



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

Issue 13-8

February 25-March 1, 2013

## CRIMES, CORRECTIONS, AND PUBLIC SAFETY

### *Firearm Safety Act of 2013*

After extensive debate on the Senate floor over two days, the Senate passed the Firearm Safety Act of 2013 (SB 281), adopting 19 of the committee amendments and 18 floor amendments. As amended, this Administration bill significantly strengthens the regulation of firearms and ammunition in the State and gives new prominence to the issue of mental health in relation to the possession of firearms.

The measure continues to ban assault weapons and high capacity magazines and to require a licensing system including a background check and fingerprinting for those who purchase, rent, or receive handguns. Committee amendments added a prohibition on gun possession by anyone who has been involuntarily committed to a mental hospital, reduced fees for license renewals, and cut the cost and hours of a required safety training course for gun owners. Another amendment also strengthened police oversight regarding “straw purchases” of guns by one person for someone else. Among the bill’s provisions, as passed by the Senate, are the following:

#### *Assault Weapons – As amended, SB 281:*

- adds railroad police, certain retired law enforcement officers, and on-duty armored car employees to the list of those exempt from the prohibition against assault weapons. Already exempt under the proposed bill were government personnel, military, and law enforcement personnel on duty;
- extends the registration deadline for assault weapons or copycat weapons to January 1, 2014, rather than November 1, 2013, as first proposed;
- reduces proposed penalties for late registration of assault weapons;
- allows a licensed dealer to return an assault weapon that has been in for repair to an out-of-state customer;

- allows those authorized to possess assault weapons to transport them;
- allows for the manufacture of assault weapons in the State; and
- changes the definition of a copycat weapon to a weapon with two instead of one feature of a semiautomatic centerfire rifle or a semiautomatic pistol.

#### *Handgun Licensing – As amended, SB 281:*

- sets the fee for handgun license applications at \$25 rather than a maximum of \$100;
- exempts certified firearms instructors and honorably discharged members of the armed forces from the firearm safety training requirement to obtain a handgun qualification license. The bill retains the original exemption for those who have already completed an approved firearms course;
- allows for replacement of a lost or stolen handgun qualification license upon written request;
- changes the required instruction from eight hours to four hours for a handgun qualification license and requires renewal every 10 years instead of five years as in the original bill;
- adds an allowance for firearms safety training completed within the past 10 years to fulfill the training requirement for a handgun qualification license;
- assigns responsibility for obtaining background checks to the State Police instead of handgun license applicants;
- adds a provision allowing the State Police to issue a handgun qualification license without any additional application or fee to a person who does not already have the license but meets the requirements for issuance of a carry permit for a handgun.

#### *Mental Health – As amended, SB 281:*

- adds mental health issues to the list of disqualifying factors for possessing a rifle or shotgun;

- provides for a prohibition on possession for voluntary admission under certain circumstances;
- adds a prohibition against persons involuntarily committed for any length of time from possessing a firearm;
- allows a person whose mental health has barred them from possessing a regulated firearm to possess a regulated firearm if he or she has a physician's certificate stating that he or she does not pose a danger to themselves or others;
- adds emergency admittance to a mental health facility in most cases to the list of disqualifying factors for firearm possession; and
- provides that a person involuntarily committed and deemed unsafe to possess a firearm may temporarily hand over his/her firearm to a licensed dealer for storage or consignment.

*Dealers – As amended, SB 281:*

- requires the refusal of a dealer's license if the applicant intends to involve in the business someone whose license has been revoked or suspended;
- establishes recordkeeping and reporting requirements; and
- allows for the suspension of a dealer's license for failing to meet recordkeeping required by the bill.

The companion Administration legislation, [HB 294](#), was heard by two committees sitting jointly on Friday, March 1. The committees also took public testimony on other jointly assigned legislation related to firearms ([HB 809](#), [HB 810](#), [HB 874](#), [HB 1133](#)). Additional bills to be considered by one of the committees include [HB 107](#), [HB 477](#), [HB 643](#), [HB 1191](#), and [HB 1457](#).

Large crowds rallied in Annapolis both for and against the House bill. An estimated 1,000 people testified on the legislation.

