

Confronting injustice on behalf of people living in poverty means being able to make the voice of the people heard in the courts, the agencies, and in the halls and hearing rooms of Annapolis. When you want to change an unjust law, you must talk to the law maker.

This report provides an overview of the Public Justice Center’s work in the 2012 Maryland General Assembly Session on behalf of poor people in an array of subject matters. Our hope is that through these legislative advocacy efforts, we are continuing to build a more just society.

TABLE OF CONTENTS

WORKERS.....1
EDUCATION STABILITY4
TENANTS5
CIVIL RIGHTS/ OTHER.....8
JUST KIDS 10
IMMIGRANTS 13
HEALTH..... 15

WORKERS' RIGHTS OVERVIEW

The PJC's Workplace Justice Project seeks to expand and enforce the rights of low-wage workers through legislative advocacy and litigation, working in coalition with low-wage workers, other advocates, Maryland's Department of Labor, Licensing and Regulation, and the private bar. During the 2012 General Assembly, the Workplace Justice Project fought against the industry attempts to roll back Maryland's Workplace Fraud Act, which renders it illegal to misclassify employees as independent contractors. Equally important, the Project supported efforts to increase employment opportunities for low-wage workers and to improve health and safety conditions in the workplace. At the same time, we continued to work in coalition with key partners to develop legislation that will create new remedies to combat wage theft.

PJC Highlight

Asbestos Worker Protection Act

(SB 649/ HB 1262)

PJC Position: favorable

Results: Win. Good bill passed.

The Workplace Justice Project expanded its commitment to low-wage workers this year by supporting efforts to improve workplace health and safety. In particular, the Project worked with the Laborers' Mid-Atlantic Regional Organizing Coalition to pass the Asbestos Worker Protection Act. The Act strengthens current laws that ensure the safety and health of all individuals who come into contact with construction sites where asbestos abatement and demolition is being performed by: 1) creating stricter penalties, including criminal penalties for violations of state asbestos abatement laws; 2) requiring the state or a third-party to administer the exam an asbestos worker must pass before obtaining his/her asbestos license; and, 3) establishing an Asbestos Worker Protection Fund. The PJC submitted oral and written testimony. The bill was passed in the wake of press around the PJC's representation of a group of asbestos workers in a complaint for violations of the Occupational Safety and Health Act (OSHA).

WORKERS' RIGHTS BILLS

Workplace Fraud Act Revisions (SB 272)

PJC Position: unfavorable

Result: Mixed. Compromise bill passed.

SB 272 was one of the myriad bills seeking to amend Maryland's Workplace Fraud Act (WFA) in a way that would limit the Act's effectiveness and leave low-wage workers at increased risk of misclassification. Project attorneys participated in a series of stakeholder workgroup meetings, arguing that amending the law in the manner proposed would undermine the Act and not resolve any of the enforcement-related problems that were the stated reason for amending the law. In addition to workgroup and other meetings, Project attorneys submitted both oral and written testimony on each of the various attempts to roll back the WFA. In the end, the WFA remained intact. The amendments that passed deal primarily with enforcement timelines for DLLR and with the circumstances under which public monies may be withheld for a WFA violation. Unfortunately, an amendment allowing the presumption of employee status to be neutralized where an employer provides certain documents was also passed over strong objection from the PJC. All told, however, these amendments should not undermine the effectiveness of the WFA.

Determination of Independent Contractor Status (SB 1005/ HB 1364)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill would have provided a presumption of independent contractor status when an employer presents specific documents to the Maryland Department of Labor, Licensing and Regulation. This particular bill did not pass, but a different compromise bill amending the Workplace Fraud Act passed. *See SB 272.*

Create Independent Contractor Registry (SB 600/ HB 734)

PJC Position: unfavorable

Results: Win. Bad bill defeated.

This bill would have authorized construction and landscaping independent contractors to register with an Independent Contractor Registry and established that work performed by an individual registered with the Registry is not presumed to create an employer-employee relationship for the purposes of specified provisions related to workplace fraud. This particular bill did not pass, but a different compromise bill amending the Workplace Fraud Act passed. *See SB 272.*

Use IRS 20 Factor Test to Determine Independent Contractor Status (HB 309)

PJC Position: unfavorable

Results: Win. Bad bill withdrawn.

This bill would have added the IRS 20 Factor Test as definition of independent contractor to Maryland code, replacing the three-factor test currently used for enforcement of the Workplace Fraud Act. This particular bill did not pass, but a different compromise bill amending the Workplace Fraud Act passed. *See SB 272.*

Leave for Parent-Teacher Meetings (SB 329/ HB 567)

PJC Position: favorable

Results: Loss. Good bill died in committee.

