

Women Legislators of the Maryland General Assembly, Inc.

2011 Session

Legislative Wrap Up

Message from the President:

I would like to thank the members of the Women's Caucus for your outstanding leadership and hard work during the 2011 legislative session. Despite facing one of the toughest economic climates ever, the Women's Caucus supported and helped pass an aggressive agenda of legislation to empower women, children and families, provide greater health care access, parity in girls' juvenile services, and protect victims of domestic violence, abuse, sexual assault, and human trafficking. We commend House Judiciary Vice Chair Kathleen Dumais for shepherding through many of the bills to fight violence against women and children. Other important priorities that passed included the *Family Planning Works Act*; *Job Applicant Fairness Act*; the 3% alcohol sales tax increase to take people off the Developmental Disabilities Administration's waiting list and fund school construction; and the restoration of \$350,000 in the Governor's Supplemental Budget for rape crisis centers statewide and the transfer of the administration of this funding to the Governor's Office of Crime Control & Prevention from the Department of Human Resources (**HB 739**). I also would like to especially thank Black Legislative Caucus Chair Catherine Pugh, New Americans Caucus Chair Ana Sol Gutierrez and the advocates from the many women's, faith, community, civil rights, and other organizations for joining and working with the Women's Caucus in supporting and passing some of our important 2011 priorities, which are highlighted in this report. We would also like to express our enormous thanks and gratitude to Marsha Wise for her outstanding work as Executive Director of the Women's Caucus.

Warm regards,
Delegate Susan C. Lee
President

The legislative priorities of the Women's Caucus for the 2011 Session were:

**Women's Health
The Family Planning Works Act
Mental Health
Juvenile Services**

Carry-over issues from 2010:

**Infant Mortality
DDA Waiting List**

The Women's Caucus supported 24 bills, 12 passed or 50%.

State Government

Procurement

Minority Business Enterprise Program

The State's Minority Business Enterprise (MBE) program establishes a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to certified MBE's, including 7% to African American-owned businesses and 10% to women-owned businesses. There are no penalties for agencies that fail to reach these targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

SB 120/HB 456 (both passed) extend the MBE program for one year, until July 1, 2012, and repeal the program's sub goals for women- and African American-owned businesses. This marks the fifth time since the MBE program assumed its present form in 1990 that it has been extended. Instead of the customary five-year extension, the program was extended by just one year because the disparity study mandated in statute, due to be completed in September 2010, was not finished until February 2011. Therefore, the General Assembly did not have sufficient time to review the need for the program and the report's various recommendations regarding the program's future structure. However, the bills declare the General Assembly's intent to eliminate discrimination against minority- and women-owned businesses in a specified manner based on the evidence of discrimination in the disparity study.

In addition to repealing the sub goals, the bills codify in statute and clarify existing regulatory provisions related to the granting of waivers from MBE participation goals in individual procurements, and authorize procurement units to exempt sole source, expedited, or emergency procurements from MBE contract goals if the public interest cannot reasonably accommodate their use. The bills also require the regulations developed by the Board of Public Works to implement the program to (1) establish

standards to require MBEs to perform commercially useful functions on State contracts; and (2) include a requirement that procurement units work with the Governor's Office of Minority Affairs to exclude certain contracts from the MBE goals.

Crimes, Corrections, and Public Safety

Sexual Crimes

Under current law, the crime of fourth degree sexual offense prohibits a person from engaging in nonconsensual sexual contact with another person. The law also prohibits a person from engaging in a sexual act or vaginal intercourse with a victim who is 14 or 15 years old if the defendant is at least 4 years older than the victim. If convicted, the defendant is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

In general, a prosecution for a misdemeanor has a one year statute of limitations. **HB 724** (passed) increases the statute of limitations applicable to the prohibition against nonconsensual sexual contact with another person to three years, if the victim was a minor at the time of the crime. This length of time is the same statute of limitations as for the crime of a "person in position of authority" engaging in a sexual act or vaginal intercourse with a minor who, at the time of the act, is a student enrolled at a school where the person is employed.

In general, crimes involving a "sexual act" carry more severe penalties than crimes involving "sexual contact." Under current law, the term "sexual contact" means an intentional touching of the genital or another intimate area of a victim's body for sexual arousal or gratification, or for the abuse of either party. It includes penetration of the genital or intimate area of a victim by certain parts of an actor's body but not including by the actor's genitals, mouth, or tongue. **SB 204/HB 1129** (both passed) change the definitions of both terms by adding "part of an individual's body" to the definition of "sexual act" and removing that phrase from the definition of "sexual contact." In this way, the bills expand the definition of "sexual act" to include certain acts currently defined as "sexual contact."