*Juvenile Detention*

[SB 732](#) establishes that a child under the age of 14 may not be detained beyond emergency detention, unless the child is alleged to have committed an act that, if committed by an adult, would be punishable by death or life imprisonment.

Detention means the temporary care of children who are awaiting court disposition and require secure custody for their own protection or the protection of others, and it may only be authorized by the court or an intake officer. Alternatives to detention placements may include returning the child to the child's home, electronic

monitoring, and approved shelter care. The companion bill is [HB 711](#).

*Death Penalty*

This week, [SB 276](#), the Governor's death penalty repeal proposal, received a favorable vote with amendments from a Senate committee. Subsequent floor discussion on the bill resulted in adoption of the committee's bill as reported, but debate will extend into early next week with the proposal of additional floor amendments.

As amended by the committee, the bill is now entitled "Death Penalty Repeal – Substitution of Life Without the Possibility of Parole." The provision that established a State Victims of Crime Fund is deleted, along with the requirement that the Governor appropriate annually \$500,000 to the fund.

The committee also deleted language in current law that had authorized the Governor to "commute or change a sentence of death into a period of confinement that the Governor considers expedient." The new language authorizes the Governor to, "change a sentence of death into a sentence of life without the possibility of parole."

A bill that would have created a special court for cases eligible for the death penalty ([HB 441](#), failed) received an unfavorable committee vote this week.

*No-knock Search Warrants*

[HB 219](#) (failed), which addressed no-knock search warrants served in counties by law enforcement officers from outside the jurisdiction, was reported unfavorably out of committee. The bill would have required that outside law enforcement officers notify a county's primary law enforcement agency of a search warrant to be executed in the county. The companion is [SB 259](#).

---

## ECONOMIC AND BUSINESS ISSUES

*Wage and Hour Law – Minimum Wage*

[HB 1204](#) increases the minimum wage to \$8.25 per hour, or to the federal minimum wage if it is greater. Employers must pay the increased wage beginning July 1, 2013, with subsequent annual increases to \$9 per hour as of July 1, 2014, and \$10 as of July 1, 2015. If the federal minimum wage is greater, then the federal minimum wage will be applied. The bill also requires an employer to pay a tipped employee an hourly wage of 70% of the minimum wage, about \$5.78 per hour by July 1, 2013.

The bill further specifies that the State's Wage and Hour Law, including minimum wage and overtime requirements, applies to additional industries or classes

of workers. These include people age 62 or over who work 25 hours or less per week, those employed in a motion picture or drive-in theater, people employed to do specified types of food packing and processing, and those employed at certain cafes, drive-ins, drugstores, restaurants, or taverns. Also, payment of overtime for agricultural workers starts at 48 hours of weekly work instead of 60, and is paid to employees of institutions that provide care for the elderly or disabled after 40 hours of work instead of 48. The crossfiled measure is [SB 683](#).

#### *Maryland Earned Sick and Safe Leave Act*

Current Maryland law does not require private-sector employers to provide employees with paid or unpaid sick leave. [SB 698/](#)[HB 735](#) require that employers, including State and local governments, have a sick and safe leave policy under which an employee earns at least one hour of paid sick and safe leave, at the same rate and with the same benefits as normally earned for every 30 hours an employee works.

The legislation defines “family member” to include children, parents, grandparents, grandchildren, and siblings, among others. The circumstances under which an employer must allow the employee to use the leave include use of the leave due to domestic violence, sexual assault, or stalking committed against the employee or the employee’s family member.

#### *Alcoholic Beverage Licenses*

Testimony from the interested public has been taken on bills that expand the number of restaurants, clubs, or hotels at which an individual may consume wine not purchased from the licensee. Legislation passed in 2012 allows individuals to bring their own wine to drink, a practice known as “corkage,” into a restaurant, club, or hotel with a Class B or a Class C alcoholic beverage license under certain conditions. License holders may charge a fee for corkage, which is subject to the sales tax. [SB 260/](#)[HB 74](#) authorize any holder of a license to sell to allow corkage in their establishment.

