

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1220
Judiciary

(Prince George's County Delegation)

Prince George's County - Commission of Crime of Violence in Presence of Minor
PG 313-17

This bill prohibits a person in Prince George's County from committing a "crime of violence," as defined in § 5-101 of the Public Safety Article, when the person knows or reasonably should know that a minor is present in a residence. A minor is present if the minor is within sight or hearing of the crime of violence. The offense is a misdemeanor, punishable by imprisonment for up to five years in addition to any other sentence imposed for the crime of violence. A sentence imposed for the offense must be separate from and consecutive to a sentence for any crime based on the act establishing the violation.

The bill also expands the definition of "neglect" in provisions of law governing the reporting and investigation of suspected child abuse and neglect in Prince George's County. The bill adds to the definition an act that constitutes the commission of a crime of violence in Prince George's County in the presence of a minor, as specified, whether or not the person who committed the act is charged with a crime.

Fiscal Summary

State Effect: Potential minimal increase in expenditures for the Department of Public Safety and Correctional Services due to the bill's incarceration penalty. The bill is not anticipated to materially impact the workload of the Judiciary, the Office of the Public Defender (OPD), or the Department of Human Resources (DHR).

Local Effect: Potential minimal increase in local expenditures due to the bill's incarceration penalty. The bill is not anticipated to materially impact the workload of State's Attorneys' offices, the circuit courts, or law enforcement agencies.

Small Business Effect: None.

Analysis

Current Law:

Neglect

“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 of the child. The failure to give proper care and attention results in 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.

Commission of a Crime of Violence in the Presence of a Minor

Pursuant to § 3-601.1 of the Criminal Law Article, a person may not commit a “crime of violence,” as defined in § 5-101 of the Public Safety Article, when the person knows or reasonably should know that a minor who is at least age two is present in a residence. A minor is considered present if the minor is within sight or hearing of the crime of violence. A violator is subject to imprisonment not exceeding five years in addition to and separate from any other sentence imposed for the crime of violence.

Section 5-101 of the Public Safety Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

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.

Child Abuse and Neglect Investigations

After receiving a report of suspected abuse or neglect of a child who lives in Maryland that is alleged to have occurred in the State, the local department of social services and/or the appropriate law enforcement agency must promptly investigate the report to protect the health, safety, and welfare of the child or children. Within 24 hours after receiving a report of suspected physical or sexual child abuse, and within five days after receiving a report of suspected child neglect or mental injury, the local department or law enforcement agency must (1) see the child; (2) attempt to have an on-site interview with the child's caretaker; (3) decide on the safety of the child and of other children in the household; and (4) decide on the safety of the other children in the care or custody of the alleged abuser.

The determinations and assessments that are required during an abuse or neglect investigation are specified in statute.

The local State's Attorney must assist in a child abuse or neglect investigation if requested to do so by a local department of social services. The local departments, appropriate law enforcement agencies, the State's Attorneys in the counties and Baltimore City, and the local health officers must enter into a written agreement pertaining to standard operating procedures for investigations of suspected abuse or neglect. A joint investigation procedure must be implemented for conducting investigations of sexual abuse, which must include techniques for expediting validation of sexual abuse complaints and other techniques to decrease trauma to the child.

To the extent possible, a child abuse or neglect investigation must be completed within 10 days after receiving the notice of the suspected abuse or neglect. Within 10 days after receiving the first notice of suspected abuse or neglect of a child, the local department of social services or law enforcement agency must report the preliminary investigation findings to the local State's Attorney. Within 5 business days after the investigation is completed, the local department and the law enforcement agency, if the law enforcement agency participated in the investigation, must make a complete written report of findings to the local State's Attorney.

Background: The Maryland State Commission on Criminal Sentencing Policy advises that it received information on one individual convicted of committing a crime of violence in the presence of a minor in the State's circuit courts during fiscal 2016 and two people sentenced for two counts of committing a crime of violence in the presence of a minor in the State's circuit courts during fiscal 2015.

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 2015 (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.

State/Local Fiscal Effect: State or local expenditures may increase minimally due to the bill's incarceration penalty.

Although the bill may result in additional reports of neglect, it is assumed that any additional investigations, as well as potential actions resulting from information learned during the investigations, such as additional child in need of assistance petitions or criminal charges, do not materially impact the workload of the Judiciary, the circuit courts, State's Attorneys' offices, OPD, or DHR. It is also assumed that individuals may already be reporting some of these incidents under current law (*e.g.*, based on the potential for a child's health or welfare to be harmed or placed at substantial risk of harm by being present when a crime of violence is committed), thus negating the need for additional resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510