SB 329 would have allowed employees to take four hours of unpaid leave to attend parent-teacher conferences, up to two times per half of an academic year. Given the importance of parent/guardian involvement in academic affairs, and the inability of low-wage workers to take leave to participate in parent-teacher conferences, this bill would have been a great help to PJC's client communities.

"Ban the Box" in State Employment Applications (SB 671/ HB 800)

PJC Position: favorable

Results: Loss. Good bill died in committee.

This bill would have prohibited questions about criminal history for state job applications until the applicant is selected for an interview. For individuals with a criminal history, the legislation would have increased the chances of being invited for a job interview with the State, and removed one barrier to attaining gainful employment, which has been shown to decrease the likelihood of recidivism. The Job Opportunities Task Force has led efforts to pass this bill for the last several years, and PJC has steadfastly supported their efforts.

The Public Justice Center 2012 Legislative Report

Civil Rights Tax Relief Act (HB 1091)

PJC Position: favorable

Results: Loss. Good bill died in committee.

Prior to 1996, damages for physical injury and emotional injury were treated equally under the tax code: neither was considered taxable income. However, the federal Small Business Protection Act in 1996 made damages for non-economic injury taxable. This imbalance undermines the purpose of non-economic damages, and creates an unjustified hierarchy among equally important legal remedies. HB 1091 would have restored the tax equity by allowing an individual a subtraction modification under the Maryland income tax for payments received for noneconomic damages as a result of claims of unlawful discrimination. PJC was asked to submit testimony by the Maryland Washington Employment Lawyers Association (MWELA).

Prevent Discrimination Against the Unemployed (SB 966)

PJC Position: favorable

Results: Loss. Good bill died in committee.

This bill would have prohibited discrimination in employment based on employment status, including discrimination by employers, employment agencies, labor organizations, and training programs. The bill was drafted in response to increasing evidence that employers have become hostile to applications from workers who are unemployed. This form of discrimination encourages a downward spiral – as those who are unemployed cannot obtain employment by virtue of their unemployment. This situation, in turn, leads to more long-term unemployment.

Abusive Work Environments (SB 999)

PJC Position: favorable

Results: Loss. Good bill defeated.

This bill would have prohibited a supervisor from subjecting an employee to an abusive work environment; and would have prohibited retaliation against an employee who opposes or resists abusive conduct in the work environment or takes other action regarding a violation of the Act.

Allow “Table-Funded Loans” (SB 451/ HB 674)

PJC Position: unfavorable

Results: Win. Bad bill died in committee.

For over 30 years, Maryland consumers have enjoyed protections against predatory lending practices under the 1979 Maryland Finder’s Fee Act. Table funding, a predatory lending practice, involves naming the broker as the “lender,” even though the funds are provided by a lender to whom the loan is assigned at the time of closing. SB 451/ HB 674 would have sanctioned the predatory lending practices that the Finder’s Fee Act is meant to prohibit, by distorting the clear and accurate definitions of “brokers” and “lenders” under the Act so that compensation from table funding would not be considered a “finder’s fee.” PJC worked with allies to lobby against this bill, and the bill was withdrawn before the first hearing.

Working Families Flexibility Act (HB 1159)

PJC Position: favorable with amendments

Results: Loss. Good bill withdrawn.

This bill would have allowed employees to ask employers for changes in terms of employment without retaliation. The effort was led by the United Food and Commercial Workers (UFCW). The PJC proposed several amendments, which were adopted by the Sponsor with UFCW’s consent.

Shielding Nonviolent Criminal Convictions from Public Disclosure (SB 667/ HB 652)

PJC Position: favorable

Results: Loss. Good bill died in committee.

This bill would have ensured that police and criminal records for nonviolent convictions become inaccessible to members of the public after a significant period of time had elapsed since the person convicted satisfied his or her complete sentence. The PJC supported the bill because it recognized that individuals who commit crimes and serve their full punishments should not be shackled to their conviction indefinitely. Moreover, the bill represented a common sense way to reduce the barriers to employment for individuals who are trying to succeed and whose criminal record is not relevant to their ability to work. This effort was led by JOTF.

EDUCATION STABILITY OVERVIEW

The PJC's Education Stability Project advocates to ensure that students who are highly mobile, including those who are homeless and in foster care, have the opportunity to remain and succeed in school. During the 2012 legislative session, the Project focused almost exclusively on achieving the passage of a bill designed to provide children in foster care with a measure of school stability consistent with the requirements of federal law. The Education Stability Project also collaborated with other PJC projects to prepare testimony on bills that had the potential to impact students who are homeless, including the marriage equality bill and a bill that would give employees the right to take leave for school-related meetings (both bills are discussed at length elsewhere in this report).

