

## 2014 Legislative Wrap Up

The Caucus supported 14 bills; eight passed or 57%.

*State Agencies, Offices, and Officials*

*State Agencies*

*Responsibilities of Agencies*

### **HB 559/SB 818 State Government – Human Trafficking Address Confidentiality Program**

Under **SB 818/HB 559** (both passed), the Secretary of State is required to establish and administer a Human Trafficking Address Confidentiality Program for victims of human trafficking. The purpose of the program is to enable State and local agencies to respond to requests for public records without disclosing the location of a human trafficking victim. Under the program, a participant may designate the Secretary of State as an agent to accept service of process and first-class, certified, and registered mail for the participant and request a substitute address. A participant's actual address and telephone number, as maintained by the Secretary of State or a State or local agency, is not a public record under the Public Information Act. On request, a State or local agency must use a participant's substitute address instead of the actual address unless the agency obtains a waiver from the Secretary of State. The Secretary of State may not disclose a participant's actual address or telephone number or substitute address, with limited exceptions related to law enforcement, court orders, and court cases. **SB 818/HB 559** also establish the designation of applicants as participants in the program, cancellation of participation in the program, and procedures for penalties for violations of the program.

*Crimes, Corrections, and Public Safety*

*Criminal Law*

*Sexual Offenses and Harassment*

### **SB 50/HB 955 Crimes – Use of Personal I.D. Information or Identity of Another – Sexual Crimes**

While there are distinct advantages to the proliferation of the Internet and social media, it has also allowed individuals to engage in once unthinkable behavior under a cloak of anonymity. **SB 50/HB 955** (both passed) prohibit a person from using the "personal identifying information" or the identity of an individual without consent to invite, encourage, or solicit another to commit a "sexual crime" against the individual. Under the bill, "sexual crime" is defined as an act that would constitute a violation of the State's prohibitions on various sexual crimes, sexual abuse of a minor, visual surveillance with prurient intent, or various other acts, including human trafficking. Violators are guilty of a felony, punishable by imprisonment for up to 20 years and/or a maximum fine of \$25,000.

*Person in Position of Authority*

**SB 460/HB 781 Criminal Law – Person in a Position of Authority – Sexual Offenses with a Minor**

The crime of fourth degree sexual offense prohibits person from (1) engaging in sexual contact with another without the consent of the other or (2) engaging in a sexual act or vaginal intercourse with a victim who is age 14 or 15 and the defendant is at least four years older than the victim. Chapter 317 of 2006 expanded the offense by specifying that, with certain exceptions, a “person in a position of authority” may not engage in a sexual act, sexual contact, or vaginal intercourse with a minor who, at the time of the act, contact, or intercourse, is a student enrolled at a school where the person is employed. A “person in a position of authority” is currently defined as a person who (1) is at least age 21; (2) is employed as a full-time permanent employee by a public or private preschool, elementary school, or secondary school; and (3) because of the person’s position or occupation, exercises supervision over a minor who attends the school. A “person of authority” expressly includes principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.

In March 2012, fourth degree sex offense charges were dropped against a Montgomery County teacher and coach accused of having sex with a 16-year-old student he coached on a high school cross country team. Prosecutors commented that, despite the fact that the accused was a full-time employee of the county’s school system the charges had to be dropped because he was only a part-time employee of the school at which he coached the victim.

**SB 460** (passed) redefines “person in a position of authority” to include a person who is “employed by or under contract with” a public or private preschool, elementary school, or secondary school and expressly includes a coach, as well as a principal, vice principal, teacher, or school counselor.

*Offenders and Ex-offenders*

*Physical Restraint on Pregnant Inmates*

**HB 27/SB 656 Correctional Services – Healthy Births for Incarcerated Women**

Effective July 1, 2014, **HB 27** (passed) specifies policy, procedures, and protocols that State and local correctional facilities must follow in connection with the care of a pregnant inmate. The bill prohibits the use of physical restraint on an inmate while the inmate is in labor or during delivery, except as determined by the medical professional responsible for the care of the inmate. In addition, a physical restraint may not be used on an inmate known to be pregnant or in postpartum recovery, except under specified circumstances.

The Department of Juvenile Services and the managing official of each local correctional facility or the managing official of the agency designated to transport

inmates must develop a policy for use at each correctional facility that (1) requires a physical restraint used on a pregnant inmate during transport to be the least restrictive necessary and (2) establishes a method for reporting the use of physical restraints on pregnant inmates.

The Department of Public Safety and Correctional Services (DPSCS) is required to submit a report to the Governor and the General Assembly no later than 30 days before the end of each calendar year until December 31, 2017, on the number of times physical restraints were used on a pregnant inmate during labor, delivery, and postpartum recovery during the previous calendar year in each State and local correctional facility.

