

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 148

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, strike “EMERGENCY BILL”; in line 4, after the first “of” insert “requiring the disclosure of certain reports or records concerning child abuse or neglect under certain circumstances;”; in line 5, after “abuse” insert “or neglect”; in the same line, after “officials;” insert “requiring a local department of social services to provide certain notice and information to certain individuals under certain circumstances;”; in line 10, after “neglect;” insert “authorizing a certain individual to request a contested case hearing under certain circumstances;”; in line 10, strike “authorizing” and substitute “requiring”; strike beginning with “repealing” in line 12 down through “registry;” in line 13; in line 14, after “individuals;” insert “authorizing a central registry to contain certain information except under certain circumstances; authorizing the Department of Human Resources or a local department of social services to identify an individual as responsible for abuse or neglect in a central registry under certain circumstances; requiring the Department to remove the identification of an individual as responsible for abuse or neglect from the name of the individual under certain circumstances; establishing that, except under certain circumstances, information in a central registry may not be used as a sole basis for responding to certain requests; establishing a certain criminal penalty; authorizing the Secretary of Human Resources to adopt certain regulations;”; in line 15, strike “this Act an emergency measure” and substitute “certain stylistic and clarifying changes; defining certain terms”; after line 21, insert:

“BY repealing and reenacting, without amendments,
Article 88A - Department of Human Resources
Section 6(e)
Annotated Code of Maryland
(1998 Replacement Volume)”;

in line 24, after “Section” insert “5-701,”; in the same line, strike “and” and substitute a comma; in the same line, after “5-707” insert “, and 5-714”; and in line 29, strike “5-706.2, 5-714, and 5-715”

(Over)

and substitute “5-706.2 and 5-715”.

On page 2, strike in their entirety lines 2 through 6, inclusive.

AMENDMENT NO. 2

On page 2, in line 12, strike the first “and” and substitute a comma; in the same line, after “subtitle,” insert “AND THIS SECTION,”; in line 15, strike “may be disclosed only”; in line 16, after “(1)” insert “SHALL BE DISCLOSED:”; in line 21, after “disclosure;” insert “AND”; in line 22, after “(2)” insert “MAY BE DISCLOSED ON REQUEST:

(I)”;

and in lines 26, 30, and 34, strike “(3)”, “(4)”, and “(5)”, respectively, and substitute “(II)”, “(III)”, and “(IV)”, respectively.

On page 3, in lines 1, 5, and 8, strike “(6)”, “(7)”, and “(8)”, respectively, and substitute “(V)”, “(VI)”, and “(VII)”, respectively; and after line 12, insert:

“(e) Any offense against the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding \$500 or imprisonment for not exceeding 90 days, or both, in the discretion of the court.”.

AMENDMENT NO. 3

On page 3, after line 13, insert:

“5-701.

(a) In this subtitle the following words have the meanings indicated.

(b) “Abuse” means:

(1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or

(2) sexual abuse of a child, whether physical injuries are sustained or not.

(c) “Administration” means the Social Services Administration of the Department.

(D) “CENTRAL REGISTRY” MEANS ANY COMPONENT OF THE DEPARTMENT’S CONFIDENTIAL COMPUTERIZED DATABASE THAT CONTAINS INFORMATION REGARDING CHILD ABUSE AND NEGLECT INVESTIGATIONS.

[(d)] (E) “Child” means any individual under the age of 18 years.

[(e)] (F) “Court” means:

- (1) the circuit court for a county sitting as a juvenile court; or
- (2) in Montgomery County, the District Court sitting as a juvenile court.

[(f)] (G) (1) “Educator or human service worker” means any professional employee of any correctional, public, parochial or private educational, health, juvenile service, social or social service agency, institution, or licensed facility.

(2) “Educator or human service worker” includes:

- (i) any teacher;
- (ii) any counselor;
- (iii) any social worker;
- (iv) any caseworker; and
- (v) any probation or parole officer.

[(g)] (H) “Family member” means a relative by blood, adoption, or marriage of a child.

(I) “IDENTIFYING INFORMATION” MEANS THE NAME OF:

- (1) THE CHILD WHO IS ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED;
- (2) A MEMBER OF THE HOUSEHOLD OF THE CHILD;
- (3) A PARENT OR LEGAL GUARDIAN OF THE CHILD; OR
- (4) AN INDIVIDUAL SUSPECTED OF BEING RESPONSIBLE FOR ABUSE OR NEGLECT OF THE CHILD.

[(h)] (J) (1) “Health practitioner” includes any person who is authorized to practice healing under the Health Occupations Article or § 13-516 of the Education Article.

- (2) “Health practitioner” does not include an emergency medical dispatcher.