Sex Offenders

Statute of Limitations

SB 196/HB 724 (both passed) increase the statute of limitations from one year to three years for the initiation of a prosecution for the fourth degree sex offense involving nonconsensual sexual contact, if the victim was a minor at the time of the offense. "Sexual contact" means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party. A fourth degree sexual offense is punishable by imprisonment not exceeding one year or a fine not exceeding \$1,000 or both.

Victims' Rights

Human Trafficking

The U.S. Department of State has estimated that approximately 600,000 to 800,000 victims are trafficked annually across international borders worldwide and approximately half of these victims are minors. According to the 2005 report, 80% of internationally trafficked victims are female and 70% are trafficked into the sex industry.

Chapter 340 and 341 of 2007 renamed the crime of pandering to human trafficking. Under the human trafficking law, a range of activities related to taking or causing a person to be taken to a place for prostitution or persuading another to be taken to a place for prostitution are prohibited.

SB 327 (passed) authorizes a person convicted of prostitution to file a motion to vacate the judgment if, when the person committed the act of prostitution, the person was acting under duress caused by an act of another committed in violation of the prohibition against human trafficking. Among other requirements, the motion to vacate the judgment must be signed and consented to by the State's Attorney and describe the evidence and provide copies of any documents showing that the defendant is entitled to relief. The court is required to hold a hearing on the motion unless the motion fails to assert grounds on which relief may be granted. In ruling on the motion, the court may vacate the conviction, modify the sentence, or grant a new trial.

Reports to General Assembly

Services and Programs for Females

According to its fiscal 2010 *Annual Statistical Report*, DJS (Department of Juvenile Services) handled 11,056 intake cases involving females in fiscal 2010, compared to 29,722 cases involving males. An evaluation of Gender Responsive Services conducted by DJS in 2007 yielded several recommendations, including (1) the creation of a Trauma Informed Care Treatment model for female youth in State-operated residential care; (2) the creation of a gender responsive certification training program for all staff and vendors working with female youth in both residential and community settings; and (3) the establishment of gender responsive community based programming in every region. **SB 787/HB 511** (both passed) require DJS to submit a report to the General Assembly by December 1, 2011, regarding the manner in which DJS will use existing resources to ensure that females receive services substantially equivalent to those offered to males in fiscal 2013 and subsequent years. The report must include statewide and regional information on the utilization of (1) prevention and diversion services; (2) alternatives to detention, including day and evening reporting and shelter care; (3) the continuum of services for those committed to DJS for probation or residential treatment, including evidence-based programs; and (4) educational and vocational training services.

Courts and Civil Proceedings

Peace Orders

An individual who does not meet specified relationship requirements under protective order statutes in the Family Law Article may file a petition for a peace order with the District Court or, if the clerk's office is closed, a District Court commissioner, that alleges the commission of specified acts against the petitioner by the respondent, if the act occurred within 30 days before the filing of the petition.

After a final peace order hearing, if a judge finds by clear and convincing evidence that the respondent has committed, and is likely to commit in the future, one of the specified acts against the petitioner, or if the respondent consents to the entry of a peace order, the court may issue a final peace order to protect the petitioner. A final peace order may order the respondent to refrain from committing specified acts, refrain from contacting the petitioner, or stay away from specific locations. The order must contain only the relief that is minimally necessary to protect the petitioner. Relief granted in a final peace order is effective for the period stated in the order, but may not exceed six months. An individual who fails to comply with specified provisions of an interim, temporary, or final peace order is guilty of a misdemeanor and subject to maximum penalties of \$1,000 fine and/or 90 days imprisonment.

SB 342/HB 667 (Chapters 57 and 58) authorize a judge, for good cause shown, to extend the term of a final peace order for an additional six months after (1) giving notice to the petitioner and the respondent; and (2) a hearing.

SB 480/HB 666 (Chapters 68 and 69) increase the penalties for a second or subsequent offense for violating an interim, temporary, or final peace order. Under the Acts, a second or subsequent violation of a peace order is subject to maximum penalties of imprisonment for one year and/or a \$2,500 fine. The current statutory penalties for violation of a peace order apply to a first violation. These Acts make the expanded penalties for violations of peace orders consistent with the penalties for violations of protective orders.

Labor and Industry

Employer Use of Credit Reports

Job Applicant Fairness Act

SB 132/HB 87 (Chapters 28 and 29) limit an employer's ability to use an individual's credit report or credit history to deny employment to a job applicant, discharge an employee, or determine a job applicant's or employee's compensation or terms of employment. An employer may request, or use the credit report or credit history of a job applicant or employee, if the individual has received an offer of employment and

the employer has a bona fide, job-related reason, for requesting the information. In addition, only certain positions or types of employment fall under the bona fide purposes established by the Act for requesting or using credit reports or credit histories. Certain types of employment or businesses are exempt from the Act's requirements including financial institutions, and if federal law requires credit report or credit history checks as a condition of employment for a job.