PJC Highlight

Compliance with Fostering Connections Act

(SB 605 / HB 757)

PJC Position: favorable

Result: Win. Good bill passed with agreed-upon amendments.

This bill will help bring Maryland into compliance with the education stability provisions of the federal Fostering Connections Act of 2008 and ensure that children in foster care enjoy a measure of stability in their education. Specifically, the bills require school systems to permit children in foster care to remain in the same school even if they leave the school zone or school district following a change in foster placement. The bill also directs the three agencies with primary responsibility for foster children's education – the State Department of Education, the Department of Human Resources, and the Department of Juvenile Services – to create regulations that further specify how to ensure school stability for children in foster care.

The change in the law has clear benefits for children in foster care, who are better off when they stay in a single school even as they may move through several different foster placements in a given year. Research shows that each school transfer can set a child back 4 to 6 months academically, and that minimizing transfers is therefore one key to academic success. At the same time, the state is in a better position legally and fiscally as a result of passing these bills. This is because, if states fail to implement Fostering Connections by facilitating foster children's school stability, they risk a reduction in their federal foster care funding. The passage of this bill will help the state to avoid such penalties (at least with respect to the education of children in foster care) moving forward.

TENANT ADVOCACY OVERVIEW

The PJC's Tenant Advocacy Project leads the Maryland Rental Housing Coalition to protect and expand tenants' rights to safe, habitable, affordable, and non-discriminatory housing and to fair and equal treatment by Maryland's landlord-tenant laws, courts, and agencies.

One of the team's major efforts this year was working to pass the HOME Act (HB 1267/ SB 277), aimed at prohibiting discrimination in the sale or rental of housing based on a prospective purchaser's or tenant's legal source of income. Specifically, it sought to prevent sellers or landlords from denying individuals who are otherwise qualified to buy or rent the property but are perceived as undesirable because they have a Housing Choice Voucher, or receive disability benefits or other forms of public assistance. The object of the legislation was to open up housing opportunities in areas of higher opportunity to traditionally disadvantaged families who receive public benefits. PJC was heavily involved in a coalition with over 70 partner organizations to pass this bill; however, we were unsuccessful due to significant opposition from the landlord lobby.

The Project also had several victories in defeating or amending bills that would have curtailed tenants' rights. Among other things, these bad bills aimed to take away the right to pay in cash to stop an eviction, reduce or eliminate interest on security deposits, and place undue burden on tenants to prove causal effect in lead poisoning cases.

PJC Highlight

Allow Tenant to Restore Utility Service When Landlord Fails to Pay

(SB 765/ HB 1269)

PJC Position: favorable

Result: Mixed Result. Bill passed with amendments.

This legislation, as introduced, would have given a tenant whose landlord had failed to pay gas, electric or water bills that were the landlord's responsibility, the right to prevent a shut-off (or to have the utility service restored) by paying the landlord's future bills for utility service even though the arrearage for past due bills was still outstanding. The bill also would have given the utility company the right, as a condition of continuing or restoring service, to require the tenant to pay an additional fractional amount of the landlord's arrearage with each future bill. The PJC lead a coalition supporting the bill.

Representatives of gas and electric companies opposed the legislation because of, (i) a concern that landlords would "game the system" by creating tenancies that were not bona fide, and (ii) a concern that by forfeiting their right to turn off the utility they would lose their leverage to require the immediate payment of the landlord's arrearage. The PJC lobbied legislators, coordinated tenant testimony at the committee hearings, and met with representatives of gas and electric companies in an effort to resolve our differences. We were unable to reach a consensus, however, and the bill was amended to direct the Public Service Commission to convene a workgroup to study the issue.

TENANTS BILLS

Prohibiting Source of Income Discrimination: The Maryland HOME Act (SB 277 / HB 168)

PJC Position: favorable

Result: Loss. Good bill withdrawn.

See Tenants Overview, previous page.

Expert in Lead Paint Poisoning Claims (HB 21)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill would have required an expert to certify the validity of practically all elements of a plaintiff's lead poisoning claim at the outset of his/her case. The Coalition to End Childhood Lead Poisoning contacted PJC, asking that we oppose this bill, because it goes counter to the laws that allow victims of lead poisoning to seek remuneration for their illness. This bill, in fact, would have restricted access to justice for victims of childhood lead poisoning. HB 21 passed out of the House, but received an unfavorable report in the Senate committee.

Creation of Rental Allowance Program Fund (SB 413)

PJC Position: favorable

Result: Loss. Good bill defeated.