[(i)] (K) “Household” means the location:

- (1) in which the child resides;
- (2) where the abuse or neglect is alleged to have taken place; or
- (3) where the person suspected of abuse or neglect resides.

[(j)] (L) “Household member” means a person who lives with, or is a regular presence in, a home of a child at the time of the alleged abuse or neglect.

[(k)] (M) “Indicated” means a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur.

[(l)] (N) (1) “Law enforcement agency” means a State, county, or municipal police department, bureau, or agency.

- (2) “Law enforcement agency” includes:

- (i) a State, county, or municipal police department or agency;
- (ii) a sheriff's office;
- (iii) a State's Attorney's office; and
- (iv) the Attorney General's office.

[(m)] (O) "Local department" means the department of social services that has jurisdiction in the county:

- (1) where the allegedly abused or neglected child lives; or
- (2) if different, where the abuse or neglect is alleged to have taken place.

[(n)] (P) "Local State's Attorney" means the State's Attorney for the county:

- (1) where the allegedly abused or neglected child lives; or
- (2) if different, where the abuse or neglect is alleged to have taken place.

[(o)] (Q) "Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.

[(p)] (R) "Neglect" means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or
- (2) mental injury to the child or a substantial risk of mental injury.

[(q)] (S) “Police officer” means any State or local officer who is authorized to make arrests as part of the officer's official duty.

[(r)] (T) “Record” means the original or any copy of any documentary material, in any form, including a report of suspected child abuse or neglect, that is made by, received by, or received from the State, a county, or a municipal corporation in the State, or any subdivision or agency concerning a case of alleged child abuse or neglect.

[(s)] (U) “Report” means an allegation of abuse or neglect, made or received under this subtitle.

[(t)] (V) “Ruled out” means a finding that abuse, neglect, or sexual abuse did not occur.

[(u)] (W) (1) “Sexual abuse” means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.

(2) “Sexual abuse” includes:

(i) incest, rape, or sexual offense in any degree;

(ii) sodomy; and

(iii) unnatural or perverted sexual practices.

[(v)] (X) “Unsubstantiated” means a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out.”.

AMENDMENT NO. 4

On page 3, in line 17, strike “person” and substitute “INDIVIDUAL”; in line 18, strike “and”; and in line 20, after “SECTION” insert “; AND”

(3) IF THE INDIVIDUAL HAS BEEN FOUND RESPONSIBLE FOR INDICATED ABUSE OR NEGLECT, THAT THE INDIVIDUAL MAY BE IDENTIFIED IN A CENTRAL

REGISTRY AS RESPONSIBLE FOR ABUSE OR NEGLECT UNDER THE CIRCUMSTANCES SPECIFIED IN § 5-714(E) OF THIS SUBTITLE”;

in line 22, strike “A person” and substitute “AN INDIVIDUAL”; in the same line, after “HEARING” insert “TO APPEAL THE FINDING”; in line 25, strike the brackets; in the same line, strike “30”; in line 24, strike “of social services”; and in lines 34 and 36, in each instance, strike “person” and substitute “INDIVIDUAL”.

AMENDMENT NO. 5

On page 4, in line 4, strike “person” and substitute “INDIVIDUAL”; in line 16, strike “A PERSON” and substitute “AN INDIVIDUAL”; in line 18, strike “OF SOCIAL SERVICES”; in lines 21 and 27, in each instance, strike “PERSON” and substitute “INDIVIDUAL”; in line 18, strike “30” and substitute “60”; in line 25, after “SEND” insert “TO”; in the same line, strike “PERSON” and substitute “INDIVIDUAL”:

(I)”;

in the same line, strike “BRIEF”; in line 26, after “RECORD” insert “; AND”

(II) NOTICE OF THE INDIVIDUAL’S RIGHT TO REQUEST A CONTESTED CASE HEARING IN ACCORDANCE WITH PARAGRAPH (4) OF THIS SUBSECTION”;

in line 27, after “(4)” insert “(I)”; in the same line, after “HEARING” insert “IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION”; in line 29, strike “30” and substitute “60”; and after line 29, insert:

“(II) IF THE INDIVIDUAL DOES NOT RECEIVE THE WRITTEN SUMMARY AND NOTICE SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION WITHIN 20 DAYS, THE INDIVIDUAL MAY REQUEST A CONTESTED CASE HEARING.

(III) AN INDIVIDUAL MAY REQUEST A CONTESTED CASE HEARING IN THE CASE OF A FINDING OF UNSUBSTANTIATED ABUSE OR NEGLECT

ONLY AS PROVIDED IN THIS PARAGRAPH.”.

