

# HOUSE BILL 162

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CF SB 178

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By: **The Speaker (By Request – Administration) and Delegates Clagett, Arora, Cullison, Dumais, Lee, Mitchell, Niemann, Reznik, Stein, and Valderrama**

Introduced and read first time: January 26, 2011

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Law – Child Neglect – ~~Penalties~~**

3 FOR the purpose of prohibiting a parent, family member, household member, or other  
4 person who has permanent or temporary care or custody or responsibility for  
5 supervision of a minor from neglecting the minor; establishing the misdemeanor  
6 of child neglect and providing certain penalties for a violation of this Act;  
7 ~~establishing a certain affirmative defense for a violation of this Act; providing~~  
8 ~~that a sentence imposed for a violation of this Act may be separate from and~~  
9 ~~consecutive to or concurrent with a certain other sentence; providing for the~~  
10 ~~construction of this Act~~ that a sentence imposed under this Act is in addition to  
11 a certain other sentence, except under certain circumstances; altering certain  
12 procedures relating to the reporting and investigation of child neglect; defining  
13 certain terms; and generally relating to child neglect.

14 BY adding to  
15 Article – Criminal Law  
16 Section 3–602.1  
17 Annotated Code of Maryland  
18 (2002 Volume and 2010 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Family Law  
21 Section 5–704, 5–705, and 5–706

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2006 Replacement Volume and 2010 Supplement)

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

5 **Article – Criminal Law**

6 **3-602.1.**

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
8 MEANINGS INDICATED.

9 (2) “FAMILY MEMBER” HAS THE MEANING STATED IN § 3-601 OF  
10 THIS SUBTITLE.

11 (3) “HOUSEHOLD MEMBER” HAS THE MEANING STATED IN  
12 § 3-601 OF THIS SUBTITLE.

13 (4) “MENTAL INJURY” MEANS THE SUBSTANTIAL IMPAIRMENT OF  
14 A MINOR’S MENTAL OR PSYCHOLOGICAL ABILITY TO FUNCTION.

15 (5) (I) “NEGLECT” MEANS THE INTENTIONAL FAILURE TO  
16 PROVIDE NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS  
17 OR MENTAL HEALTH OF A MINOR, INCLUDING:

18 ~~(I) FOOD;~~

19 ~~(II) CLOTHING;~~

20 ~~(III) TOILETING;~~

21 ~~(IV) ESSENTIAL MEDICAL TREATMENT;~~

22 ~~(V) SHELTER; OR~~

23 ~~(VI) SUPERVISION THAT CREATES A SUBSTANTIAL RISK OF~~  
24 HARM TO THE MINOR’S PHYSICAL HEALTH OR A SUBSTANTIAL RISK OF MENTAL  
25 INJURY TO THE MINOR.

26 (II) “NEGLECT” DOES NOT INCLUDE THE FAILURE TO  
27 PROVIDE NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS  
28 OR MENTAL HEALTH OF A MINOR WHEN THE FAILURE IS DUE SOLELY TO A LACK  
29 OF FINANCIAL RESOURCES OR HOMELESSNESS.

1 (B) A PARENT, FAMILY MEMBER, HOUSEHOLD MEMBER, OR OTHER  
2 PERSON WHO HAS PERMANENT OR TEMPORARY CARE OR CUSTODY OR  
3 RESPONSIBILITY FOR THE SUPERVISION OF A MINOR MAY NOT NEGLECT THE  
4 MINOR.

5 (C) ~~(1)~~ A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE  
6 ~~FELONY MISDEMEANOR~~ OF CHILD NEGLECT AND ON CONVICTION IS SUBJECT  
7 TO IMPRISONMENT NOT EXCEEDING ~~10~~ 5 YEARS OR A FINE NOT EXCEEDING  
8 ~~\$10,000~~ \$5,000 OR BOTH.