If an employer violates the provisions of the Act, the aggrieved job applicant or employee may file a written complaint with the Commissioner of Labor and Industry. If the commissioner determines that the employer has committed a violation of the Act, the commissioner must try to resolve the matter informally. If the matter cannot be resolved informally, the commissioner may assess a fine against the employer not exceeding \$500 for a first offense, or up to \$2,500 for any subsequent offenses. Upon failure of the employer to comply with the administrative procedures if a complaint was filed, the bill authorized the commissioner or the job applicant or employee to bring an action to the circuit court where the employer or job applicant or employee is located.

Health and Human Services

Services

The Family Planning Works Act

Under Medicaid and the Primary Adult Care Program, eligibility for family planning services is limited to women with incomes up to 116% of federal poverty guidelines. Women with incomes up to 200% of federal poverty guidelines may retain family planning coverage for five years following a birth paid for by Medicaid. **SB 743/HB 778** (both passed) require Medicaid, beginning on January 1, 2012, to provide family planning services to all women whose family income is at or below 200% of federal poverty guidelines without regard to how recently a woman has delivered a child. Federal funds will pay for the majority of the costs of providing these services, with the general fund share of \$1.2 million derived from existing programs. Savings from a reduction in unintended pregnancies and births are also anticipated.

Miscellaneous Facilities

In September 2010, a female patient was allegedly murdered by a male patient who was housed just two doors away in a co-ed, medium-security ward at Clifton T. Perkins Hospital. According to the Maryland Disability Law Center, up to 81% of men and women in psychiatric hospitals nationwide have experienced physical and/or sexual abuse. A task force convened in 2005 by the law center urged the Mental Hygiene Administration (MHA) to separate the bedrooms of male and female patients to the extent possible. **SB 556/HB 1150** (both passed) require MHA to develop and implement a plan (including a three-year pilot program) to secure the sleeping quarters of male and female patients at all State mental health facilities. The bills also establish training and reporting requirements related to sexual abuse and sexual harassment.

Sales and Use Tax

Sales Tax Rate on Alcoholic Beverages

The Caucus supported **SB 168/HB 121 The Lorrain Sheehan Health and Community Services Act of 2011** (both failed) proposing an increase in the excise tax on alcoholic beverages by approximately “a dime a drink” in order to support funding for several special funds, including the Developmental Disability Support Fund.

In addition to State and federal excise taxes that are imposed on alcoholic beverages at the wholesale level, Maryland’s 6% sales tax is imposed on the retail sale of alcoholic beverages. Except for Delaware, all of Maryland’s surrounding states and the District of Columbia also impose a sales tax on alcoholic beverages. In lieu of its general sales and use tax rate of 6%, the District of Columbia imposes a 9% sales tax rate for off-premises sales and a 10% sales tax rate for on-premises sales of alcoholic beverages.

SB 994 (passed) and HB 1213 (passed) increase the State sales and use tax rate imposed on the retail sale of alcoholic beverages from 6% to 9% beginning in fiscal 2012. Both bills provide for supplementary appropriations from the resulting revenue increase.

SB 994 provides for a supplementary appropriation of \$15.0 million in fiscal 2012 to be used to fund a Waiting List initiative for the Developmental Disabilities Administration. Priority must be given to individuals in the Crisis Prevention and Crisis Resolution categories of the Waiting List. The bill further provides that the appropriation under SB 994 has priority over any other appropriation for fiscal 2012 from the additional revenues resulting from the increase in the sales and use tax rate for the sale of an alcoholic beverage.

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

*The 90 Day Report
A Review of the 2011 Legislative Session
Department of Legislative Services
Maryland General Assembly*

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

Strong Support:

SB 71/HB 120 Commission on Surrogate Parenting

SB 204/HB 1128 Criminal Law – Sexual Crimes – Definitions

SB 335 Family Law – Permanency Planning and Guardianship Review Hearings

SB 593/HB 819 Definition of Serious Physical Injury – Strangulation and Suffocation

SB 653/HB 416 Family Law – Domestic Violence- Definition of Abuse

SB 759/HB 783 Autism Treatment Mandate Legislation

SB 247/HB 418 Criminal Procedure – Seizure and Forfeiture – Property Used in Human Trafficking

SB 604/HB 1111 Tanning Devices – Use by Minors – Prohibition

HB 1018 Family Law – Protective Orders – Additional Relief

SB 667/HB 386 Education – Tween/Teen Dating Violence (Kristin Marie Mitchell Law)

SB 859/HB 913 Homestead Property Tax Credit – Eligibility – Child Support Payments

SB 919/HB 1169 Courts – Testimony by Spouses – Central Registry of Records of Refusals

Support:

SB 351/HB 455 Request to Place a Statue of Harriet Tubman in the National Statuary Hall Collection

HB 157 State Government – Commemorative Days – Maryland Women's History Day

