

Women Legislators of the Maryland General Assembly, Inc.

2015 Legislative Wrap Up

The Women's Caucus strongly supported 16 bills, nine passed or 56%.

Human Trafficking

Human Trafficking Victim Defense

Under Criminal Law Article, § 11-306, a person may not knowingly (1) engage in prostitution or assignation by any means; (2) keep, set up, occupy, maintain, or operate a building, structure, or conveyance for prostitution or assignation; (3) allow a building, structure, or conveyance owned or under the person's control to be used for prostitution or assignation; (4) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or (5) procure or solicit, or offer to procure or solicit, for prostitution or assignation. A person who violates this section is guilty of prostitution, a misdemeanor punishable by imprisonment for up to one year and/or a \$500 maximum fine.

Under the human trafficking prohibition set forth in § 11-303 of the Criminal Law Article, a person may not knowingly:

- take or cause another to be taken to any place for prostitution;
- place, cause to be placed, or harbor another in any place for prostitution;
- persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
- receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;
- engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious harm; or
- destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to commit these acts.

In general, a person who commits human trafficking involving an adult victim is guilty of a misdemeanor and subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000. A person who commits human trafficking involving a victim who is a minor is guilty of a felony and subject to maximum penalties of 25 years imprisonment and/or a fine of \$15,000. **SB 520** establishes that in a prosecution for a charge relating to prostitution under Criminal Law Article § 11-306, it is an affirmative defense of duress if the defendant committed the act as a result of being a victim of an act of another who was charged with violating the prohibition against 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

HB 456 establishes the workgroup to Study Safe Harbor Policy for Youth Victims of Human Trafficking to study legal protections and the provision of services for youth victims of human trafficking.

Among other things, the workgroup must (1) compile existing information on and identify the needs of youth victims of human trafficking and identify the public- and private-sector programs and resources currently available to meet those needs; (2) identify gaps in public- and private-sector programs and resources currently available to meet the needs of youth victims of human trafficking; (3) collect and compile data on the number of youth victims of human trafficking in the State, including the number of youth victims in each jurisdiction of the State; and (4) make specified recommendations on specified topics related to youth victims of human trafficking.

The workgroup must report its findings and recommendations to the Governor and the General Assembly by December 1, 2015.

Sexual Assault

Statewide Accounting of Kits

SB 498 requires a law enforcement agency or other State or local agency charged with the maintenance, storage, and preservation of sexual assault kit evidence, by January 1, 2015, to conduct an inventory of all kits that are stored by the agency. The agency must also prepare a written report by March 1, 2016, containing the number of untested sexual assault collection kits in the possession of the agency, and the date the sexual assault kit evidence was collected and submit the report to the Office of the Attorney General (OAG).

By December 1, 2016, OAG must prepare and transmit a report to the General Assembly detailing (1) the number of untested sexual assault collection kits stored by each agency; (2) the date that each untested sexual assault collection kit was collected; and (3) recommendations for addressing any backlog of untested sexual assault collection kits.

Domestic Violence

Protection for Maryland Residents

Pursuant to the federal Violence Against Women Act, any order for protection meeting specified requirements that is issued by the court of one state, Native American tribe, or territory (the issuing jurisdiction) must be accorded full faith and credit by the court of another state, tribe, or territory and enforced by the court and law enforcement personnel as if it were the order of the enforcing jurisdiction. "Full faith and credit" requirements apply to any order for protection entered pursuant to a complaint, petition, or motion filed by or on behalf of a person seeking

protection if (1) the issuing court has jurisdiction over the parties and subject matter under the law of the state, tribe, or territory and (2) notice and an opportunity to be heard is given to the person against whom the order is sought.

SB 270/HB 390 specifically 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. The bills 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.

Additional Relief

In a domestic violence proceeding, if a judge finds by a preponderance of the evidence that abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse. A final protective order may contain numerous forms of relief, including provisions (1) requiring a respondent to refrain from further contact and/or abuse and remain away from specified locations; (2) establishing temporary custody and visitation arrangements; and (3) awarding temporary use and possession of a residence or vehicle under certain circumstances. The final protective order also must require the respondent to surrender to law enforcement authorities any firearm in the respondent's possession and to refrain from possession of any firearm for the duration of the protective order. **SB 269/HB 225** 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.

Duration of Protective Orders

Permanent Protective Order

A victim of abuse who was the person eligible for relief in an original final protective order may request the 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. A permanent final protective order may contain only the relief that was granted in the original order that required the respondent to refrain from abusing or threatening to abuse the person eligible for relief or to refrain from contacting, attempting to contact, or harassing the person eligible for relief. **HB 263** adds the crimes of conspiracy or solicitation to commit murder to the list of crimes, the commission of which subjects an individual to the issuance of a permanent final protective order under the circumstances set forth above.

Human Relations

Employment Discrimination – Interns

Under current law, discrimination in employment based on an individual's race, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity, or disability is prohibited. This includes discrimination by employers with 15 or more employees, employment agencies, labor organizations, and training programs. Employers are also prohibited from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee. Discrimination or retaliation is also prohibited against individuals who have opposed any discriminatory practice or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing relating to an alleged discriminatory act. Employment discrimination includes actions related to the printing or publishing of notices or advertisements indicating a prohibited preference, limitation, specification, or discrimination.