Another alcohol-related bill increases the annual production limit for Class 7 micro-breweries from 22,500 barrels of malt beverages to 60,000 barrels ([HB 704](#)). Class 7 micro-brewery licenses have been issued for use in 20 jurisdictions, and are generally issued to holders of a Class B beer, wine, and liquor license that is issued for use on the premises of a restaurant. The crossfiled measure is [SB 755](#).

## **EDUCATION**

### *School Resource Officers*

Recently, a Senate committee reviewed a bill concerning school safety and school resource officers. [SB 807](#) requires each superintendent of a local school system to enter into an agreement with an appropriate law enforcement agency to provide a full-time school resource officer to each public elementary and secondary school. A “school resource officer” is defined as a law enforcement officer who has been assigned to a school in accordance with a memorandum of understanding between the chief of a law enforcement agency and a local school system.

Any necessary additional funding, beyond that provided in the local school 2013 budget, must be paid from the Education Trust Fund (ETF). Currently, ETF funds are dedicated to the continued funding of the Bridge to Excellence formulas and programs, as well as to construction and early childhood programs. The companion bill is [HB 165](#).

### *Certification of Net Taxable Income (NTI)*

This week a Senate committee heard [SB 277](#), a bill that requires State education aid formulas that include a local wealth component to be calculated twice, once using a NTI amount for each county based on tax returns filed by September 1 and once using a NTI amount based on tax returns filed by November 1 to account for late filers. Each local school system then receives the greater State aid amount of the results from the two calculations. Beginning with fiscal 2014, the increased State aid will be phased in over a five-year period. The companion bill, [HB 229](#), was considered by a House committee several weeks ago.

---

## **ELECTIONS AND ETHICS**

### *Registration – Lobbying*

[HB 1193](#) repeals exemptions from registration and regulation under the Maryland Public Ethics Law for an officer, director, member, or employee of an association engaged exclusively in representing counties or municipal corporations. Sponsor testimony maintains that the bill is aimed at closing the loophole that does not currently require registration by the Maryland Association of Counties and the Maryland Municipal League. Sponsor testimony also states that the bill, as currently drafted, should be amended to delete the reference that a “member” of such an association be subject to registration and to delete the provisions requiring registration of State employees.

*Petitions – Referenda*

Receiving an unfavorable committee vote, [SB 367](#) (failed) would have prohibited public examination of petition signatures once the petition has been submitted to the Board of Elections. The bill provided an exception for judicial review. The companion, [HB 729](#), remains in committee.

---

**ENVIRONMENT, NATURAL RESOURCES,  
AND AGRICULTURE**

*Hydraulic Fracturing*

The process for exploration or production of natural gas known as hydraulic fracturing was discussed in a Senate committee this week. The crossfiled bills ([HB 337](#) and [HB 341](#), respectively) will be the subject of a House hearing next week. Senators examined several bills:

- [SB 514](#) prohibits a person from engaging in the hydraulic fracturing of a well for the exploration or production of natural gas in the State; and
- [SB 513](#) prohibits a person from storing, treating, discharging, or disposing of, in the State, wastewater resulting from hydraulic fracturing.

Another proposal, [SB 601](#), prohibits the Maryland Department of the Environment (MDE) from issuing a permit for the hydraulic fracturing of a well until MDE and the Department of Natural Resources issue a risk assessment of public health and environmental hazards relating to hydraulic fracturing activities with specified information and classifications of risk. MDE must also adopt regulations that are specific to hydraulic fracturing, including any restrictions deemed necessary to protect public health and the environment, among other requirements.

MDE is authorized to establish a fee on owners of specified gas interests, if the fee is requested by a representative of the natural gas drilling industry. Additionally, [SB 601](#) alters definitions applicable to current oil and gas provisions and includes provisions related to the intent of the General Assembly related to hydraulic fracturing. [HB 1274](#) is a similar measure.

*Food Safety*

[SB 521](#) requires meat or poultry that is derived from an animal that was fed or administered antibiotics while being raised in the State to bear a label identifying each antibiotic that was fed or administered to the animal. The bill only applies to meat or poultry that is intended for human consumption, processed in the State, and sold in the State.

