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### Pennsylvania Legal Update

Summer 2009

#### Juvenile Court Oversteps Bounds



Pennsylvania appellate judges have described the express purpose of the Pennsylvania Juvenile

Act as that of "seeking treatment, reformation and rehabilitation, and not to punish. To this end, the juvenile court system was designed to provide a distinctive procedure and appropriate setting to deal with the problems of youth." Juvenile proceedings are closed to the public to protect the privacy of juveniles. However, all juveniles have an absolute right of appeal from a closed-hearing adjudication of delinquency.

In a recent case, a school girl was charged with criminal mischief and simple assault because she rushed through the right side of a set of double glass doors as she left school to catch her bus at the end of the school day. The girl passed a special needs student (seriously handicapped by scoliosis and spina bifida) who was accompanied by a service dog. The door that the girl rushed through struck the dog on its flank, knocking it over, and also struck the special needs student in the back. The special needs student fell on top of the dog. The dog suffered a torn liga-

ment from the incident, and the special needs student required a course of over-the-counter pain relievers and chiropractic treatment.

Admonishing the prosecution for bringing criminal juvenile charges for the incident, the appeals court found that the girl charged with the crimes was a good

student and was well liked by her teachers. She had received academic awards on several occasions and was planning to attend college. She had been employed, but had stopped working at her mother's request in order to improve her

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#### Home Improvement Laws

Recently, Pennsylvania laws regulating home improvement construction contractors changed dramatically with the passage of the Home Improvement Consumer Protection Act. The Act goes into effect on July 1, 2009. Any person or business involved in home improvement work must learn more about the Act.

The Act requires that any person or business that provides home improvement services and that earns \$5,000 or more a year from those home improvement services must register with the Commonwealth of Pennsylvania and must provide proof of insurance. "Home improvement" is very broadly de-

finied in the Act to include all repairs and demolition performed on private land and at private residences. The Act does not apply to any new home construction. The Act includes some narrow exclusions for certified landscapers and for emergency work.

By July 1, 2009, home improvement construction contractors must register with the Bureau of Consumer Protection section of the Office of the Attorney General. Go to [www.attorneygeneral.gov](http://www.attorneygeneral.gov) to register. The registration process requires that a contractor disclose his

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#### Property Tax Rebate

This year, you may be eligible for a rebate on your property taxes, even if you don't own taxable real estate—but you must act quickly to collect the rebate. What will surprise you the most is that you don't have to own real estate to receive a rebate. Renters and homeowners are eligible for the property tax relief. If you paid property taxes or paid rent in 2008 and you are age 65 or older, or you are a widow or widower age 50 or older, or you are age 18 or older and qualify as disabled, you may be eligible for a property tax rebate in 2009. With

came eligible. The maximum income for renters is still \$15,000 annually. Because increased gambling revenues may trigger another expansion of the program, watch the news and check for changes this year—the household income threshold could be increased once again.

All applicants may exclude one-half of their Social Security income in their efforts to meet the income guidelines. The maximum rebate for homeowners is \$650, and the maximum rebate for renters is \$500. The rebates are not automatic—eligible homeowners and renters must apply in writing to the

Pennsylvania Department of Revenue by filling out a simple form. The deadline to apply for a rebate for 2008 property taxes is June 30, 2009. Applications must be post-marked no later than that date to be considered. Don't wait—last year, the deadline was extended to December 31, but there is no guarantee that the deadline will be extended this year.

Eligible homeowners and renters can apply online. Simply go to [www.revenue.state.pa.us](http://www.revenue.state.pa.us). To receive an application by mail, call 1-888-222-9190. Don't delay another day!

*The Department of Revenue recently disclosed that over 100,000 eligible taxpayers did not request their rebates in 2008.*

#### Driving Under the Influence

The combined effect of alcohol and drugs can cause unexpected symptoms. A Pennsylvania woman arrested and prosecuted for driving under the influence (DUI) recently tried to avoid conviction by claiming that she became unexpectedly impaired when a pain "patch" that she was wearing heightened the effects of her alcohol intake. She admitted that she had failed to read the pain patch label, and claimed that her doctor did not advise her to avoid alcohol while using the patch.

#### Involuntary Intoxication

Pennsylvania has not yet formally recognized the defense of "involuntary intoxication." Several other states have identified cer-

tain circumstances where a person's impairment may be excusable. These circumstances include where the intoxication was caused by force, duress, or fraud, and where the intoxication was an innocent mistake. An innocent mistake can occur when a person takes an alcoholic drink or a narcotic pill under the mistaken belief that the drink is nonalcoholic or that the pill is a simple aspirin. Excusable circumstances found by other states also include occasions where the person suffers an unexpected over-reaction to a legal intoxicant or has an unexpected impairment from a properly prescribed drug.

Pennsylvania courts have an-

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## Counseling for Injured Workers

The Pennsylvania Workers' Compensation Act requires that employers maintain insurance to compensate employees injured on the job. Workers' compensation benefits include partial payment of lost wages and coverage for medical and health-care costs. The Act includes licensed psychologists, licensed psychiatrists, and licensed therapists as covered health-care providers.

