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April 25, 2011

The Honorable Martin O'Malley  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401-1991

*Re: Senate Bills 384 and 556 and House Bills 346 and 1150*

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 384 and House Bill 346, identical bills entitled "Health - State Facilities and Residential Centers - Definition of Abuse," and Senate Bill 556 and House Bill 1150, identical bills entitled "Mental Hygiene Administration - Facilities - Trauma-Informed Care." We write to discuss the interaction of the two sets of bills.

Both Senate Bill 384 and House Bill 346 and Senate Bill 556 and House Bill 1150 amend Health - General Article §10-705(a), in rather different ways. It is our view that if you choose to sign them all, the changes made by the bills can all be given effect, and should be codified together as follows:

(a)(1) In this section the following words have the meanings indicated.

(2)(i) "Abuse" means cruel or inhumane treatment that causes:

1. Any physical injury; or
2. Any of the following kinds of sexual abuse:
  - A. A sexual act, as defined in § 3-301 of the Criminal Law Article;
  - B. Sexual contact, as defined in § 3-301 of the Criminal Law Article; or
  - C. Vaginal intercourse, as defined in § 3-301 of the Criminal Law Article.

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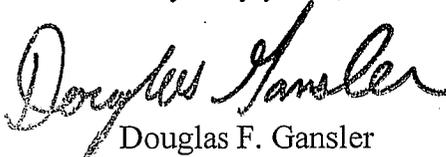
(ii) "Abuse" does not include:

1. The performance of an accepted medical procedure that a physician orders in a manner that is consistent with the provisions of this subtitle; or

2. An action taken by an employee that complies with applicable State and federal laws and applicable Department policies on the use of physical intervention.

(3) "Sexual harassment" means intimidation, bullying, or coercion of a sexual nature or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive environment.

Very truly yours,



Douglas F. Gansler  
Attorney General

DFG/KMR/kk

cc: The Honorable John P. McDonough  
Joseph Bryce  
Karl Aro