity of other authorized acts that a principal may delegate to an agent. The bills do not supersede other laws applicable to financial institutions or other entities.

Maryland Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act: HB1275/SB231 establish the Maryland Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The bills address the jurisdiction of Maryland courts over adult guardianship and protective proceedings, in relation to courts in other states, and related issues. The bills apply to a proceeding beginning on or after October 1, 2010.

Maryland International Wills Act: Chs. 63 and 64 establish the Maryland International Wills Act. The Acts establish requirements and procedures for a will to be made in the form of an international will, including: (1) requirements for the execution of an international will, including that at least two witnesses and a person authorized to act in connection with international wills attest the will by signing their names in the presence of the person making the will (testator); and (2) a requirement that a certificate be attached to the will (for which a statutory form is provided), signed by an authorized person, which, in the absence of evidence to the contrary, is conclusive of the formal validity of the will as an international will (although the absence or irregularity of a certificate does not affect the formal validity of a will).

Construction of References in Will or Trust to Federal Estate Tax or Generation-Skipping Transfer Tax: Ch. 62 requires that specified words, phrases, and provisions (generally relating to or based upon the federal estate tax or generation-skipping transfer tax laws) that are included in wills or trusts of deceased persons who die after December 31, 2009 and before January 1, 2011 be deemed to refer to the federal estate tax or generation-skipping transfer tax laws as applied to estates of persons dying or generation-skipping transfers made on December 31, 2009. The Act establishes exceptions and a provision limiting its applicability if a federal estate tax or generation-skipping transfer tax becomes applicable before January 1, 2011. The Act also allows the personal representative or any interested person under a will or other instrument to bring a proceeding to determine whether references to the federal estate tax and generation-skipping transfer tax laws should be construed with respect to the law as it existed after December 31, 2009.

Property Held as Tenants by the Entireties – Transfer to Trust: SB25 specifies that, subject to certain conditions, any property of a husband and wife held by them as tenants by the entirety and subsequently conveyed to a trustee, and specified proceeds of that property, have the same immunity from the claims of the husband and wife's separate creditors as would exist if the husband and wife had continued to hold the property or its proceeds as tenants by the entirety. Such property, with respect to claims by a separate creditor of a husband or wife, and a debtor's beneficial interest in such property, is also exempt from execution on a judgment.

Guardianship – Payment of Expenses After Death of Ward: HB328/SB339 require the guardian of the property of a minor or disabled person, on the death of the minor or disabled person, to pay from the estate all commissions, fees, and expenses shown on the court-approved final guardianship account before delivering the balance to an appointed personal representative or other person entitled to it.

Elective Share – Extension of Time for Making Election: Ch. 146 repeals statutory language specifying that an extension of the time for a surviving spouse to elect to take an elective share of the deceased spouse's estate be authorized by the court prior to the expiration of the time period for making the election and provides that the orphans' court may order an extension of time as long as the surviving spouse files a petition (with a copy given to the personal representative) for an extension of time within the period for making an election.

Real Property – Effect of Deed Granting Property from Trust or Estate: HB337/SB341 establish that a grant of property by deed from a grantor designated in the deed as an estate of a

deceased person or a trust has the same effect as if the person granted the property had received the property from the personal representative(s) for the estate or trustee(s) appointed and acting for the trust on the effective date of the deed, if the grant is executed by the personal representative(s) or trustee(s). The bills apply to any grant of property by a trust or estate contained in a deed existing on or after October 1, 2010.

Disqualification – Conviction for Unlawfully Obtaining Property of Vulnerable Adult or Elderly Individual: HB327 establishes that a person who is convicted of unlawfully obtaining property from a vulnerable adult or individual who is at least 68 years old is disqualified, to the extent of the person’s failure to restore the property or its value, from benefiting from the estate, insurance proceeds, or property of the victim, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the person was convicted. A disqualified person is treated as if the person predeceased the victim, and if a distribution is erroneously made to the person, full restitution must be made to the heir, legatee, or beneficiary who should have received the distribution. A fiduciary or other person who distributes property in good faith and without actual knowledge of a conviction is not personally liable for the distribution. The bill applies prospectively to an action or proceeding begun on or after October 1, 2010.

More information about these bills and other legislation can be found at the Maryland General Assembly’s webpage, www.mlis.state.md.us or please call our offices.

Very truly yours,

Thomas V. Mike Miller, Jr.

Joseph F. Vallario, Jr.

James E. Proctor, Jr.