Another bill, [SB 520](#), prohibits, beginning October 1, 2016, the use, sale, or distribution within the State of any commercial feed or drinking water that contains a “critical antimicrobial animal drug” as a feed ingredient and is intended for “nontherapeutic use.” “

“Critical antimicrobial animal drug” means a drug composed in part or in whole of specified drugs, including penicillin, or any other drug or its derivative that is intended for use as treatment or prevention of disease or illness in humans. Such a drug, used in the absence of disease that has been diagnosed by a veterinarian, for purposes such as growth promotion or routine disease prevention, constitutes “nontherapeutic use.”

*Disposable Bags – Community Cleanup and Greening*

[SB 576](#) requires stores in “eligible counties” to charge and collect a fee of 5 cents per disposable carryout bag provided to a customer. Stores may retain 1 cent of every 5-cent fee collected. Stores with a customer bag credit program may retain 2 cents of every 5-cent fee collected. Revenue generated by the bill must be used for administrative and program implementation and enforcement costs, but any remaining revenue is divided evenly between the Chesapeake Bay Trust and eligible counties. The crossfiled bill is [HB 1086](#).

*Shark Fins*

Several bills restrict the use of shark fins. [SB 592](#) prohibits a person from possessing, selling, offering for sale, trading, or distributing a shark fin with some exemptions. The crossfiled bill is [HB 1148](#). [SB 528](#) prohibits a restaurant or grocery store from selling, and an individual from consuming, shark fin soup. A similar bill, restricting possession of either shark fins or shark fin soup, [SB 46](#) (failed), has been withdrawn by the sponsor.

*Water Pollution*

[SB 289](#), which increases the maximum administrative penalty for violations of the Water Pollution Control subtitle of the Environment Article from \$5,000 to \$10,000, initially received a favorable committee vote, but was subsequently recommitted from the Senate floor to committee. The crossfiled measure is [HB 799](#).

*Maryland Clean Water Fund – Uses*

This fund consists of all application fees, permit fees, renewal fees, funds, and civil and administrative penalties collected under State and federal water pollution control laws, with priority given to funding activities relating to the water quality of the Chesapeake Bay and its tributaries.

[SB 575](#) seeks to restrict the uses of the fund by requiring use of the fund to restore or improve the area associated with the penalty or fine or an area that is similar in biological function to that area, with preference given to areas in close proximity to the area associated with the penalty or fine. Another bill, [HB 44](#), with similar restrictions provides that MDE may not use more than 1% of a penalty or fine that is paid into the fund for administrative purposes.

Under current law, there is no requirement to dedicate fines or other revenue sources of the fund for use in specific geographic areas.

---

## FISCAL MATTERS

### *Cybersecurity – Income Tax Credit*

Heard this week, [HB 803](#) creates a tax credit against the State income tax for qualified investments in Maryland cybersecurity companies. A qualifying company is a for-profit entity primarily engaged in the development of innovative and proprietary cybersecurity technology that meets specified criteria.

The refundable credit is equal to 33% of the qualified investment, not to exceed \$250,000. The amount of credits awarded each year cannot exceed the amount of money appropriated to a reserve fund established by the bill.

### *Corporate Income Tax Rate*

Three bills have been recently heard in legislative committees to reduce Maryland’s corporate income tax rate:

- [SB 34/HB 261](#) reduce the corporate income tax rate from 8.25% to 6.00%; and
- [SB 411](#) reduces the corporate income tax rate from 8.25% to 8.20% for tax year 2013, 8.15% for tax year 2014, 8.10% for tax year 2015, and following the same pattern reaches 7.75% for tax year 2022 and beyond.

### *Retirement Funding*

[HB 239](#) (failed), concerning funding the State retirement systems, received an unfavorable committee vote.

---

## GAMING, RACING, AND SPORTS

### *Purchase of Lottery Tickets Online*

The Senate passed [SB 272](#), a bill that prohibits the State Lottery Agency from allowing a person to purchase a

State lottery ticket through an electronic device that connects to the Internet.

---

## HEALTH CARE AND HEALTH INSURANCE

### *Medical Marijuana – Caregivers*

[SB 580](#) creates an affirmative defense for caregivers who are prosecuted for the possession of marijuana that the caregiver intended it for medical use by an individual with a debilitating medical condition. The defense may not be used if the caregiver was using or assisting in the use of marijuana in public, or was in possession of more than one ounce.