This bill would have increased the fees for service of process by a sheriff and provided that \$10 of the fees be distributed to the Rental Allowance Program (RAP) of the Department of Housing and Community Development. The RAP provides funds to local government to distribute to low-income families who have an emergency housing need.

Create a Lead Poisoning Compensation Fund (SB 873 / HB 472)

PJC Position: unfavorable

Result: Mixed result. Bill passed with amendments.

This bill proposed the creation of a Compensation Fund that would cap compensation for lead-poisoning victims

at \$200,000. It also purported to shelter "former compliant owners" from liability if they pay into the Compensation Fund before a claim is filed. PJC opposed these measures. In committee, the bill's Compensation Fund was completely scrapped in favor of creating a workgroup, under the authority of the Maryland Insurance Commissioner, to evaluate and make recommendations relating to lead liability protection for owners of pre-1978 rental property. This version of the bill passed into law under the title "Workgroup on Lead Liability Protection for Rental Property." The workgroup will include representatives of the judiciary, the insurance industry, rental property owners, and "childhood lead poisoning advocacy groups."

Expanding the Reduction of Lead Risk in Housing Law (SB 947 / HB 644)

PJC Position: favorable with amendments

Result: Win. Bill passed with PJC's amendments

The bill posed a major benefit to PJC's client base but a troubling legal hurdle, too. Beneficially, the bill sought to expand the coverage of the Reduction of Lead Risk in Housing Act over single-unit rental properties. The existing law covered only those single-unit rentals that were constructed before 1950. This bill aimed to change the cut-off year to 1978. PJC supported the expanded coverage. The downside of the bill was its language establishing steep evidentiary burdens on plaintiffs who assert that their elevated blood-lead level is caused by conditions on the property. The bill included a rebuttable presumption in favor of landlords and made the presumption rebuttable by clear and convincing evidence. PJC opposed these propositions, as they attempted to quash tenants' access to justice, and lobbied for amendments to strike the presumption from the bill. Ultimately, the expanded coverage provisions survived and have passed into law. Senate amendments removed the bill's unjust evidentiary burden and substituted new language that is fairer to the plaintiff.

Defining Which Law Enforcement Officials May Execute Evictions (HB 934)

PJC Position: unfavorable

Result: Win. Bad bill died in committee

HB 934 intended that other law enforcement officials besides the sheriff could be present to execute a warrant

The Public Justice Center 2012 Legislative Report

of restitution. PJC educated the bill's sponsor about the ways in which this proposal would throw the whole eviction process into confusion for tenants, landlords, and law enforcement. PJC opposed the bill, and it received an unfavorable report. In the course of consideration of the bill, there was much discussion about the possibility of adopting the "Baltimore City Model" for notifying tenants of evictions in the future, which would be a welcome improvement.

Stay of Eviction in Extreme Weather – Except Baltimore City (HB 1184)

PJC Position: unfavorable

Result: Win. Bad bill withdrawn.

This bill would have authorized an administrative judge to stay the execution of an eviction in the event of extreme weather conditions, except in District 1 of the District Court of Maryland (Baltimore City). PJC contacted the sponsor of this legislation to educate him on the eviction procedures in Baltimore City and worked to get other opponents of the bill to contact the sponsor and convince the sponsor to withdraw the bill.

Allowing Landlords to Not Accept Cash to Stop an Eviction (HB 619)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill would have enabled landlords to eliminate cash as a method of payment upon a tenant's redemption of the rental property as required by Real Property § 8-401 (e). The PJC opposed the bill because it would create an unnecessary burden on tenants' right of redemption and because it failed to include any safeguard against wrongful use of the law. We presented written testimony and additionally met with the Real Estate Subcommittee chair and delegates to discuss our opposition, as well as to present an amendment to the bill which would provide tenants a cause of action for wrongful eviction. Ultimately, the bill failed in committee.

Allowing Landlord a Defense in a Nuisance Action (HB 610)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill proposed a shield for landlords facing a nuisance

action – at the expense of tenants. So long as a tenant's actions alone were causing the nuisance, the landlord would be able to use a breach of lease suit against the tenant to raise a 'complete defense' to the nuisance action. The bill was voted down in the House committee.

Security Deposits - Change to Higher of Treasury Curve Rate or 1.5% (SB 361 / HB 22)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

Current law requires that landlords pay a flat rate of 3% simple interest on tenant security deposits. Several bills proposed this year would have reduced the interest owed to zero, 1%, or to a variable rate based on U.S. Treasury's, or 1.5%, whichever is greater. The PJC opposed all bills that would decrease the amount of interest paid on security deposits with written and oral testimony. Every bill except HB 22 was withdrawn or voted down in the originating committee. HB 22, which proposed the Treasury Rate or 1.5%, passed the House, but on crossover was not called for a vote in the Senate Judicial Proceedings Committee, and thus died.

