

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1053
Judiciary

(Delegate McComas, *et al.*)

Child Abuse - Failure to Report - Penalties and Task Force

This bill makes it a misdemeanor for a worker in a professional capacity who is required to report suspected child abuse to knowingly and willfully fail to provide the required report. Workers in a professional capacity who knowingly and willfully fail to provide a required report under specified circumstances are subject to increased penalties. The bill also establishes the Task Force to Study Training for Mandatory Reporters on the Risk Factors, Prevention, Identification, and Reporting of Child Abuse.

The provisions of the bill establishing the task force take effect June 1, 2014, and terminate June 30, 2015. Otherwise, the bill takes effect October 1, 2014.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for the Department of Human Resources (DHR) are assumed to be minimal and absorbable within existing resources. Potential minimal increase in general fund revenues due to the bill's penalty provisions.

Local Effect: Potential minimal increase in local revenues due to the bill's penalty provisions. Expenditures are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary: A worker required to file a report under existing law may not knowingly and willfully fail to file a required report of abuse. A violator is guilty of a misdemeanor and subject to maximum penalties for a first offense of a \$5,000 fine and a requirement to

complete a training course approved by DHR on the child abuse reporting laws and how to identify potential child abuse. For a second or subsequent offense, a violator is subject to maximum penalties of one year imprisonment and/or a \$10,000 fine.

A worker required to file a report under existing law may not knowingly and willfully fail to file a required report of abuse if (1) the person witnesses the abuse or the abuser confesses to the person that the abuser committed the abuse and the person knows or should have known that the abuse is likely to cause or has caused serious physical injury or death to a child or (2) the person witnesses “sexual abuse” as defined in the Family Law Article or the abuser confesses to the person that the abuser committed “sexual abuse.” A violator of these provisions is guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$10,000 fine.

Task Force

The bill also establishes the Task Force to Study Training for Mandatory Reporters on the Risk Factors, Prevention, Identification, and Reporting of Child Abuse. The Governor must designate the chair of the task force, which is to be staffed by DHR. The task force is required to study (1) current State law and regulations related to the mandatory reporting of suspected child abuse; (2) laws in other states and territories regarding mandatory reporting of suspected child abuse; (3) current practices and resources to train mandatory reporters on the risk factors, prevention, identification, and reporting of child abuse; (4) nationally recognized model programs for training mandatory reporters on the prevention, identification, and reporting of child abuse; and (5) the opinion of the Maryland Office of the Attorney General that advises the reporting of child sexual abuse when the abuse is disclosed by an adult who was a minor at the time of the abuse.

The task force is also required to make recommendations regarding (1) any changes needed to clarify and strengthen the State’s laws and regulations regarding mandatory reporting of suspected child abuse; (2) training requirements on the risk factors, prevention, identification, and reporting of suspected child abuse; (3) the need for resources and policy changes to provide the necessary training for mandatory reporters; and (4) the need for laws regarding the false reporting of child abuse.

The task force must report its findings and recommendations to the Governor and the General Assembly by December 1, 2014. A member of the task force may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations.

Current Law:

“Sexual Abuse”

Pursuant to § 5-701 of the Family Law Article, “sexual abuse” is 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. Sexual abuse includes (1) allowing or encouraging a child to engage in obscene or pornographic activities or prostitution; (2) human trafficking; (3) incest; (4) rape; (5) sexual offense in any degree; (6) sodomy; and (7) unnatural or perverted sexual practices.

Penalties for Failure to Report

State law does not criminalize the failure of a worker to report suspected abuse or neglect. The licensing boards for some workers who are mandated to report child abuse and neglect (nurses, doctors, and social workers are examples) are authorized to discipline workers for failing to report.

Mandatory Reporters

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. An “educator or human service worker” includes any teacher, counselor, social worker, caseworker, and parole or probation officer. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee.