The House amended and passed the original crossfiled measure, [HB 180](#). Amendments to the House bill include language concerning the rules of discovery provided in various sections of the Maryland Court Rules. The House bill is now under Senate consideration.

### *Wellness Program*

This week, the House passed [HB 391](#), concerning a wellness program for State employees and retirees. As amended, [HB 391](#) requires the State to include a wellness program in the State Employee and Retiree Health and Welfare Benefits Program. The crossfiled bill is [SB 224](#).

### *Radiation Machines*

Legislation under consideration this session concerns radiation machines used by various types of health care providers. Among other provisions, the legislation addresses inspection and maintenance. Specifically, [SB 614/HB 625](#) concern dental radiation machines, and [SB 608/HB 798](#) concern radiation machines at podiatry or chiropractic offices.

### *Mental Health/Substance Use Disorder Safety Net*

Crossfiled measures [SB 822/HB 1245](#) require the Department of Health and Mental Hygiene (DHMH), the Department of Public Safety and Correctional Services and the Maryland State Department of Education to establish and implement programs and services to eliminate gaps in the State’s mental health, substance use disorder, and behavioral health safety net. The bills also require development of a cost-based reimbursement methodology for community behavioral health providers, a data-sharing initiative between core service agencies and local detention centers, and reports related to program implementation.

### *Workgroup on Cancer*

The Senate passed [SB 380](#), which creates a workgroup to examine issues relating to the investigation of potential cancer clusters in the State and potential environmental causes of cancer. A report is due by June 30, 2014. The crossfiled bill is [HB 1343](#).

### *Mental Health and Addiction Parity*

Inequality has been a defining characteristic in health insurance coverage for addiction and mental health treatment. The federal Mental Health Parity and Addiction Equity Act (MHPAEA) requires group health plans of large employers, as well as qualified health plans sold in health insurance exchanges and in the small group and individual markets as of January 1, 2014, to equalize health benefits for addiction and mental health care and medical and surgical services in many fundamental ways. Several bills before the General Assembly seek to comply with the required parity:

- [SB 581/HB 1216](#) require insurers, nonprofit health service plans, and HMOs (collectively known as carriers) whose policies or contracts are subject to MHPAEA to provide Maryland consumers with greater access to their insurance documents, clear information about their right to file a complaint, and instructions on how to enforce their rights.
- [SB 582/HB 1252](#) require a private review agent to certify to the Insurance Commissioner that the criteria and standards to be used by the agent in conducting utilization review for mental health and substance use disorder benefits are in compliance with MHPAEA; and
- [SB 585/HB 1001](#) require carriers to submit a report to the Insurance Commissioner outlining how each policy, contract, or certificate complies with MHPAEA and State mental health and addiction parity laws.

### *Food Allergy Awareness*

[SB 390](#) requires a food establishment, by March 1, 2014, to display a poster and menu notice related to food allergies. The bill also specifies that, in order to be designated as the “person in charge” by a food establishment, an individual must view an approved video and be knowledgeable about food allergies and food preparation.

In addition, DHMH must create materials related to food allergies, issue guidelines and requirements, and make available a list of food-allergy friendly establishments. Additionally, the Governor must annually proclaim the second full week of May as Food Allergy Awareness Week. The crossfiled measure is [HB 9](#).

### *Food Services Facilities Grading*

[HB 1217](#) requires DHMH to establish and implement a system for grading and classifying inspection results for a food service facility (including a full-service restaurant or a mobile food service facility), using letters to identify a facility’s degree of compliance with State and local public health laws. DHMH must conduct a second inspection of a food service facility that receives a grade lower than grade “A” upon initial inspection.

A number of states (including Mississippi, North Carolina, and Tennessee) and local jurisdictions (including New York City and Los Angeles County) require the results of restaurant inspections to be graded and publicly posted. A proposal to require inspection grades for restaurants in Baltimore City is currently pending before the city council.

---

## HUMAN RESOURCES

### *Gender Identity*

[SB 449](#), the Fairness for All Marylanders Act of 2013, expands existing prohibitions on discrimination based on certain characteristics to include discrimination based on gender identity. The bill defines gender identity as a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.

