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A Comment on the 1989 Maryland General Assembly's Legislative Session

by Delegate Robert L. Ehrlich, Jr.

Patuxent

The 1989 Legislature passed landmark legislation (SB 332/HB448) that will substantially alter the operation, public accountability, parole, furlough and work release policies of the Patuxent Institution. The legislation was passed, in large part, because of two incidents involving Patuxent inmates. In November, 1988 it was reported that Robert Angell, an inmate who had been convicted of three murders, had been released on unsupervised leave by the Patuxent Board of Review eleven times between March and April, 1988. In November, James Stavarakas, who was serving 25 years for a rape committed in 1978, failed to return to Patuxent after leaving his work release job. He was subsequently captured and charged with a rape committed during his escape. The resulting public outcry resulted in the formation of a Special Joint Committee on Patuxent which issued a report containing numerous recommendations regarding the reorganization of Patuxent. Many of these recommendations are contained in SB 332/HB448. The following are the major changes effectuated by enactment of this legislation:

(1) An inmate convicted of first degree murder, first degree rape, or first degree sexual offense will be ineligible for admission to Patuxent unless there is a recommendation for referral to the prison by the sentencing judge at the time of the sentencing or in the exercise of the Judge's revisory powers. An inmate serving a life sentence for one of these offenses will be ineligible for parole before comple-

tion of 15 years of that person's sentence (less credits). An inmate convicted of murder with an aggravating circumstance will be required to serve 25 years (less credits) before becoming eligible for parole.

(2) The Patuxent Board of Review is expanded to nine members with membership of the Board substantially changed to improve public accountability. The previous Board consisted in part of three professionals and a member of the State Bar Association. The new board adds five members of the general public in their place, one of whom will be a member of a victim's rights organization. The Governor, subject to Senate confirmation, will appoint members to four-year terms and will designate a chairperson. All decisions to grant parole, work release or leave will require the approval of seven of the nine members. Moreover, before parole is granted, the Secretary of Public Safety and Correctional Services must also give his approval. In essence, Bishop Robinson, the well respected Secretary of Public Safety, will have veto power over parole decisions made by the new Board of Review.

(3) The legislation defines a "major violation" of privileges to include: escape or failure to return within one hour of the time due back from work release; commission of a new offense other than a minor traffic violation; or drug use as determined by an administered drug test.

(4) The victims of a crime, or if the

victim is deceased, the victim's family, will be notified in writing before a hearing is held to grant an inmate work release, leave or parole. A victim will be provided an opportunity to comment in writing prior to the time the Board decides whether to grant work release, leave or parole to the inmate.

(5) The Board of Patuxent Institution, which previously acted in an advisory capacity and included professors of psychiatry and criminology, is now abolished and replaced by a Citizen's Advisory Board, appointed by the Governor and based on recommendations by the Secretary of Public Safety and Correctional Services.

The Environment

SB 481, "The Nontidal Wetlands Protection Act," establishes a statewide program within the Department of Natural Resources for the conservation, regulation, enhancement, creation, and reasonable utilization of marshes, bogs and swamps.

The bill requires the Department of Natural Resources to assist local governments in undertaking nontidal wetland management planning including mapping, technical assistance and expediting the permit process. One of the major goals of the legislation is to assure there will be no further loss of wetlands and to work toward a net resource gain in nontidal wetland acreage and function.

Generally, the bill mandates that agriculture activities conducted in nontidal wetlands (not exempted by the Act) be subject to a soil conservation and water quality

plan containing the best management practices to protect nontidal wetlands. The bill also provides that forestry activities be required to have an erosion and sediment control plan incorporating nontidal wetlands management practices. Moreover, where agricultural activities result in a loss of nontidal wetlands, the Department of Natural Resources will require a soil conservation and water quality plan to include mitigation for the loss. Mitigation may include restoration of the wetland, creation of a new wetland, or payment of monetary compensation.

This is important legislation given that approximately two-thirds of Maryland's 440,000 acres of wetlands are nontidal wetlands, and that recent studies have shown that Maryland is currently losing over 1,000 acres of nontidal wetlands each year. SB 481 was the most important (and controversial) environmental bill passed this session.

Covered Trucks

After twenty-seven years of often heated debate concerning the pros and cons of covered loads, SB 2/HB 321 provide timetables which will require all trucks carrying spillable loads to be covered by January 1992.

The major thrust of the legislation stipulates that the bed of a vehicle manufactured after July 1, 1990, while carrying loose material, be fully enclosed by an appropriate canvas cover approved by the MVA. With certain exceptions, all other vehicles carrying loose loads will be required to comply with the cover requirement by January 1, 1992. Materials to be covered include dirt, sand and wood chips, and similar loose materials. The cover requirement will not apply to farm vehicles, semi-tractor trailers, vehicles hauling cargo within a mile of the Port of Baltimore, and those construction vehicles ferrying materials on a public works construction project for a distance of up to one mile.