9 ~~(2) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING~~  
10 ~~THIS SECTION THAT THE SOLE REASON FOR THE FAILURE TO PROVIDE THE~~  
11 ~~NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS OF THE~~  
12 ~~MINOR WAS A LACK OF FINANCIAL RESOURCES.~~

13 (D) ~~(1) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE~~  
14 ~~SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE~~  
15 ~~FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS~~  
16 ~~SECTION.~~

17 ~~(2) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE~~  
18 ~~PROSECUTION OF A PERSON FOR A VIOLATION OF § 3-601 OF THIS SUBTITLE~~  
19 ~~FOR EVENTS ARISING FROM THE SAME FACTS AND CIRCUMSTANCES AS COULD~~  
20 ~~BE CHARGED AS A VIOLATION OF THIS SECTION WHEN THE EVENTS RESULT IN~~  
21 ~~PHYSICAL INJURY TO A MINOR~~ A SENTENCE IMPOSED UNDER THIS SECTION  
22 SHALL BE IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR A CONVICTION  
23 ARISING FROM THE SAME FACTS AND CIRCUMSTANCES UNLESS THE EVIDENCE  
24 REQUIRED TO PROVE EACH CRIME IS SUBSTANTIALLY IDENTICAL.

## 25 Article – Family Law

26 5-704.

27 (a) Notwithstanding any other provision of law, including any law on  
28 privileged communications, each health practitioner, police officer, educator, or human  
29 service worker, acting in a professional capacity in this State:

30 (1) [(i)] who has reason to believe that a child has been subjected to  
31 abuse OR NEGLECT, shall notify the local department or the appropriate law  
32 enforcement agency]; or

33 (ii) who has reason to believe that a child has been subjected to  
34 neglect, shall notify the local department]; and



1           (4) the nature and extent of the abuse or neglect of the child, including  
2 any evidence or information available to the reporter concerning possible previous  
3 instances of abuse or neglect; and

4           (5) any other information that would help to determine:

5           (i) the cause of the suspected abuse or neglect; and

6           (ii) the identity of any individual responsible for the abuse or  
7 neglect.

8 5–705.

9           (a) (1) Except as provided in paragraphs (2) and (3) of this subsection,  
10 notwithstanding any other provision of law, including a law on privileged  
11 communications, a person in this State other than a health practitioner, police officer,  
12 or educator or human service worker who has reason to believe that a child has been  
13 subjected to abuse or neglect shall]:

14           (i) if the person has reason to believe the child has been  
15 subjected to abuse,] notify the local department or the appropriate law enforcement  
16 agency]; or

17           (ii) if the person has reason to believe the child has been  
18 subjected to neglect, notify the local department].

19           (2) A person is not required to provide notice under paragraph (1) of  
20 this subsection:

21           (i) in violation of the privilege described under § 9–108 of the  
22 Courts Article;

23           (ii) if the notice would disclose matter communicated in  
24 confidence by a client to the client’s attorney or other information relating to the  
25 representation of the client; or

26           (iii) in violation of any constitutional right to assistance of  
27 counsel.

28           (3) A minister of the gospel, clergyman, or priest of an established  
29 church of any denomination is not required to provide notice under paragraph (1) of  
30 this subsection if the notice would disclose matter in relation to any communication  
31 described in § 9–111 of the Courts Article and:

32           (i) the communication was made to the minister, clergyman, or  
33 priest in a professional character in the course of discipline enjoined by the church to  
34 which the minister, clergyman, or priest belongs; and

1                   (ii) the minister, clergyman, or priest is bound to maintain the  
2 confidentiality of that communication under canon law, church doctrine, or practice.

3           (b) (1) An agency to which a report of suspected abuse OR NEGLECT is  
4 made under subsection (a) of this section shall immediately notify the other agency.

5                   (2) This subsection does not prohibit a local department and an  
6 appropriate law enforcement agency from agreeing to cooperative arrangements.

7           (c) A report made under subsection (a) of this section may be oral or in  
8 writing.

9           (d) (1) To the extent possible, a report made under subsection (a) of this  
10 section shall include the information required by § 5-704(c) of this subtitle.

11                   (2) A report made under subsection (a) of this section shall be  
12 regarded as a report within the provisions of this subtitle, whether or not the report  
13 contains all of the information required by § 5-704(c) of this subtitle.

14 5-706.

15           (a) Promptly after receiving a report of suspected abuse or neglect of a child  
16 who lives in this State that is alleged to have occurred in this State[;

17                   (1)], the local department or the appropriate law enforcement agency, or  
18 both, if jointly agreed on, shall make a thorough investigation of a report of suspected  
19 abuse OR NEGLECT to protect the health, safety, and welfare of the child or children[;  
20 or

21                   (2) the local department shall make a thorough investigation of a  
22 report of suspected neglect to protect the health, safety, and welfare of the child or  
23 children].