SB 604 extends these prohibitions to include acts against interns or applicants for internships. Under the Act, an intern claiming to be aggrieved by an alleged discriminatory act must have access to any internal procedure the employer has for resolving complaint by an employee of sexual harassment or other discrimination. If the employer does not have an internal procedure, the individual may file a complaint with the Maryland Commission on Civil Rights for nonmonetary administrative remedies.

Nonmonetary administrative remedies include:

- enjoining an employer from engaging in the discriminatory act;
- ordering reinstatement or hiring of the intern;
- prohibiting retaliation for complaining;
- requiring employer and staff “harassment” training; and
- reinstating benefits lost because of the discrimination (e.g., work assignments, mentors, access to employer information needed for the internship assignment, field trips, etc.).

The Act's provisions do not create an employment relationship between an employer and an intern for the purposes of (1) statutory provisions authorizing a civil action to be brought by a complainant or the commission on behalf of a complainant or monetary damages or (2) any provision of the Labor and employment Article or the State Personnel and Pensions Article.

Health Occupations

Nursing

The profession of midwifery includes nurse-midwives and direct-entry midwives. The state Board of Nursing provides advanced practice registered nurse certification to nurse-midwives, who must also be licensed registered nurses. Under board regulations, an applicant

for certification as a nurse-midwife must hold a current license to practice registered nursing in Maryland and complete a program in a clinical nurse specialty area accredited by a national certifying body that is specified or recognized by the board. Direct-entry midwifery refers to an educational path that does not require prior nursing training to enter the profession.

HB 9 establishes the Direct-Entry Midwifery Advisory Committee within the State Board of Nursing and the procedures for obtaining and renewing a license to practice direct-entry midwifery. The bill alters what is included and not included in the practice of direct-entry midwifery and provides for the situations in which a licensed direct-entry midwife (LDEM) is required to transfer the care of the patient to another health care practitioner, the situations in which an LDEM is required to consult with a health care practitioner, and the situations in which an LDEM must arrange for the immediate transfer of a patient to a hospital. The Board of Nursing is required to develop an informed consent agreement and an LDEM must submit an annual report to the committee that includes specified data. The bill requires an LDEM to meet specified educational requirements and subjects an LDEM to specified disciplinary grounds. Finally, the bill creates a workgroup to study the development of the standardized transfer form, the standardized informed consent agreement, and a midwifery formulary, and requires the Department of Legislative Services (DLS) to study data related to vaginal births after cesareans attended by midwives in other states and countries.

Education

Sexual Assault Policies and Surveys

Sexual assaults on college campuses were the subject of several bills during the 2015 session. Under federal law, a school is obligated to act when it knows or reasonably should have known that one of its students has been sexually assaulted. A school is charged with providing a safe learning environment for all students and giving victims the help needed to reclaim their education. As part of Title IX of the federal Education Amendments of 1972, schools that receive federal financial assistance are required to take the necessary steps to prevent sexual assault on their campuses and respond promptly and effectively when an assault is reported.

HB 571 requires the sexual assault policies of institutions of higher education to conform with Title IX in addition to other requirements and requires MHEC to establish procedures by which institutions administer a sexual assault campus climate survey on or before March 1, 2016, and at least every two years thereafter.

Sexual Assault Policies

Under the bill, a sexual assault policy must prohibit the imposition of a campus conduct action, except for a mandatory intervention for substance abuse, for a violation of the alcohol or drug use policies of the institution for a student who reports to the institution or a law enforcement officer an incident of sexual assault, or who participates in an investigation of a sexual assault as a witness under specified circumstances. The policy must also prohibit the institution of higher education from retaliating against a student who files a complaint for sexual assault or who participates as a witness in an investigation of a sexual assault. The policy must

include provisions for the pursuit, by the institution, of formalized agreements with a local law enforcement agency that complies with the relevant provision of Title IX and a State-designated rape crisis program or federally recognized sexual assault coalition, or both.

Reporting to MHEC and the General Assembly

On or before June 1, 2016, and every two years thereafter, in addition to the school-specific results of the survey, the bill requires each institution of higher education to submit to MHEC a report aggregating data collected by the institution regarding sexual assault complaints made to the institution including types of misconduct, outcome of each complaint, disciplinary actions taken by the institution, accommodations made to students, and number of reports involving alleged nonstudent perpetrators. In reporting the data, the institutions of higher education must make reasonable efforts to protect student privacy. Institutions must submit this data along with the data required by the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Acts, as amended by the Violence Against Women Reauthorization Act of 2013. By October 1, 2016, and every two years thereafter, MHEC must report this information to the Governor and specified committees of the General Assembly and publish the results on MHEC's website and in any other location or venue MHEC determines is necessary or appropriate.

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

*The 90 Day Report
A Review of the 2015 Legislative Session
Department of Legislative Services
Maryland General Assembly*

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

SB 320/HB 602 Maryland Health Care Commission – Uterine Fibroids – Study

HB 241 Criminal Law – Human Trafficking – Adult Victim Penalty

SJ 3 Honoring the Surviving Human Trafficking Victims of Asia and the Pacific Islands During World War II

HB 227 Family Law – Domestic Violence – Definition of Abuse

HB 503/SB 78 Rape Survivor Family Protection Act

HB 749 Higher Education – Sexual Assault Policies – Reporting

HB 354 Task Force to Study the Commemoration of Harriet Elizabeth Brown