

# SENATE BILL 792

D4  
HB 1474/06 – JUD

71r2715  
CF 71r2716

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By: **Senator Kelley**  
Introduced and read first time: February 15, 2007  
Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Child Welfare – Reports of Children at Risk of Abuse or Neglect**

3 FOR the purpose of requiring a person to notify the local department of social services  
4 or the appropriate law enforcement agency if the person has reason to believe  
5 that a child is at substantial risk of abuse or neglect because the child is living  
6 with, is regularly in the presence of, or is in the care or custody of a certain  
7 individual; providing certain exceptions; providing for the receipt and  
8 investigation of a report that a child is at substantial risk of abuse or neglect;  
9 requiring the local department or the appropriate law enforcement agency to  
10 take certain actions within a certain time period after receiving a report;  
11 requiring an investigation to be completed within a certain time period;  
12 authorizing and requiring the local department to take certain actions after  
13 completion of an investigation; authorizing the disclosure of reports or records  
14 concerning child abuse or neglect to certain persons providing treatment or care  
15 to a child who is the subject of a report of a substantial risk of abuse or neglect;  
16 making certain technical and conforming changes; and generally relating to  
17 reports and investigations regarding children at substantial risk of abuse or  
18 neglect.

19 BY repealing and reenacting, with amendments,  
20 Article – Human Services  
21 Section 1–202(c)(1)(v)  
22 Annotated Code of Maryland  
23 (As enacted by Chapter \_\_\_ (S.B. 6) of the Acts of the General Assembly of 2007)

24 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Family Law  
2 Section 5–705.2 and 5–706.1  
3 Annotated Code of Maryland  
4 (2006 Replacement Volume)

5 BY repealing and reenacting, with amendments,  
6 Article – Family Law  
7 Section 5–706.1, 5–707(b), 5–708, and 5–714(b) and (e)  
8 Annotated Code of Maryland  
9 (2006 Replacement Volume)

10 Preamble

11 WHEREAS, No child should die from maltreatment by a parent or caregiver;  
12 and

13 WHEREAS, Child fatalities represent the ultimate failure of our child  
14 protection and community systems; and

15 WHEREAS, Child fatality review teams have seen multiple deaths as a result of  
16 repeated patterns of abuse of multiple offspring; and

17 WHEREAS, Parents and caregivers with a history of abuse or neglect or  
18 criminal injury to a child present a preventable threat to the safety of Maryland’s  
19 children; and

20 WHEREAS, Maryland courts have consistently interpreted the child in need of  
21 assistance statute to allow judges to protect a sibling of a maltreated child; and

22 WHEREAS, Maryland courts have consistently held that a child can be  
23 adjudicated a child in need of assistance after considering the prior conduct of a parent  
24 or caregiver, that substantial risk of harm constitutes neglect, and that judges in  
25 Maryland need not wait until a child suffers maltreatment before protecting the child;  
26 and

27 WHEREAS, A court is unlikely to have the information necessary to protect a  
28 child who is exposed to a person with a history of harming children unless a local  
29 department of social services petitions the court to find that the child is in need of  
30 assistance; and

31 WHEREAS, The Attorney General’s office has interpreted the statutory scheme  
32 requiring a local department of social services to investigate abuse and neglect to be

1 incident based and, thus, not in harmony with the child in need of assistance statute;  
2 and

3 WHEREAS, Families at risk of repeat, preventable death or injury of a child  
4 need to be closely monitored and provided appropriate services; and

5 WHEREAS, To prevent death and injuries to children at substantial risk of  
6 harm, local departments of social services should have a positive obligation to assess  
7 risk and protect children; now, therefore,

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – Human Services**

11 1–202.