The bill also requires the MVA and the Insurance Division of the Department of Licensing and Regulation to gather data related to property damage caused by falling material, increased workmen's compensation costs, and personal injury claims. The costs associated with complying with the law to the trucking industry, the State, and local governments shall also be reported to the General Assembly.

Passage of this bill reflects what can be accomplished when enough constituents become outraged over a particular issue—in this case, cracked and broken windshields caused by debris falling from uncovered trucks! Final passage of SB2/HB 321 resulted in spontaneous applause from the Floor of the House.

Drunk Driving

The problems associated with drunk and drugged drivers have increasingly been the focus of legislative action in Annapolis. Accordingly, the 1989 General Assembly dealt in a comprehensive manner with the policy issues posed by drunk drivers.

SB 398/HB 556 contain several major drunk driving initiatives, including the alteration of lengths of time imposed for license suspension and the establishment of new procedures for police officers relative to impaired drivers.

These bills require that a driver who tests at an alcohol concentration of 0.10 or more receive a license suspension for a minimum of 45 days for a first offense and 90 days for a second or subsequent offense. In the case of a driver who refuses the test, the MVA will suspend the license for a minimum of 120 days for the first offense and for one year for a second offense.

SB 398/HB 556 authorizes the MVA to modify a license restriction or issue a restricted license to a person who (1) has taken an alcohol test; (2) has no prior DWI conviction; (3) is required to drive a motor vehicle in the course of employment; (4) needs a license to attend alcohol prevention or treatment programs; or (5) needs a license to earn a living.

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Approximately \$350,000 has been appropriated in the FY 1990 State budget to implement this legislation. With the enactment of SB 398/HB 556, Maryland now joins twenty-three other states with so-called “administrative per se” statutes for drunk driving offenders. This legislation is by far the strongest drunk driving initiative undertaken by the Administration and General Assembly in recent memory.

Family Law

SB 49 establishes advisory child support guidelines for use by a court in a proceeding to establish or modify child support. The adoption of the guidelines may be grounds for requesting a modification of a child support award based on a material change of circumstances, if the application of the guidelines would result in a change in the award of 25% or more.

The guidelines are advisory only and

give rise to no presumption or inference. If a court decides to use the guidelines, the court may consider factors not specified under the guidelines or may discount or disregard factors contained in the guidelines.

Enactment of the guidelines brings Maryland into compliance with federal requirements imposed under the Child Support Enforcement Amendments of 1984, P.L. 98-378. Failure to enact guidelines most likely would have resulted in the loss of up to \$35 million in federal funding for Maryland's Child Support Enforcement Program and Aid to Families with Dependent Children Program. In fact, due to the failure of similar legislation in the 1988 session, in September, 1988 Lt. Governor Steinberg advised the federal Grant Appeals Board that the Schaefer Administration and leadership of both houses had agreed to push for passage of new emergency regulation by February 1, 1989. It should be noted, however, that the federal Family Support Act of 1988 requires *mandatory*, not voluntary, guidelines. As a result, while Maryland is presently in technical compliance with federal law, we will again be out of compliance and subject to federal penalties as of October 1, 1989.

The Act also provides for an adjustment to be made in cases of “shared physical custody.” Shared physical custody is defined to mean that arrangement where each parent keeps the child or children overnight for more than 35% of the year and where both parents contribute to the expense of the child or children in addition to the payment of child support.

The Court of Appeals has issued standardized worksheet forms to be used in applying the new child support guidelines.

Medical Malpractice/Tort Reform

HB 776 modifies the certification requirements under the Health Care Malpractice Claims Act for any claim filed with the Health Claims Arbitration Office on or after July 1, 1989. Under the bill, a party to a malpractice action may not serve as that party's expert on a certificate of merit and the certificate may not be signed by the party, an employee or partner of the party, or an employee or stockholder of any professional corporation of which the party is a stockholder.

The bill also creates an exception to the requirement that a claim filed with the Arbitration Office be dismissed if the claimant fails to file a certificate of a qualified expert. Under this bill, in lieu of dismissing the claim, the panel chairman is required to grant an extension of not more than ninety days for filing the certificate, if the statute of limitations has expired and the failure to file the certificate was neither

willful nor the result of gross negligence.

With respect to the continuing crisis in medical malpractice rates, there does appear to be a moderation of rates for Maryland based physicians. The Medical Mutual Liability Insurance Society of Maryland, which insures about 90% of practicing physicians in the state, has attributed its recent decision to refrain from seeking a rate increase to recent changes in Maryland's tort law and the lack of a dramatic increase in claims made against insured physicians. Surely the original certificate of merit legislation has had the most dramatic impact on premium levels. I have no doubt, however, that the introduction of competition into the malpractice insurance marketplace has also been a positive contributing factor to the recent moderation of rates.

Drugs

Although an unfortunate reflection of the times we live in, one of my top legislative priorities continues to be the "war" on drugs. In the 1989 Session alone, more than fifty pieces of anti-drug legislation were introduced that targeted the supply and demand of controlled dangerous substances.

