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Recent Developments: Maryland General Assembly Update

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Maryland General Assembly Update

CRIMINAL LAW

Senate Bill 368 - Child Sexual Offenses and Kidnaping - Imprisonment for Life Without Possibility of Parole

Senate Bill 368, entitled "Child Sexual Offenses and Kidnaping- Imprisonment for Life Without Possibility of Parole," will take effect on October 1, 1998. This bill amends Maryland Annotated Code, Article 27, Crimes and Punishments, Sections 338, 462, and 464. More specifically, this bill provides that life imprisonment without the possibility of parole is the strictest penalty for a person who is found guilty of certain sexual offenses and kidnaping of children.

If, in the same proceeding, a person is convicted of both first degree rape and kidnaping of a child under the age of sixteen years, then the maximum penalty will be life without possibility of parole. The law also provides that the defendant must be given notice thirty days prior to trial that the State intends to seek a sentence of imprisonment for life without the possibility of parole. This bill is not retroactive, therefore it will only pertain to defendants who have committed a combination of these offenses on or after October 1, 1998.

-Melony Joe Ellinger

House Bill 1080 - Child Abuse - Death of a Child - Penalties

House Bill 1080, entitled "Child Abuse - Death of a Child - Penalties," increases the maximum period of incarceration for those found to be in violation of the felony of child abuse where such abuse results in the death of the victim. This bill repeals and reenacts, with amendments, the Crimes and Punishments Article, Section 35C, of the Maryland Annotated Code. House Bill 1080 will become effective as of October 1, 1998.

Where sexual or physical abuse is rendered against a minor by a family or household member who has permanent or temporary care, responsibility, or supervision of a child and the perpetrator is convicted of child abuse, the accused will be considered guilty of a felony and the period of incarceration shall not exceed fifteen years. However, where the same crime results in the death of the victim, the incarceration of the accused has been increased from a maximum term of twenty years to a maximum term of thirty years.

The law will also allow any sentence imposed under this section to be considered consecutive to, or concurrent with, any other offense committed by the abuser based upon the act or acts that establish a pattern of abuse against the same child.

-Ruth-Ann Lane

EVIDENCE

Senate Bill 688 - Child Abuse - Out-of-Court Statements - Nurses

Senate Bill 688, entitled Child Abuse - Out-of-Court Statements - Nurses, expands the category of witnesses who may testify to out-of-court statements made by child abuse victims in juvenile court or criminal court proceedings. This bill will take effect on October 1, 1998. Currently, statements offered to prove the truth of the matter asserted regarding certain offenses of a child victim under 12 years of age offered by a licensed physician, a licensed psychologist, a licensed social worker, or a teacher are admissible. Senate Bill 688 adds nurses, human service workers, principals, vice principals, and teacher's aides at a public or private preschool, elementary, or secondary school to the list of persons who may testify. Non-licensed physicians, psychologists, and social workers may also testify so long as they were lawfully acting in the course of their employment when the statement was made to them. In addition, an alleged offender may no longer depose the person who will testify to the out-of-court statement.

One motivation behind this change in the law was to protect lower income children, especially in Baltimore City. The requirement restricting the admissibility of such testimony only if previously made to a licensed professional would impair the rights of certain child victims because they did not have access to such licensed professionals. Most often children disclose information regarding abuse to unlicensed medical residents, nurses, or teachers.

-Gregory P. Jimeno

FAMILY LAW

House Bill 9 - Grounds for Absolute Divorce - Domestic Violence

On October 1, 1998, House Bill 9, entitled "Grounds for Absolute Divorce-Domestic Violence" will take effect. This bill amends the absolute divorce provisions in Maryland Annotated Code Family Law Article Section 7-103(a).

Section 7-103(a) previously prescribed that the court may grant an absolute divorce on the grounds of adultery, desertion, voluntary separation, two year separation, and insanity. Curiously however, domestic violence, particularly cruelty, were not included among any of the fault grounds for absolute divorce. Prior to the new law, most domestic violence victims could file only for a limited divorce in Maryland if domestic violence served as the grounds on which the divorce was to be based.

As amended, the new law allows an absolute divorce to be granted if it can be proved that there was cruelty of treatment or excessively vicious conduct toward the complaining spouse and there is no reasonable expectation of reconciliation. A significant feature of the law is that there is no required waiting period; therefore, the party meeting the requisite burden of proof of cruelty or vicious conduct could obtain an absolute divorce immediately. It will likely be left to the courts to determine what constitutes the minimum requirements for "vicious" conduct.

-Melony Joe Ellinger

PROFESSIONAL RESPONSIBILITY

House Bill 468 - Lawyers - Solicitation of Clients - Requirements

House Bill 468, entitled "Lawyers - Solicitation of Clients - Requirements," alters Maryland Annotated Code, Business Occupations and Professions Article, Section 10-605.2 and repeals Section 10-606(c) of that same article. Pertaining to communications by attorneys or their agents to prospective clients, the new law places certain requirements on advertisements soliciting personal injury claims, wrongful death actions, or criminal prosecutions, including traffic violations that may result in incarceration. These revisions will go into effect on October 1, 1998.

The law requires that all forms of attorney communication (whether by audio or video recording, computer on-line transmission, facsimile, letter, telegraph or telephonic transmission) in an effort to gain professional employment must prominently state, at the beginning and end of each communication, that such method used is an advertisement. In addition, if the communication is in written form, the outside of the communication may not reveal the nature of the prospective client's legal matter. The requirements of this section, however, do not apply to any information supplied by an attorney at the request of a potential client.

Further, within three days of the use of the communication, a copy of the final product of the advertisement must be filed with Bar Counsel by the soliciting attorney or their agent, along with a listing of those potential clients to whom the advertisement was communicated. The communication must also be determined to be in accordance with the demands of the Maryland Rules of Professional Conduct, Rules 7.1 through 7.4 (regulating professional conduct with regard to advertising, communications with prospective clients, communications concerning fields of practice, and communications regarding general attorney services). Any deviation from the requirements listed in either House Bill 468 or the Maryland Rules will subject the violator to a fine not to exceed \$1,000.00 or imprisonment not exceeding one year, or both.

-Ruth-Ann Lane

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