Interest on Security Deposits - Change to 1% (HB 521)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill would have reduced the interest rate paid on security deposits to 1%. *See SB 361/ HB 22.*

Security Deposits - Change to Higher of Treasury Curve Rate or 1.5% (SB 194)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill would have changed the interest rate paid on a security deposit from 3 % to the daily U.S. Treasury yield curve rate for 1 year as of the first business day of each year or 1.5%, whichever is greater. *See SB 361/ HB 22.*

Eliminate Interest on Security Deposits (SB 271)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill would have eliminated the interest paid on security deposits. *See SB 361/ HB 22.*

The Public Justice Center 2012 Legislative Report

CIVIL RIGHTS/ OTHER OVERVIEW

The PJC's civil rights agenda is to support or oppose a broad range of civil rights bills that are not addressed by any of our other more specific focus areas. Thus its major goals are to support coalition partners on very significant legislation (e.g., marriage equality) and to be a watchdog for extremely bad legislation that might otherwise not be addressed by other PJC teams (e.g., attacks on access to justice such as the law school clinics bill).

PJC Highlight

Civil Marriage Protection Act

(SB 241 / HB 438)

PJC Position: favorable

Result: Win. House Bill passed.

The Civil Marriage Protection Act is historic and landmark legislation that finally passed this session after a many-years' struggle. The PJC supported a large coalition and the Governor that finally succeeded in securing passage of this civil marriage equality law. The bill, which eliminates the provision in Maryland law that had defined marriage as between a man and a woman, now heads to a referendum on the November ballot.

CIVIL RIGHTS/ OTHER BILLS

Repeal Right to Counsel at Bail Hearings (SB 422)

PJC Position: unfavorable

Result: Mixed result. Compromise bill passed.

This was one of a number of bills introduced to respond to the Court of Appeals' January 4, 2012, decision in *DeWolfe v. Richmond*, in which the Court held that there is a statutory right to counsel at initial bail proceedings under the Maryland Public Defender Act. Legislators responded with efforts to repeal the portion of the Act on which the Court's decision was based, and the PJC participated in an opposition coalition. The result was a compromise bill that repealed the requirement for representation at initial bail determinations but made other significant improvements to the Act and bail proceedings, including a citation procedure for minor offenses that will reduce the number of people who face pretrial detention, a clarification and reinforcement of the right to counsel at bail reviews, and a requirement that such bail reviews happen during the current session of the district court or during the next one if the court is not in session at the time of arrest. The latter provision still leaves persons arrested on a Friday night to face 3 or 4 days in jail before a counsel-assisted bail review, so the compromise has its weak points. There is also a provision for a task force (to which the PJC has been appointed) to study the issue and requirements for specific data collection to determine whether further improvements to the law are necessary.

Repeal Right to Counsel at Bail Hearings (SB 165)

PJC Position: unfavorable

Result: Win. Bad bill died in committee.

See SB 422.

Repeal Right to Counsel at Bail Hearings (HB 261)

PJC Position: unfavorable

Result: Win. Compromise bill passed.

See SB 422.

The Public Justice Center 2012 Legislative Report

Exception to Right to Counsel at Bail Hearings (HB 112)

PJC Position: unfavorable

Result: Win. Bad bill died in committee.

See SB 422.

Maryland Marriage Protection Act (HB 474)

PJC Position: unfavorable

Result: Win. Bad bill died in committee.

This bill would have created a constitutional amendment defining marriage as being between one man and one woman. PJC lobbied against this bill and in favor of the Civil Marriage Protection Act, which was the main focus of our lobbying around marriage equality in Maryland.

Applying Discrimination Law and Remedies to Websites (SB 278 / HB 183)

PJC Position: favorable

Result: Loss. Good bill defeated.

The PJC supported the civil rights coalition behind this bill to modernize the state's public accommodations anti-discrimination laws by applying them to business web sites and providing for a private right of action to enforce them. Unfortunately, this bill failed in the House.

Providing a Private Right of Action in Maryland's Discrimination Laws (SB 491 / HB 287)

PJC Position: favorable

Result: Loss. Good bill defeated.

The PJC supported a civil rights coalition behind this bill to modernize the state's public accommodations anti-discrimination laws by providing for a private right of action to enforce them. Unfortunately, the House bill received an unfavorable report from the House committee.

Law School Clinics May Only Represent Individuals (HB 751)

PJC Position: unfavorable

Result: Win. Bad bill withdrawn.