SB 289, the "Youth Protection Act," mandates that a person who manufactures, distributes, dispenses or possesses with the intent to distribute a controlled dangerous substance in, on, or within 1,000 feet of any school or school vehicle is guilty of a felony separate from other controlled dangerous substance charges brought against him. The intent of this bill is to set up a "drug-free school zone" around our elementary and secondary schools, thereby protecting those most vulnerable to the temptation of drugs.

First offenders will be subject to a twenty year maximum imprisonment penalty and/or a maximum fine of \$20,000. Second or subsequent offenders will be subject to a five year mandatory minimum sentence, which may not be suspended, and a forty year maximum imprisonment penalty and/or a maximum fine of \$40,000.

SB 419, the "Drug Forfeiture Act," provides that all property will be subject to the regulations and procedures for the forfeiture of property under controlled dangerous substance laws. Property will now include real property and weapons used or intended to be used in connection with drug offenses and found in close proximity to contraband, controlled dangerous substances and drug paraphernalia.

SB 400/HB 502, the "Drug Kingpin Act," contains several provisions concerning the large scale drug dealer, popularly known as a "drug kingpin."

The bill defines "drug kingpin" as a person who is an organizer, financier, or manager of a conspiracy to manufacture or distribute large quantities of drugs. The penalty for being a drug kingpin is a minimum of twenty and a maximum of forty years imprisonment and a fine up to \$1,000,000. The 20 year minimum may not be suspended and the offender is ineligible for parole during that time.

SB 400/HB 502 also makes it a separate felony to use, wear, carry or transport a firearm during a drug trafficking crime. The penalty for this offense is five to twenty years for a first offense and ten to twenty years for a second or subsequent offense. Here again, the minimum term may not be suspended and the defendant may not be paroled during that period.

Business

Under present law, Maryland's publicly held corporations are relatively unprotected from hostile takeovers financed by higher yield, high risk bonds; consequently, the General Assembly was requested to act to provide added protection for these potential targets of corporate raiders.

"Top Legislative priority continues to be war on drugs."

HB 179 prohibits a person who acquires more than 20% of the corporate stock of a Maryland company from exercising the full voting power which accompanies ownership of the stock, unless two thirds of the other shareholders vote to allow the person to exercise full voting power.

HB 180 imposes a five year moratorium on business combinations between a raider and a target corporation. The bill also includes provisions which assure minority stockholders that they will receive the highest price possible for their stocks in the event of a hostile takeover attempt.

These two bills, which were priority legislation for the Maryland Chamber of Commerce, will make it much more difficult for a corporate raider to gain control of a targeted company. The legislation will also prevent a raider from financing a highly leveraged takeover by selling off the assets of a corporation.

Child Abuse

SB 58 makes it a misdemeanor for a person to sell, barter, or trade, or offer to sell, barter, or trade a child for money, proper-

ty, or anything else of value. A person convicted of violating this law is subject to a fine not to exceed \$10,000, or imprisonment not exceeding five years, or both.

This bill addresses a gap in the law raised during this Session when an Anne Arundel County Circuit Court judge, to the surprise of many in the legal community, dismissed charges against a woman accused of trading her baby for money and drugs, on the grounds that the law under which she was charged did not clearly apply to baby selling by a parent.

SB 99/HB 1210—"Child Abuse and Neglect," repeals an exception to Maryland's child abuse reporting requirements for mental health practitioners who specialize in the psychiatric treatment of pedophilia.

Currently, Maryland is the only state in the nation to have a so-called pedophile exception in its reporting laws. This exception, which was created to address the concern that requiring reporting during treatment would discourage pedophiles from voluntarily seeking treatment, allows a pedophile to inform his psychiatrist about sexually abusive acts committed against a child without concern as to reporting laws.

I was proud to be the lead House sponsor of this legislation, which had the support of the Maryland Department of Human Resources, the Governor's Council on Child Abuse, the Child Welfare League, the American Bar Association, and the National Committee for the Prevention of Child Abuse. The General Assembly rightfully found that the need to identify and provide treatment for past victims of sexual abuse must outweigh the contention of some that the elimination of the exception would discourage pedophiles from voluntarily seeking treatment. In effect, passage of HB 1210 ensures that Maryland will *not* become a refuge for pedophiles from other states with mandatory reporting laws. It also reaffirms my commitment to doing all I can to break the terrible cycle of child abuse, a problem that results in the victimization of thousands of our children each year.

The Honorable Robert Ehrlich, Jr. is a member of the Maryland House of Delegates. A representative from Baltimore County's Tenth Legislative District, Delegate Ehrlich is a member of the House Judiciary Committee. He completed his undergraduate education at Princeton University and earned his Juris Doctorate at Wake Forest University. In addition to his position in the House, Delegate Ehrlich is associated with the law firm of Ober, Kaler, Grimes & Shriver.