AMENDMENT NO. 6

On page 4, before line 30, insert:

“(D) IN THE CASE OF AN UNEXPUNGED FINDING OF INDICATED OR UNSUBSTANTIATED ABUSE OR NEGLECT MADE PRIOR TO JUNE 1, 1999, THE LOCAL DEPARTMENT SHALL PROVIDE THE INDIVIDUAL WITH AN OPPORTUNITY TO APPEAL THE FINDING IN ACCORDANCE WITH THIS SECTION IF THE INDIVIDUAL:

(1) REQUESTS SUCH AN APPEAL;

(2) HAS NOT BEEN OFFERED AN OPPORTUNITY TO REQUEST A CONTESTED CASE HEARING; AND

(3) HAS NOT BEEN FOUND GUILTY OF ANY CRIMINAL CHARGE ARISING OUT OF THE ALLEGED ABUSE OR NEGLECT.”.

On page 6, strike in their entirety lines 9 through 20, inclusive.

AMENDMENT NO. 7

On page 5, in line 33, strike the bracket.

On page 6, in line 2, strike “the” and substitute “A”; in line 3, strike the first “the” and substitute “A”; and in line 8, strike the bracket.

On pages 6 and 7, strike in their entirety the lines beginning with line 21 on page 6 through line 10 on page 7, inclusive.

On page 6, after line 8, insert:

“(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AND SUBJECT TO SUBSECTION (E) OF THIS SECTION, A CENTRAL REGISTRY MAY CONTAIN IDENTIFYING INFORMATION RELATED TO AN INVESTIGATION OF ABUSE

OR NEGLECT.

(2) A CENTRAL REGISTRY MAY NOT CONTAIN IDENTIFYING INFORMATION RELATED TO AN INVESTIGATION OF ABUSE OR NEGLECT IF:

(I) ABUSE OR NEGLECT HAS BEEN RULED OUT; OR

(II) THE ABUSE OR NEGLECT FINDING HAS BEEN EXPUNGED IN ACCORDANCE WITH § 5-707(B)(1) OF THIS SUBTITLE.

(E) (1) THE DEPARTMENT OR A LOCAL DEPARTMENT MAY IDENTIFY AN INDIVIDUAL AS RESPONSIBLE FOR ABUSE OR NEGLECT IN A CENTRAL REGISTRY ONLY IF THE INDIVIDUAL:

(I) HAS BEEN FOUND GUILTY OF ANY CRIMINAL CHARGE ARISING OUT OF THE ALLEGED ABUSE OR NEGLECT; OR

(II) HAS BEEN FOUND RESPONSIBLE FOR INDICATED ABUSE OR NEGLECT AND HAS:

1. UNSUCCESSFULLY APPEALED THE FINDING IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED UNDER § 5-706.1 OF THIS SUBTITLE; OR

2. FAILED TO EXERCISE THE INDIVIDUAL'S APPEAL RIGHTS WITHIN THE TIME FRAMES SPECIFIED IN § 5-706.1 OF THIS SUBTITLE, TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE, OR THE MARYLAND RULES.

(2) THE DEPARTMENT WITHOUT THE NECESSITY OF A REQUEST SHALL REMOVE FROM THE NAME OF AN INDIVIDUAL DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION THE IDENTIFICATION OF THAT INDIVIDUAL AS RESPONSIBLE FOR ABUSE OR NEGLECT IF NO ENTRY HAS BEEN MADE FOR THAT INDIVIDUAL FOR 7 YEARS AFTER THE ENTRY OF THE INDIVIDUAL'S NAME IN A REGISTRY.

(Over)

(F) (1) EXCEPT FOR INFORMATION ENTERED IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION, INFORMATION IN A CENTRAL REGISTRY MAY NOT BE USED AS A SOLE BASIS FOR RESPONDING TO ANY REQUEST FOR BACKGROUND INFORMATION FOR EMPLOYMENT OR VOLUNTARY SERVICE.

(2) AN OFFICIAL OR EMPLOYEE OF THE DEPARTMENT OR A LOCAL DEPARTMENT WHO RELEASES INFORMATION FROM A CENTRAL REGISTRY IN VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION IS SUBJECT TO THE PENALTY PROVIDED IN ARTICLE 88A, § 6(E) OF THE CODE.

(G) THE SECRETARY OF HUMAN RESOURCES:

(1) SHALL ADOPT REGULATIONS NECESSARY TO PROTECT THE RIGHTS OF INDIVIDUALS SUSPECTED OF ABUSE OR NEGLECT; AND

(2) MAY ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.”.

AMENDMENT NO. 8

On page 7, strike beginning with “is” in line 11 down through “enacted” in line 15 and substitute “shall take effect June 1, 1999”.