A worker who notifies the appropriate authorities must make an oral report by telephone or direct communication as soon as possible to the local department or the appropriate law enforcement agency if the worker has reason to believe the child has been subjected to abuse or neglect. A written report to the local department is required not later than 48 hours after the contact, examination, or treatment that caused the worker to believe that the child had been subjected to abuse or neglect. A copy of the written report must be provided to the local State’s Attorney. An agency that receives an oral report of suspected abuse or neglect must immediately notify the other agency.

As far as reasonably possible, a worker who makes a report must include the name, age, and home address of the child; the name and home address of the child’s parent or other person responsible for the child’s care; the whereabouts of the child; and the nature and

extent of the child abuse or neglect. The report must include any available evidence about previous instances of abuse or neglect, any information that would help to determine the cause of the suspected abuse or neglect, and the identity of any person responsible for the abuse or neglect.

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute. Individuals (other than those who are required to report because of their professional capacity) who in good faith make or participate in making a report of abuse or neglect or participate in an investigation or resulting judicial proceeding are immune from civil liability or criminal penalties.

Background:

Mandatory Reporters

According to the Child Welfare Information Gateway, every state and the District of Columbia have laws that identify those people who are required to report suspected incidences of child abuse and neglect. As of August 2012 (the latest information available), 48 states and the District of Columbia specify professions for which the mandatory reporting requirements apply. Typically, mandated reporters include school personnel, social workers, health care workers, child care providers, medical examiners or coroners and law enforcement officers. The other two states, New Jersey and Wyoming, do not specify professional workers who are required to report, but require all persons to report suspected child abuse or neglect. At least 18 states, including Maryland, require all citizens to report suspected abuse or neglect regardless of profession. In Maryland, however, the reporting requirements for a citizen are less stringent than the reporting requirements for covered professionals.

Failure to Report Penalties

According to the Child Welfare Information Gateway, as of August 2012, 47 states and the District of Columbia impose penalties on mandatory reporters who knowingly or willfully fail to report suspected child abuse or neglect. The states that do not impose a penalty, in addition to Maryland, are North Carolina and Wyoming.

In 38 of the 47 states that impose penalties, the penalty is a misdemeanor. The nine states that do not use the misdemeanor classification for the failure to report penalty are Connecticut, Delaware, Florida, Massachusetts, Mississippi, New Jersey, Vermont, Virginia, and Wisconsin. In Arizona and Minnesota, misdemeanors are upgraded to

felonies for failure to report more serious situations, while in Illinois, second or subsequent violations are classified as felonies.

A mandated reporter who fails to report can face jail terms ranging from 30 days to five years and/or fines ranging from \$300 to \$10,000. In California and Massachusetts, harsher penalties are imposed when the failure to report results in the child's death or serious bodily injury. Louisiana imposes harsher penalties when the reporter fails to report sexual abuse or serious bodily injury. Delaware and Virginia impose harsher penalties upon second or subsequent convictions for failure to report.

Attorney General Opinion

A 1993 opinion of the Attorney General advised that the statutory provisions requiring mandated reporting are applicable whenever there is reason to believe that child abuse or neglect occurred in the past, even if the alleged victim is an adult when the incident becomes known. The fact that the victim is an adult at the time of the report may be taken into account by the authorities when they determine the appropriate actions to be taken in response to the report.

State Revenues: Potential minimal general fund revenue increase as a result of the bill's monetary penalty provision from cases heard in the District Court.

Local Revenues: Potential minimal revenue increase as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Additional Information

Prior Introductions: SB 94 of 2013, a similar bill, to criminalize the failure to report child abuse or neglect and create a task force, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Numerous bills introduced in 2012 (SB 63, SB 140, HB 496, HB 999, and HB 1067) also would have criminalized the failure to report child abuse or neglect in varying ways; one House bill received an unfavorable report from the House Judiciary Committee, while others received no action after being heard. SB 63 passed the Senate as amended, but no further action was taken.

Cross File: SB 210 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Department of Human Resources; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Baltimore, Dorchester, Garrett, and Howard counties; Child Welfare Information Gateway; Department of Legislative Services

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