This bill would have restricted University of Maryland law school clinics from representing anyone other than individuals. It was an attempt to thwart the clinic's ability

to use class, group, amicus, policy and other actions to advocate for its clients. The particular purpose is to keep the Environmental Clinic from suing the poultry industry on the Eastern Shore. The PJC organized the Maryland Legal Services Executives to sign a group letter in opposition, and coordinated with the law schools, but the bill was withdrawn before a hearing was conducted.

Task Force to Study Implementing a Civil Right to Counsel in Maryland (SB 280 / HB 265)

PJC Position: favorable

Result: Loss. Good bill received unfavorable report in Senate Committee; House bill withdrawn.

This task force bill had been put forth by the Maryland Access to Justice Commission as a vehicle for beginning a dialog among Maryland legislators about civil right to counsel but it got upstaged. Although there was no opposition, the Senate Judicial Proceedings committee gave it an unfavorable report by one vote, apparently because of the huge and urgent focus on *DeWolfe v. Richmond* and the need to address that decision and additional funding for the Office of Public Defender's new obligation to provide representation at bail reviews across the state.

JUST KIDS OVERVIEW

The Just Kids Partnership (“Just Kids”) is a collaboration between the Public Justice Center (PJC) and Community Law in Action (CLIA) whose goals are to:

- 1) reduce the number of youth who are charged and tried as adults;
- 2) advocate for policies that transfer fewer youth to the adult criminal justice system; and
- 3) increase the number of safe and effective community-based programs and practices that serve youth who are accused of serious offenses.

Just Kids and Advocates for Children and Youth, seeing the need for greater coordination of juvenile justice advocacy efforts, held weekly conference calls among advocates to discuss proposed legislation likely to affect youth in the juvenile justice and adult criminal systems and to share information. Advocates were made aware of and to the extent possible supported each other’s bills and mobilized against the bad bills. Just Kids plans to work with ACY and the other advocates to build a more nuanced and comprehensive juvenile justice advocacy platform/agenda over the next year in preparation for the 2013 session.

PJC Highlight

Expungement of Criminal Charge Transferred to Juvenile Court

(SB 678 / HB 708)

PJC Position: favorable

Result: Win. Good bill passed.

This bill changes the provisions relating to the expungement of certain criminal records by authorizing a person to file, and requiring a court to grant, a petition for expungement of a criminal charge transferred to the juvenile court after conviction (also called a second chance transfer). For some reason this type of transfer was overlooked when expungement provisions were passed in previous years; this bill rectifies the error and codifies recent case law. This is a great change for youth charged as adults who are handicapped in terms of job and educational opportunities due to their adult criminal conviction record, even though their cases were ultimately transferred to juvenile court, where the record is confidential. Now more young people will have greater opportunity to rebuild their lives without the stigma of an adult criminal record.

JUVENILE JUSTICE BILLS

Juveniles Charged as Adults Should Be Held Pre-Trial in Juvenile Facilities (SB 761 / HB 1122)

PJC Position: favorable

Result: Mixed result. Bill passed with amendments.

Conceived by the Just Kids Partnership, this bill as originally drafted would have created a presumption that youth charged as adults were to be held in juvenile detention facilities run by the Department of Juvenile Services (DJS) instead of in adult jails, except in specified exceptional circumstances. The Just Kids Partnership – a coalition of the PJC and Community Law in Action (CLIA) – led the campaign to pass this bill. Just Kids drafted the initial legislation, built a base of support for the policy change through extensive grassroots and grassroots organizing, spoke extensively with legislators, submitted written and oral testimony, coordinated additional written and oral testimony, and developed a series of fact sheets and talking points about the pretrial detention of youth with adults and youth in the adult system. The bill was well-received by many legislators in both houses, but there was an extremely high fiscal note and concerns about DJS's capacity to handle this population. As a result, the bill was amended into a reporting bill that requires DJS to report on its efforts to "work toward ensuring that youth charged as adults can be detained in juvenile detention facilities." The report will include significantly more information about youth in the adult system than Just Kids has been able to gather in the past, and Just Kids will build on the success of this bill as it continues its policy reform campaign next session.

Placement of a Youth Charged as an Adult To be Determined by Court at Bail Hearing (HB 1142)

PJC Position: favorable with amendments

Result: Loss. Good bill died in committee.

This bill would have required that a court routinely determine whether a youth charged as an adult shall be detained in an adult detention facility or juvenile justice facility at a bail review hearing, if the defendant is a minor and the court has ordered continued detention. Current law provides for such a determination on motion of

the defendant at bail review, but this is still not a well-known provision and the requests for such a determination are only routinely made in Baltimore City cases where the Office of the Public Defender is the defense counsel. This bill would have made such a determination routine, created some uniformity throughout the state, and hopefully pulled more eligible youth out of adult jails pending trial. Unfortunately it died in committee.

