



The Judiciary Review

Report from the Senate Judiciary Committee (D)

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MEDICAL MALPRACTICE DATA CONTINUES POSITIVE TREND

The Pennsylvania Supreme Court recently released its annual statistical data concerning medical malpractice filings and verdicts. The data for 2005 demonstrates a continued positive trend showing fewer medical malpractice case filings and decreased verdicts when compared to the “crisis” years of 2000-2002. In fact, 2005 had the fewest number of medical malpractice actions filed, the fewest number of jury verdicts and the fewest number of verdicts exceeding \$1.0 million over the six-year period studied.

In 2003, the Supreme Court began a systematic collection of data from each of Pennsylvania’s sixty-seven counties regarding case filings, jury verdicts and non-jury verdicts in medical malpractice actions. The effort began by “reaching back” to filings for the period between 2000 and 2002 to establish a baseline.

The data over the last three years appears to demonstrate a positive trend that as the result of initiatives taken by the General Assembly, the Supreme Court and the Governor’s office to address the medical malpractice crisis. Those efforts resulted in the enactment of the MCARE Act (Act 13-2002) and several important changes to the Rules of Civil Procedure by the Supreme Court. The cumulative effect of those actions have produced positive results in the last three years. Most recently, the data provided by the Court shows the following:

- Total Medical Malpractice filings for 2005 numbered 1698

statewide—down 37.8% compared to the period 2000-2002.

- Total Medical Malpractice filings in Allegheny County numbered 324, down 18.2 percent compared to the period 2000-2002.
- Total jury verdicts in 2005 numbered 223 statewide.
- Defense verdicts in jury trials for 2005 numbered 179 or 80.3% of the jury verdicts rendered.
- The number of jury verdicts in excess of \$1.0 million numbered 13 cases or 5.8% of the total.
- The number of non-jury verdicts in 2005 numbered 14.
- Defense verdicts in non-jury trials in 2005 numbered 12 or 85.7% of the jury verdicts rendered.
- The number of jury verdicts in excess of \$1.0 million numbered 0. (The two verdicts were in amounts less than \$500,000).

A complete review of the data may be found at the AOPC website under the Medical Malpractice tab at <http://www.courts.state.pa.us>

Eminent Domain Revisions Completed and Sent to Governor

Two bills, revising the use of eminent domain have been approved by the General Assembly and sent to the Governor for his signature.

Senate Bill 881, Printer’s No. 1738 amends the Eminent Domain Code providing for certain limitations on the use of eminent domain. Under the measure, the use of eminent domain is prohibited by any condemner to take private property in order to use it for private

purposes. Certain exceptions are included.

House Bill 2054, Printer’s No. 3848 amends Title 26 (Eminent Domain), Title 42 (Judiciary and Judicial Procedure) and Title 51 (Military Affairs) adding provisions relating to eminent domain.

*Current Status—Governor’s Desk
Last Day for Action—May 6, 2006*

Senate Judiciary Committee

The following legislation was recently reported by the Senate Judiciary Committee.

■ **Senate Bill 631** **Printer’s No. 1677**

The legislation amends the judicial code to provide for the consideration of mental retardation in capital cases both in the prosecution stage and in the post-conviction relief stage.

The legislation is applicable to all persons currently sentenced to death and to all capital proceedings occurring on or after the effective date of this act. The post conviction petition alleging mental retardation may be filed or amended within one year of the effective date of this act.

The legislation prohibits the imposition of the death penalty for a defendant convicted of first-degree murder who is determined to be mentally retarded. In a first-degree murder prosecution, the issue of mental retardation must be submitted to the court in a pre-trial motion filed ninety (90) days prior to the date of trial alleging that there is reasonable cause to believe that the defendant is mentally retarded.

The court is required to order psychological or psychiatric examination of the defendant prior to the evidentiary hearing. The discovery rights of the Commonwealth relating to the pre-trial hearing on mental retardation are the same as currently available including the right to experts and production of reports.

To establish that the defendant is a person with mental retardation the following must be proved at the pretrial hearing by a preponderance of evidence:

- The individual has significant sub-average intellectual functioning evidenced by an intelligence quotient of 70 or below on an individually administered I.Q. test.
- The mental retardation manifested in the individual prior to age 18.
- The mental retardation exists concurrently with impairment in adaptive behavior in two or more of the following adaptive skill areas; communication, self care, home living, social/interpersonal skills, use of community resources, self-direction, health and safety, functional academic skills, leisure and work.

At the pre-trial evidentiary hearing, if the court determines that the defendant is a person with mental retardation it shall declare that the person is ineligible for the death penalty and subject to life imprisonment if convicted. If the court determines that the person is not a person with mental retardation, the district attorney may certify the case as a capital case with the possibility that either the death penalty or life imprisonment without parole may be imposed.

Current Status: Senate Calendar—Third Consideration

■ **Senate Bill 1131**
Printer's No. 1678

The legislation amends "Megan's Law" to further provide for information that is posted on the State Police Internet website regarding sex offenders, lifetime registrants and sexually violent

predators (SVPs).

The legislation provides that the Sex Offenders Assessment Board (SOAB) is required to prepare a concise description of the offense committed include:

- Victim's age and gender.
- Whether the offense was committed during daylight or nighttime.
- If the offenders was a family or household member.
- If a weapon or force was used or threatened to be used in the commission of the offense.
- Whether the offense included unauthorized entry of a room, building or vehicle by the offender.
- Any prior convictions by the offender that would subject him/her to registration under the subchapter.

The legislation also changes the information that is provided on the Internet website maintained by the State Police. Sexually Violent Predators, Lifetime Registrants and other registrants would be required to list the municipality of their residence rather than using just a city address. It would also require that the information include the place of confinement if the registrant is still incarcerated. Further, it requires the posting of all known aliases. The information would also include the name of any school in which the SVP or sex offender is enrolled rather than just the address, a description of the offense prepared by the SOAB and the actual or the earliest possible date of release of the offender.

Current Status: Senate Calendar—Third Consideration

■ **Senate Bill 1150**
Printer's No. 1679

The legislation establishes a new offense under the Crimes Code. To provide that a person commits a misdemeanor of the third degree if a person engages in protest activities within five hundred (500) feet of any cemetery, mortuary, church or other location being used for a commemorative service within one hour before, during or after such service. In addition to criminal penalties, the bill authorizes a court to order injunctive relief as well as damages and punitive damages for a violation of this section. The legislation defines commemorative services and protest activities.

Current Status: Senate Calendar—Third Consideration

■ **Senate Bill 1153**
Printer's No. 1680

The legislation provides that in order for a document that is filed with the Recorder of Deeds to constitute constructive notice, it must satisfy the following conditions:

- It must be recorded.
- A uniform parcel identifier must be included in counties where it is applicable.
- The document must be indexed properly as to the party in all appropriate indices and in the daily log.

Current Status: Senate Calendar—Third Consideration

Executive Nominations

Julia Hall, Ph.D. nominee to the Pennsylvania Board of Pardons.

STATE SENATOR JAY COSTA

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