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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

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.

The Honorable Martin O'Malley
April 25, 2011
Page 2

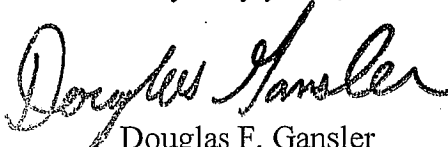
(ii) "Abuse" does not include:

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