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*The referral from the woman's orthopedic doctor was critical to her entitlement to receive coverage for her counseling.*

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A Pennsylvania woman recently won attorney's fees when she challenged the denial of coverage for counseling that she received. The woman was injured while working; she suffered cervical and shoulder injuries as well as lower back vertebrae and nerve damage. She settled with her employer's insurance company for a lump-sum wage payment. The settlement terms included continued coverage for her medical expenses related to the work injuries.

Depression, limited physical abilities, and a lack of mental alertness stemming from pain medica-

tion led the woman to seek counseling from a group of counselors that her primary orthopedic doctor recommended. The employer's insurance company denied all payments for the counseling, claiming that there was not a reasonable connection to the woman's work injuries, and that the counselors were not qualified health-care providers and did not submit adequate written reports.

On appeal, the woman won full coverage for the counseling services. The appeals court found that the depression, physical limitations, and pain medication side effects that the woman related to her counselors were credible and were directly related to her work injuries. The court clarified that neces-

sary counseling services can be provided by psychologists, psychiatrists, or other "licensed" therapists, including licensed social workers.

The court declined to issue a penalty against the insurance company but did award the woman her attorney's fees.

The referral from the woman's orthopedic doctor was critical to her entitlement to receive coverage for her counseling. Injured workers who are referred by their doctors to counseling can receive workers' compensation benefits as long as the counselor is licensed.

If you are an injured worker in need of counseling, carefully check the credentials of any counselor that you consult.

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## DUI

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nounced that if the defense of involuntary intoxication is to be adopted in Pennsylvania law, our legislature should address the issue. The courts have also observed that defendants will have the burden of proving the defense. In the case involving the woman who used the pain patch, the trial court and the appeals court rejected the woman's defense largely because

she did not call expert witnesses and failed to prove that her reaction was unique, unusual, or unexpected.

While taking prescription or over-the-counter drugs, be sure to avoid any substances, including alcohol or other medications, that could render you impaired. Unless your physical reaction to a combination of drugs and alcohol is documented as highly unusual, you cannot raise involuntary intoxication as a defense to DUI charges.

*Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

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## Home Improvement

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or her name, home and business addresses, age, driver's license number, Social Security number, and all prior business names under which the contractor ever operated. Partnerships and corporations engaged in home improvements must also register and must disclose the identities of the major partners and shareholders. All individuals, partnerships, and corporations must disclose criminal histories and previous license revocations. All home improvement construction contractors now must maintain \$50,000 in insurance.

The Act also provides that all home improvement construction contracts in Pennsylvania must include the approximate start and finish dates, full contact information for the contractor, a complete description of the work to be done, including the materials to be used and a set of specifications, and the identities of any subcontractors that the contractor intends to use. Contracts must include the Bureau's toll-free telephone number and a three-day right of rescission.

Home improvement construction contracts that require arbitration of claims must set out the arbitration clause terms in 12-point, bold-face type, in capital letters, on a separate page. The arbitration clause must be separately signed by the contractor and the homeowner. If certain terms are included in a home improvement construction contract, the contract is completely "voidable" by the owner, meaning that the owner can, at any time, reject the contract as void. Clauses that make such construction contracts voidable by homeowners include those that (1) waive building

codes, (2) award attorney's fees to contractors, (3) waive rights under the Act, and (4) waive a jury trial.

The Act establishes the crime of "home improvement fraud." Contractors who violate the Act, or make false promises, or misuse down payments can be charged criminally and, if convicted, may be fined and imprisoned. Jurisdiction for criminal prosecution lies with the local county district attorney.

A contractor may be liable to a homeowner for triple damages and attorney's fees incurred by the homeowner if the contractor engages in any "prohibited acts." The long list of prohibited acts includes failing to refund down payments when properly requested to do so

by the homeowner, requiring excessive down payments, securing false certificates of occupancy from local code officers, abandoning a job, and/or deviating from plans or specifications.

The Pennsylvania Home Improvement Consumer Protection Act now joins the previously enacted Unfair Trade Practices and Consumer Protection Law and the Contractor and Subcontractor Payment Act to regulate the business of home construction and home improvement in Pennsylvania. Before entering into a home improvement contract, make sure that you know your rights and responsibilities under these laws.

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## Juvenile Court

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grades. She had never before had contact with the police, was reportedly drug- and alcohol-free, did not smoke, and was not sexually active. The court further noted that the girl resided with her mother, did specific chores at home, and observed a curfew of 10 p.m. She was in need of and received psychological services for anxiety, depression, and insomnia only after the commencement of the criminal prosecution.

The court dismissed the charge of criminal mischief because the crime requires proof of intentional or reckless conduct that causes more than \$500 in damages. No such damages were proved by the prosecution. The court went on to dismiss the simple assault charge,

finding that criminal liability requires "gross criminal negligence," and that the girl's rushing for her bus did not amount to gross criminal negligence.

Acknowledging that the girl acted impulsively and "was at least inconsiderate, at worst callous," the court held that none of those lapses rose to the level of criminality.

Increasingly, schools and law enforcement refer children to juvenile court. If your family becomes involved in juvenile proceedings, be sure to retain competent counsel to protect your child's rights. Not all careless conduct is criminal, and an adjudication of delinquency can place heavy burdens on a young person. A child in juvenile proceedings should be represented by counsel and should understand his or her right to appeal.