12 (c) A report or record concerning child abuse or neglect:

13 (1) may be disclosed on request to:

14 (v) a licensed practitioner who, or an agency, institution, or  
15 program that, is providing treatment or care to a child who is the subject of a report of  
16 child abuse or neglect **OR A REPORT OF SUBSTANTIAL RISK OF ABUSE OR**  
17 **NEGLECT UNDER § 5–705.2 OF THE FAMILY LAW ARTICLE** for a purpose relevant  
18 to the treatment or care;

19 **Article – Family Law**

20 **5–705.2.**

21 (A) **EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION AND**  
22 **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING ANY LAW ON**  
23 **PRIVILEGED COMMUNICATIONS, A PERSON SHALL NOTIFY THE LOCAL**  
24 **DEPARTMENT OR THE APPROPRIATE LAW ENFORCEMENT AGENCY IF THE**  
25 **PERSON HAS REASON TO BELIEVE THAT A CHILD IS AT SUBSTANTIAL RISK OF**  
26 **ABUSE OR NEGLECT AND THE CHILD IS LIVING WITH, IS REGULARLY IN THE**  
27 **PRESENCE OF, OR IS IN THE PERMANENT OR TEMPORARY CARE OR CUSTODY OF**  
28 **AN INDIVIDUAL WHO:**

1           **(1) IS IDENTIFIED IN THE CENTRAL REGISTRY ESTABLISHED**  
2 **UNDER § 5-714 OF THIS SUBTITLE AS AN INDIVIDUAL RESPONSIBLE FOR CHILD**  
3 **SEXUAL ABUSE;**

4           **(2) IS THE PARENT OR GUARDIAN OF A CHILD FOUND TO BE A**  
5 **CHILD IN NEED OF ASSISTANCE AND PLACED IN THE CUSTODY OF A LOCAL**  
6 **DEPARTMENT UNDER § 3-819 OF THE COURTS ARTICLE IN A PROCEEDING ON A**  
7 **PETITION ALLEGING THAT THE CHILD WAS ABUSED OR NEGLECTED;**

8           **(3) HAS BEEN CONVICTED OF:**

9                   **(I) CHILD ABUSE UNDER § 3-601 OF THE CRIMINAL LAW**  
10 **ARTICLE;**

11                   **(II) CHILD SEXUAL ABUSE UNDER § 3-602 OF THE CRIMINAL**  
12 **LAW ARTICLE; OR**

13                   **(III) A CRIME OF VIOLENCE, AS DEFINED IN § 14-101 OF THE**  
14 **CRIMINAL LAW ARTICLE OR § 5-101 OF THE PUBLIC SAFETY ARTICLE,**  
15 **AGAINST A CHILD; OR**

16           **(4) COMMITTED AN ACT IN ANOTHER STATE EQUIVALENT TO**  
17 **THOSE DESCRIBED IN SUBPARAGRAPH (1), (2), OR (3) OF THIS PARAGRAPH.**

18           **(B) A PERSON IS NOT REQUIRED TO PROVIDE NOTICE UNDER**  
19 **SUBSECTION (A) OF THIS SECTION:**

20                   **(1) IN VIOLATION OF THE PRIVILEGE DESCRIBED UNDER § 9-108**  
21 **OF THE COURTS ARTICLE;**

22                   **(2) IF THE NOTICE WOULD DISCLOSE MATTER COMMUNICATED IN**  
23 **CONFIDENCE BY A CLIENT TO THE CLIENT'S ATTORNEY OR OTHER**  
24 **INFORMATION RELATING TO THE REPRESENTATION OF THE CLIENT; OR**

25                   **(3) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO**  
26 **ASSISTANCE OF COUNSEL.**

1           **(C) EACH HEALTH PRACTITIONER, POLICE OFFICER, EDUCATOR, OR**  
2 **HUMAN SERVICE WORKER, ACTING IN A PROFESSIONAL CAPACITY IN THIS**  
3 **STATE, WHO MAKES A REPORT UNDER SUBSECTION (A) OF THIS SECTION:**

4           **(1) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC**  
5 **HEALTH AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER,**  
6 **SCHOOL, OR SIMILAR INSTITUTION, SHALL IMMEDIATELY NOTIFY AND GIVE ALL**  
7 **PERTINENT INFORMATION TO THE HEAD OF THE INSTITUTION OR THE**  
8 **DESIGNEE OF THE HEAD; AND**