Police Must Notify Parent or Guardian When Juvenile is Arrested or Jailed as an Adult (HB 1138)

PJC Position: favorable

Result: Win. Good bill passed with amendments.

This bill, conceived of by the University of Maryland Community Justice Clinic, will require a police officer who arrests a youth and charges him or her as an adult to make a reasonable attempt to notify the minor's parent/ guardian of the charge within 48 hours. This changes current law which had no such requirement with regard to youth charged as adults. Indeed, in some counties, parents might not know about the arrest and jailing of their child if s/he was arrested and charged as an adult. PJC supported this bill through the Just Kids Partnership and helped the students who proposed the bill prepare oral testimony for the hearing.

Allowing Juvenile to Be Sentenced Both as an Adult and as a Juvenile (HB 798)

PJC Position: unfavorable

Result: Win. Bad bill withdrawn.

This bill, a repeat of a bill that was withdrawn last year before its hearing, would have created a blended sentencing option for youth charged as adults, whereby a criminal court prosecuting a child would be able to impose simultaneously a juvenile disposition and an adult sentence. The court would have been able to order the child to complete the juvenile disposition and suspend the adult sentence and would have had broad authority to take any series of discretionary actions if the youth committed a new offense or violated a condition of the suspended adult sentence. Just Kids researched the effects of blended sentencing schemes in other states and found that such systems tend to widen the net and send more youth into the adult system. As a result, Just Kids coordinated opposition to the bill.

The Public Justice Center 2012 Legislative Report

Stop the New Youth Jail -- Redirect Funds to Public School Construction (HB 1283)

Result: Loss. Good bill defeated.

See HB 1137.

Juvenile Detention Facilities Moratorium (HB 1137)

PJC Position - Favorable

Result: Loss. Good bill defeated.

HB 1137 bill would have resulted in a halt to any further progress on the design and construction of a new youth detention center in Baltimore City until a task force had conducted a study on implementing the scenarios in the report from the National Council on Crime and Delinquency (NCCD). It also would have reallocated jail monies to school construction. Although HB 1137 and HB 1283 both received an unfavorable report, the hearing testimony and extensive advocacy by the Alliance to Stop the Youth Jail led to increased skepticism among the committees regarding the need for a new youth jail and a slow but evolving understanding of the ineffective and harmful policies and practices that would be reinforced by continued funding of a new youth jail.

Capital Budget Bill – Funding for Proposed Youth Detention Facility (SB 86/ HB151)

PJC Position: unfavorable

Result: Mixed Result.

Just Kids, as one of the leaders of the Alliance to Stop the Youth Jail, continues to lobby against the construction of a new jail in Baltimore City for the pretrial detention of youth charged as adults and advocate for amendments to the capital budget bill de-authorizing capital funding for this project. Although the jail was not defunded, language was included in the capital budget that holds the release of preauthorized funding until the Department of Public Safety and Correctional Services submits a report to the budget committees evaluating the option renovating the currently vacant Baltimore Pre-Release Unit for women in order to accommodate the youth-charged-as-adult population.

IMMIGRANTS' RIGHTS OVERVIEW

The goal of the Immigrants' Rights Project is to develop strategies to create systemic change for Maryland's immigrant communities via impact litigation, legislation and community education in the following areas: unpaid wage claims, consumer law issues, housing law, and language access to state courts, programs and agencies. The Project works in collaboration with CASA de Maryland, SEIU, the ACLU, as well as several labor unions. This year the Project is focused on litigation on behalf of immigrant workers and defeating legislation harmful to immigrant communities.

IMMIGRANTS BILLS

Requiring the Use of E-Verify in State Contracts and Grants (HB 82)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

There were a number of bills submitted this session that would have required the use of E-Verify in various employment contexts. E-Verify is a free, Internet-based system that businesses can use to check the employment eligibility of their employees. All employers are already required to verify their employees' employment eligibility upon hiring with an I-9 form, but use of the E-Verify system is still mostly voluntary. E-Verify is required for employers with federal contracts; some states have also passed laws requiring use of E-Verify by all employers. The PJC and other advocacy groups

oppose the mandatory use of E-verify because of significant problems with the system. Database errors resulting from name changes due to marriage or divorce, problems with hyphenated names and errors related to naturalization cause U.S. and authorized workers to erroneously lose their jobs or miss out on opportunities for work. In addition, the vast majority of employees who will be impacted by an E-Verify error are immigrants, persons of color, and women, meaning that those groups of workers are most at risk of losing their jobs even where they are U.S. citizens or otherwise authorized to work in the U.S. PJC worked with allies including CASA de Maryland, SEIU, and the ACLU to oppose these bills, which all received unfavorable committee reports.