Owners of rental housing may be exempt from the prohibition if the housing is also the owner’s principal residence and contains five or fewer rental units. Employers are allowed to establish and require adherence to reasonable appearance, grooming, and dress standards for the workplace as long as an employee is allowed to appear, groom, and dress according to the employee’s gender identity.

---

## STATE GOVERNMENT

### *Maryland’s Open Meetings Act*

Current law, with limited exceptions, provides that a public body must provide adequate notice of the time and location of meetings and meet in open session in a location that is reasonably accessible to attendees. The State Open Meetings Law Compliance Board handles complaints alleging violations, but currently the opinions of the board are advisory only.

[HB 331](#), with a favorable preliminary House floor vote, changes procedures related to violations of the open meetings law by providing a public process to acknowledge any violation.

As amended, the bill provides that compliance by a public body is not an admission to a violation of the Act and may not be used in court. Another amendment continues to provide civil penalties for willful violation of the Act, but with lower fees and with the proviso that the court consider the public body's financial resources and ability to pay. The Senate companion bill is [SB 826](#).

The House passed [HB 139](#), which requires a public body to designate at least one individual who is an employee, officer, or a member of the public body to receive training on the requirements of the open meetings law through an online class offered by the Office of the Attorney General and the University of Maryland or a class offered by the Maryland Association of Counties or the Maryland Municipal League.

Other bills related to the Open Meetings Act have not progressed. [HB 140](#) and [HB 484](#) were withdrawn by their sponsors and [HB 485](#) received an unfavorable committee vote.

---

## TRANSPORTATION

### *Distracted Driving*

[HB 759](#) establishes the misdemeanor offense of distracted driving. Punishable by a maximum fine of \$500, the offense is not a moving violation for the purpose of assessing points and may only be enforced as a secondary action. Similar bills have been introduced in six of the past seven years.

The 2013 legislation provides that, if an individual engages in a "preoccupying activity" while driving, resulting in the operation of the motor vehicle in an inattentive or unsafe manner, the person is guilty of distracted driving. A "preoccupying activity" is defined as including reading or writing, performing personal grooming, using a wireless communications device, adjusting cargo, eating, drinking, or smoking, physically attending to another passenger, and operating or observing a video display.

Distracted driving is not currently prohibited in the State although an individual may be deemed guilty of negligent driving for the offense of driving in a careless or imprudent manner that endangers property or human life.

### *Audio Tapes – Maryland Transit Administration (MTA)*

[SB 182](#) was recommitted from the Senate floor to committee this week, which unless further action is taken, kills the bill. As amended by the committee, the bill would have prohibited MTA from activating audio

recording devices on transit vehicles used for transit service. The MTA transit system operating throughout the Baltimore-Washington Metropolitan area includes more than 50 local bus lines in Baltimore, as well as light rail, metro, and commuter bus services, Maryland Area Regional Commuter (MARC) trains, and mobility/paratransit vehicles.

MTA has begun to install audio surveillance equipment in its local bus vehicles, in part, to serve as an after-the-fact investigative tool in the event of a criminal incident or crash. By summer 2013, MTA anticipates that the audio-surveillance function will be turned on in 158 buses. Currently, 334 of their 758 buses are equipped with new audio and video surveillance equipment. While the remaining buses are equipped with older video-only surveillance equipment that records to a unit onboard the bus, MTA advises that audio and visual camera systems now are standard on new buses.

MTA light rail cars and metro cars are equipped with cameras, without audio capability, that record video to a unit in the vehicle. New metro cars will be equipped with both audio and video camera equipment.

MARC trains and commuter buses do not have audio surveillance equipment nor are there current plans for installation.

---

## NEW DELEGATE

On Wednesday, February 27, Nina R. Harper was sworn in to represent Baltimore City's District 45 through the end of the term in 2014. She has been appointed to serve on the House Ways and Means Committee. Delegate Harper has been a community activist for many years, first serving as the Executive Director of the Oliver Community Association and, since 2004, for the Oliver Economic Development Corporation. Delegate Harper succeeds the late Delegate Hattie N. Harrison, who had served in the House since 1973 until her death in January.