9           **(2) SHALL MAKE AN ORAL REPORT AND A WRITTEN REPORT.**

10 **5-706.1.**

11           **(A) (1) A LOCAL DEPARTMENT OR A LAW ENFORCEMENT AGENCY**  
12 **MAY RECEIVE A REPORT UNDER § 5-705.2 OF THIS SUBTITLE THAT A CHILD IS**  
13 **AT SUBSTANTIAL RISK OF ABUSE OR NEGLECT.**

14           **(2) (I) IF A LAW ENFORCEMENT AGENCY RECEIVES THE**  
15 **REPORT, THE LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REFER THE**  
16 **REPORT TO THE LOCAL DEPARTMENT.**

17           **(II) ON REQUEST OF THE LOCAL DEPARTMENT, THE LAW**  
18 **ENFORCEMENT AGENCY SHALL, WITHIN 48 HOURS, PROVIDE ANY NECESSARY**  
19 **INFORMATION TO CONFIRM OR DENY CONVICTIONS ALLEGED IN THE REPORT AS**  
20 **DESCRIBED IN § 5-705.2(A)(3) OF THIS SUBTITLE.**

21           **(3) THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT**  
22 **REGULATIONS GOVERNING:**

23           **(I) HOW STAFF IN A LOCAL DEPARTMENT SHOULD ELICIT**  
24 **INFORMATION WHEN RECEIVING A REPORT UNDER § 5-705.2 OF THIS SUBTITLE;**  
25 **AND**

26           **(II) THE DEFINITION OF SUBSTANTIAL RISK OF ABUSE OR**  
27 **NEGLECT AS USED IN § 5-705.2(A) OF THIS SUBTITLE.**

28           **(B) (1) AFTER CONFIRMING THAT THE ALLEGATIONS IN THE REPORT**  
29 **REGARDING THE INDIVIDUAL'S HISTORY ARE TRUE, THE LOCAL DEPARTMENT**

1 SHALL MAKE A THOROUGH INVESTIGATION TO PROTECT THE HEALTH, SAFETY,  
2 AND WELFARE OF ANY CHILD OR CHILDREN WHO MAY BE AT SUBSTANTIAL RISK  
3 OF ABUSE OR NEGLECT, EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS  
4 SUBSECTION.

5 (2) THE LOCAL DEPARTMENT MAY CONDUCT THE INVESTIGATION  
6 JOINTLY WITH AN APPROPRIATE LAW ENFORCEMENT AGENCY.

7 (3) IF A SUBSEQUENT REPORT IS RECEIVED REGARDING AN  
8 INDIVIDUAL WITH A HISTORY OF CHILD ABUSE OR NEGLECT THAT ALLEGES  
9 SUBSTANTIALLY THE SAME FACTS AS A REPORT THAT THE LOCAL DEPARTMENT  
10 HAS PREVIOUSLY INVESTIGATED, THE LOCAL DEPARTMENT MAY DECLINE TO  
11 MAKE AN INVESTIGATION OF THE SUBSEQUENT REPORT.

12 (C) WITHIN 5 DAYS AFTER RECEIVING THE REPORT, THE LOCAL  
13 DEPARTMENT OR THE APPROPRIATE LAW ENFORCEMENT AGENCY SHALL:

14 (1) SEE THE CHILD;

15 (2) ATTEMPT TO HAVE AN ON-SITE INTERVIEW WITH THE CHILD'S  
16 CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS HAVING A  
17 HISTORY OF ABUSE OR NEGLECT;

18 (3) DECIDE ON THE SAFETY AND LEVEL OF RISK OF THE CHILD,  
19 WHEREVER THE CHILD IS, AND OF OTHER CHILDREN IN THE HOUSEHOLD; AND

20 (4) DECIDE ON THE SAFETY AND LEVEL OF RISK OF OTHER  
21 CHILDREN IN THE CARE OR CUSTODY OF THE INDIVIDUAL IDENTIFIED IN THE  
22 REPORT AS HAVING A HISTORY OF ABUSE OR NEGLECT.

23 (D) (1) TO THE EXTENT POSSIBLE, AN INVESTIGATION UNDER THIS  
24 SECTION SHALL BE COMPLETED WITHIN 10 DAYS AFTER RECEIPT OF THE  
25 REPORT.