Requiring the Use of E-Verify on State Contracts and Grants (HB 344)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

See HB 82.

Requiring the Use of E-verify in State Transportation Projects (HB 345)

PJC Position: unfavorable

Result: Win. Bad defeated.

See HB 82.

"Better MD Immigration Reform" – Requiring the Use of E-Verify for Specified Contractors and Grantees (HB 355)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

See HB 82.

Unauthorized Alien Defendants - Nullity of Bail Bonds (HB 551)

PJC Position: favorable

Result: Loss. Good bill defeated.

This bill attempted to address an issue that was a con-

The Public Justice Center 2012 Legislative Report

cern in Maryland's immigrant communities. Where a defendant posts a bail bond for his/her release, but is then transferred to ICE custody for deportation proceedings, the defendant loses the money that s/he posted. Under HB 551, where a defendant is taken into custody by ICE because of the defendant's immigration status, the bond would have been null and void, meaning that the bond amount would have been returned to the defendant. PJC collaborated with CASA de Maryland in support of this bill, which ultimately died in the Senate.

Public Benefits - Proof of Lawful Presence (HB 388)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill would require that adults provide proof of lawful presence in the United States before receiving public benefits. PJC opposed this bill because not only does it create an additional, unnecessary barrier to public benefits, but that barrier would disproportionately affect senior citizens, women, and people of color because they are less likely to have ID.

Foreign Language Interpreters - Assessment of Costs to the Party Requesting the Interpreter (HB 703)

PJC Position: unfavorable

Result: Win. Bad bill defeated.

This bill would have allowed a court to charge a party in a case for the use of a foreign language interpreter. Because this creates an unfair barrier to justice for non-English speaking litigants, the PJC opposed the bill and recruited written testimony from other advocates through the Maryland Legal Aid Bureau Language Access Task Force.

The Public Justice Center 2012 Legislative Report

HEALTH OVERVIEW

A primary objective of the PJC's Health Rights Project is to protect and expand the coverage of Medicaid, the health plan for people living in poverty. During the 2012 Session, PJC supported efforts of partners to ensure that bills implementing federal healthcare reform — the Affordable Care Act — would balance the interests of vulnerable populations and consumers with the interests of the other stakeholders, such as insurance providers, brokers, and third party administrators concerned with healthcare reform.

PJC's Health Rights Project continues to work with the Get it Right Team to influence healthcare reform implementation in Maryland so that consumer advocates are heard throughout the implementation process and to ensure that healthcare reform in Maryland benefits all Marylanders. PJC looks forward to participation in future stakeholder session as Maryland continues in its role as a national leader in healthcare reform implementation.

PJC also monitored various health related bills proposed this session that focused on reforms to Maryland's Medical Assistance program, particularly those designed to address longstanding delays in determining eligibility for Medical Assistance for long term care and Senate Bill 72, a bill which would allow youth living separate and apart from their parents or guardians, i.e. homeless youth, the capacity to consent to routine medical and dental services. While the bills attempting to address Medicaid delays died in committee in part due to the extremely high fiscal notes that accompanied them, SB 72 passed.

HEALTH BILLS

Maryland Health Benefits Act of 2012 (SB 238 / HB 443)

PJC Position: favorable with amendments

Result: Win. Good bill passed with amendments.

The Maryland Health Benefits Act of 2012 is a major piece of legislation that defines and sets up the functions of the Exchange, Maryland's new health insurance marketplace. The PJC signed on to suggested amendments to the bill, many of which were ultimately adopted. The legislation creates the framework for, among other things, 1) a strong Navigator program that is responsive and community based — so as to reach underserved populations to access the health insurance coverage needed; 2) a consumer-friendly SHOP (Small Business Health Options Program) exchange that will allow employees of small businesses to finally access affordable coverage, and 3) qualified health plans within the Exchange including provisions that explicitly require compliance with the Federal Mental Health Parity and Addiction Equity Act of 2008.

Consent by Minors for Care (SB72)

PJC Position: favorable

Result: Win. Good bill passed with amendments.

SB 72, as amended, will apply to a very small number of minors in Maryland who are disconnected from their families and in need of medical and dental care. This bill will allow a youth who is homeless and living apart from family to obtain routine medical care (e.g., treat the flu, a sprained ankle, asthma, or other chronic health conditions) or dental care (e.g., fill a cavity or provide a teeth cleaning) without a parent's consent. The PJC signed on to testimony submitted by Healthcare for the Homeless in recognition that this bill will remove a significant barrier to providing routine health and dental care to a very vulnerable group of youth.