*Courts and Civil Proceedings*  
*Family Law*  
*Domestic Violence*

### **SB 333/HB 307 Peace Orders and Protective Orders – Burden of Proof**

In order to grant a final protective order, a judge must find by clear and convincing evidence that the alleged abuse has occurred, or the respondent must consent to the entry of the order. In order to grant a final peace order, a judge must find by clear and convincing evidence that the respondent has committed, and is likely to commit in the future, one of specified acts against the petitioner, or the respondent must consent to the entry of a peace order. The “clear and convincing” evidentiary standard is also used in evaluating whether mutual peace or protective orders may be issued and in determining whether a final protective order may be extended under specified circumstances.

“Preponderance of the evidence” is the evidentiary standard applicable in most civil cases and has been described as requiring evidence sufficient to establish that a fact is “more likely true than not true,” “more probable than not,” or that amounts to at least 51% of the evidence. “Clear and convincing evidence” is more than a preponderance of the evidence and less than would be required for the evidentiary standard “beyond a reasonable doubt.” According to a 2012 report from the Department of Legislative Services, *How States Address Domestic Violence in Selected Areas*, 29 states either specify in statute or have established through case law that the evidentiary standard used for granting a final protective order is a “preponderance of the evidence.” According to the report, Maryland is the only state that specifically requires by statute that a petitioner meet the higher burden of “clear and convincing evidence” to receive a final protective order.

**SB 333/HB 307** (both passed) alter, from clear and convincing evidence to a preponderance of the evidence, the standard of proof by which a judge must make specified findings before (1) granting a final protective order or mutual protective orders; (2) extending a final protective order under specified circumstances; or (3) issuing a final peace order or mutual peace orders.

## *Extensions of Peace Orders and Protective Orders*

### **SB 434/HB 647 Peace Orders and Protective Orders – Extensions**

In *La Valle v. La Valle*, 432 Md. 343 (2013), the Court of Appeals held that if a motion to extend a protective order is filed before its expiration, but, for any reason, the hearing on the motion is delayed beyond the expiration of the protective order, that order can no longer be extended.

**SB 434/HB 647** (both passed) require a court to extend a final peace order or a final protective order if, during the term of the order, the petitioner or person eligible for relief files a motion for extension, and to hold a hearing within 30 days after the motion is filed.

## *Business and Economic Issues* *Leave Policies*

The federal Family and Medical Leave Act (FMLA) requires covered employers with 50 or more employees, to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period under the following conditions: the birth and care of an employee’s newborn child; the adoption or placement of a child with an employee for foster care; care for an immediate family member with a serious health condition; medical leave when the employee is unable to work due to a serious health condition; or any qualifying circumstance arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.”

**SB 737/HB 1026** (both passed) require employers with 15 to 49 employees in the State to provide employees with unpaid parental leave benefits. An eligible employee may take unpaid parental leave up to a total of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. To be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. Prior to taking unpaid parental leave under the bills, an employer may require that an employee, or an employee may elect to, use paid leave, if available. During parental leave, the employer must maintain existing coverage for a group health plan and, in specified circumstances, may recover the premium if the employee fails to return to work. An employee has a right of action against an employer for damages caused by an employer’s noncompliance.

## *Health and Human Services* *Miscellaneous*

### **HB 963 Requirements for Sexual Assault Medical Forensic Examinations and Reporting**

**HB 963** (passed) requires each hospital that provides emergency medical services to have a protocol to provide timely access to a sexual assault medical forensic examination to a victim of an alleged rape or sexual offense who arrives at the hospital

for treatment. The protocol must be in place by July 1, 2014. **HB 963** also establishes the Planning Committee to Implement Improved Access to Sexual Assault Medical Forensic Examinations in Maryland. The planning committee must submit a report on its findings and recommendations by December 1, 2015.

\*Please note the descriptions of the legislation are taken from:

*The 90 Day Report  
A Review of the 2014 Legislative Session  
Department of Legislative Services  
Maryland General Assembly*

Legislation supported by the Women's Caucus that did not pass:

SB 237/HB 381	Human Relations – Employment Discrimination – Protections for Interns
HB 491	Criminal Law – Intentionally Causing Emotional Distress – Distribution of Images or Video
SB 753/HB 968	Labor and Employment – Maryland Earned Sick and Safe Leave Act
HB 958/SB 411	Rape Survivor Family Protection Act
HB 1211	State Board of Nursing – Midwives – Licensing and Regulation
SB 812/HB 550	Child Support – Income Tax Refund Intercept – Priority of Requests and Information to Obligee

(2014 Legislative Wrap Up  
April 15, 2014)