26 (2) AN INVESTIGATION THAT IS NOT COMPLETED WITHIN 30 DAYS  
27 SHALL BE COMPLETED WITHIN 60 DAYS AFTER RECEIPT OF THE REPORT.

1           **(E) IF, AFTER THE INVESTIGATION IS COMPLETED, THE LOCAL**  
2 **DEPARTMENT DETERMINES THAT THE CHILD IS NOT SAFE OR IS AT**  
3 **SUBSTANTIAL RISK OF ABUSE OR NEGLECT, THE LOCAL DEPARTMENT:**

4                   **(1) MAY OFFER SERVICES TO THE FAMILY; AND**

5                   **(2) SHALL IMMEDIATELY DECIDE WHETHER TO FILE A PETITION**  
6 **ALLEGING THAT THE CHILD IS IN NEED OF ASSISTANCE.**

7           **(F) WITHIN 30 DAYS AFTER THE COMPLETION OF AN INVESTIGATION**  
8 **UNDER THIS SECTION, THE LOCAL DEPARTMENT SHALL NOTIFY IN WRITING THE**  
9 **CHILD'S CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS**  
10 **HAVING A HISTORY OF ABUSE OR NEGLECT OF THE LOCAL DEPARTMENT'S**  
11 **DETERMINATION ON THE SAFETY AND LEVEL OF RISK OF THE CHILD.**

12 **[5-706.1.] 5-706.2.**

13           (a) Within 30 days after the completion of an investigation **UNDER § 5-706**  
14 **OF THIS SUBTITLE** in which there has been a finding of indicated or unsubstantiated  
15 abuse or neglect, the local department shall notify in writing the individual alleged to  
16 have abused or neglected a child:

17                   (1) of the finding;

18                   (2) of the opportunity to appeal the finding in accordance with this  
19 section; and

20                   (3) if the individual has been found responsible for indicated abuse or  
21 neglect, that the individual may be identified in a central registry as responsible for  
22 abuse or neglect under the circumstances specified in § 5-714(e) of this subtitle.

23           (b) (1) In the case of a finding of indicated abuse or neglect, an individual  
24 may request a contested case hearing to appeal the finding in accordance with Title  
25 10, Subtitle 2 of the State Government Article by responding to the notice of the local  
26 department in writing within 60 days.

27                   (2) Unless the individual and the department agree on another  
28 location, a contested case hearing shall be held in the jurisdiction in which the  
29 individual alleged to have abused or neglected a child resides.

1           (3)   (i)    If a criminal proceeding is pending on charges arising out of  
2 the alleged abuse or neglect, the Office of Administrative Hearings shall stay the  
3 hearing until a final disposition is made.

4           (ii)   If after final disposition of the criminal charge, the  
5 individual requesting the hearing is found guilty of any criminal charge arising out of  
6 the alleged abuse or neglect, the Office of Administrative Hearings shall dismiss the  
7 administrative appeal.

8           (4)   (i)    If a CINA case is pending concerning a child who has been  
9 allegedly abused or neglected by the appellant or a child in the care, custody, or  
10 household of the appellant, the Office of Administrative Hearings shall stay the  
11 hearing until the CINA case is concluded.

12           (ii)   After the conclusion of the CINA case, the Office of  
13 Administrative Hearings shall vacate the stay and schedule further proceedings in  
14 accordance with this section.

15           (c)   (1)    In the case of a finding of unsubstantiated abuse or neglect, an  
16 individual may request a conference with a supervisor in the local department by  
17 responding to the notice of the local department in writing within 60 days.

18           (2)    In response to a timely request for a conference, a local department  
19 supervisor shall schedule a conference, to occur within 30 days after the supervisor  
20 receives the request, to allow the individual an opportunity to review the redacted  
21 record and request corrections or to supplement the record.

22           (3)    Within 10 days after the conference, the local department shall  
23 send to the individual:

24           (i)    a written summary of the conference and of any  
25 modifications to be made in the record; and

26           (ii)   notice of the individual's right to request a contested case  
27 hearing in accordance with paragraph (4) of this subsection.