24           (b) Within 24 hours after receiving a report of suspected physical or sexual  
25 abuse of a child who lives in this State that is alleged to have occurred in this State,  
26 and within 5 days after receiving a report of suspected neglect or suspected mental  
27 injury of a child who lives in this State that is alleged to have occurred in this State,  
28 the local department or the appropriate law enforcement agency shall:

29                   (1) see the child;

30                   (2) attempt to have an on-site interview with the child's caretaker;

31                   (3) decide on the safety of the child, wherever the child is, and of other  
32 children in the household; and

1           (4)    decide on the safety of other children in the care or custody of the  
2 alleged abuser.

3           (c)    The investigation under subsection (b) of this section shall include:

4               (1)    a determination of the nature, extent, and cause of the abuse or  
5 neglect, if any;

6               (2)    if mental injury is suspected, an assessment by two of the  
7 following:

8                   (i)    a licensed physician, as defined in § 14–101 of the Health  
9 Occupations Article;

10                  (ii)   a licensed psychologist, as defined in § 18–101 of the Health  
11 Occupations Article; or

12                  (iii)   a licensed social worker, as defined in § 19–101 of the Health  
13 Occupations Article; and

14               (3)    if the suspected abuse or neglect is verified:

15                   (i)    a determination of the identity of the person or persons  
16 responsible for the abuse or neglect;

17                   (ii)   a determination of the name, age, and condition of any other  
18 child in the household;

19                   (iii)   an evaluation of the parents and the home environment;

20                   (iv)   a determination of any other pertinent facts or matters; and

21                   (v)    a determination of any needed services.

22           (d)    On request by the local department, the local State’s Attorney shall assist  
23 in an investigation under subsections (b) and (c) of this section.

24           (e)    The local department, the appropriate law enforcement agencies, the  
25 State’s Attorney within each county and Baltimore City, the local department’s office  
26 responsible for child care regulation, and the local health officer shall enter into a  
27 written agreement that specifies standard operating procedures for the investigation  
28 under subsections (b) and (c) of this section and prosecution of reported cases of  
29 suspected abuse OR NEGLECT.

30           (f)    (1)   The agencies responsible for investigating reported cases of  
31 suspected sexual abuse, including the local department, the appropriate law  
32 enforcement agencies, and the local State’s Attorney, shall implement a joint

1 investigation procedure for conducting joint investigations of sexual abuse under  
2 subsections (b) and (c) of this section.

3           (2) The joint investigation procedure shall:

4                   (i) include appropriate techniques for expediting validation of  
5 sexual abuse complaints;

6                   (ii) include investigation techniques designed to:

7                           1. decrease the potential for physical harm to the child;

8 and

9                           2. decrease any trauma experienced by the child in the  
10 investigation and prosecution of the case; and

11                   (iii) establish an ongoing training program for personnel  
12 involved in the investigation or prosecution of sexual abuse cases.

13           (g) (1) To the extent possible, an investigation under subsections (b) and  
14 (c) of this section shall be completed within 10 days after receipt of the first notice of  
15 the suspected abuse or neglect by the local department or law enforcement agencies.

16                   (2) An investigation under subsections (b) and (c) of this section which  
17 is not completed within 30 days shall be completed within 60 days of receipt of the  
18 first notice of the suspected abuse or neglect.

19           (h) Within 10 days after the local department or law enforcement agency  
20 receives the first notice of suspected abuse OR NEGLECT of a child who lives in this  
21 State that is alleged to have occurred in this State, the local department or law  
22 enforcement agency shall report to the local State's Attorney the preliminary findings  
23 of the investigation.

24           (i) Within 5 business days after completion of the investigation of suspected  
25 abuse OR NEGLECT of a child who lives in this State that is alleged to have occurred  
26 in this State, the local department and the appropriate law enforcement agency, if  
27 that agency participated in the investigation, shall make a complete written report of  
28 its findings to the local State's Attorney.

29           (j) Promptly after receiving a report of suspected abuse or neglect of a child  
30 who lives in this State that is alleged to have occurred outside of this State, the local  
31 department shall:

32                   (1) forward the report to the appropriate agency outside of this State  
33 that is authorized to receive and investigate reports of suspected abuse or neglect;

1           (2) cooperate to the extent requested with the out-of-state agency  
2 investigating the report; and

3           (3) if determined appropriate by the local department:

4                   (i) interview the child to assess whether the child is safe; and

5                   (ii) provide services to the child and the child's family.

6           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7           October 1, 2011.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.