28           (4)   (i)    The individual may request a contested case hearing in  
29 accordance with subsection (b) of this section to appeal the outcome of the conference  
30 by responding to the summary in writing within 60 days.

31           (ii)   If the individual does not receive the written summary and  
32 notice specified in paragraph (3) of this subsection within 20 days, the individual may  
33 request a contested case hearing.



1 (iii) An individual may request a contested case hearing in the  
2 case of a finding of unsubstantiated abuse or neglect only as provided in this  
3 paragraph.

4 (d) In the case of an unexpunged finding of indicated or unsubstantiated  
5 abuse or neglect made prior to June 1, 1999, the local department shall provide the  
6 individual with an opportunity to appeal the finding in accordance with this section if  
7 the individual:

8 (1) requests such an appeal;

9 (2) has not been offered an opportunity to request a contested case  
10 hearing; and

11 (3) has not been found guilty of any criminal charge arising out of the  
12 alleged abuse or neglect.

13 5-707.

14 (b) The local department shall expunge a report of suspected abuse or  
15 neglect and all assessments and investigative findings:

16 (1) within 5 years after the date of referral if the investigation under §  
17 5-706 of this subtitle concludes that the report is unsubstantiated, and no further  
18 reports of abuse or neglect **UNDER § 5-704 OR § 5-705 OF THIS SUBTITLE OR OF A**  
19 **SUBSTANTIAL RISK OF ABUSE OR NEGLECT UNDER § 5-705.2 OF THIS SUBTITLE**  
20 are received during the 5 years; and

21 (2) within 120 days after the date of referral if the report is ruled out,  
22 and no further reports of abuse or neglect **UNDER § 5-704 OR § 5-705 OF THIS**  
23 **SUBTITLE OR OF A SUBSTANTIAL RISK OF ABUSE OR NEGLECT UNDER § 5-705.2**  
24 **OF THIS SUBTITLE** are received during the 120 days.

25 5-708.

26 Any person who makes or participates in making a report of abuse or neglect  
27 under § 5-704, § 5-705, [or] § 5-705.1, **OR § 5-705.2** of this subtitle or participates in  
28 an investigation or a resulting judicial proceeding shall have the immunity described  
29 under § 5-620 of the Courts and Judicial Proceedings Article from civil liability or  
30 criminal penalty.

1 5-714.

2 (b) (1) Each local department shall provide the information for a central  
3 registry.

4 (2) Except for identifying information authorized under subsection (d)  
5 of this section, a central registry may not include information from a local department  
6 case file until any individual found responsible for indicated or unsubstantiated child  
7 abuse or neglect has:

8 (i) been found guilty of any criminal charge arising from the  
9 alleged abuse or neglect;

10 (ii) unsuccessfully appealed the finding in accordance with the  
11 procedures established under [§ 5-706.1] § **5-706.2** of this subtitle; or

12 (iii) failed to exercise the appeal rights within the time frames  
13 specified in [§ 5-706.1] § **5-706.2** of this subtitle, Title 10, Subtitle 2 of the State  
14 Government Article, or the Maryland Rules.

15 (e) (1) The Department or a local department may identify an individual  
16 as responsible for abuse or neglect in a central registry only if the individual:

17 (i) has been found guilty of any criminal charge arising out of  
18 the alleged abuse or neglect; or

19 (ii) has been found responsible for indicated abuse or neglect  
20 and has:

21 1. unsuccessfully appealed the finding in accordance  
22 with the procedures established under [§ 5-706.1] § **5-706.2** of this subtitle; or

23 2. failed to exercise the individual's appeal rights within  
24 the time frames specified in [§ 5-706.1] § **5-706.2** of this subtitle, Title 10, Subtitle 2  
25 of the State Government Article, or the Maryland Rules.

26 (2) The Department without the necessity of a request shall remove  
27 from the name of an individual described in paragraph (1) of this subsection the  
28 identification of that individual as responsible for abuse or neglect if no entry has been  
29 made for that individual for 7 years after the entry of the individual's name in a  
30 registry.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2007.