

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 550

(Delegates Menes and Hixson)

Judiciary

Judicial Proceedings

Family Law - Reporting of Out-of-State Child Abuse and Neglect

This bill requires reporting of child abuse or neglect that is alleged to have occurred outside Maryland to a victim currently under age 18, who lives outside of Maryland and establishes procedures for that reporting. The bill extends provisions for immunity from criminal penalty or civil liability to persons who make or participate in such reports. The bill establishes procedures for local departments of social services (LDSS) that receive a report of suspected abuse or neglect alleged to have occurred outside of Maryland to a child victim living in Maryland. The bill also clarifies that the existing procedures for reporting and formal investigation of allegations of child abuse and neglect apply only to suspected abuse or neglect that is alleged to have occurred in Maryland, and suspected abuse or neglect of a child living in Maryland, regardless of where the suspected abuse or neglect is alleged to have occurred.

Fiscal Summary

State Effect: The bill's requirements could be handled with existing resources.

Local Effect: None. Notification by law enforcement agencies could be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: This bill provides that if abuse or neglect is alleged to have occurred outside of Maryland and the victim is currently under age 18 and lives outside of Maryland, then a health care practitioner, police officer, educator, or human services

worker, or other person, except as otherwise provided by statute, who would otherwise be required to report the suspected abuse or neglect, must report the suspected abuse or neglect to any LDSS as soon as possible.

The bill provides that a health care practitioner, police officer, educator, or human services worker must make an oral report by telephone or direct communication as soon as possible and a written report no later than 48 hours after the contact, examination, attention, or treatment that caused the worker to believe that the child had been subjected to abuse or neglect. Any other person, except as otherwise provided by statute, who suspects child abuse or neglect that may have occurred outside Maryland to a victim currently under age 18 who may live outside of Maryland is required to make an oral or written report. The report should contain, to the extent possible, identifying information about the child and the child's parent or other person responsible for the child's care, the child's whereabouts, the extent of the suspected abuse or neglect, and any other information that would help determine the cause of the suspected abuse or neglect and the identity of the person who may have caused the suspected abuse or neglect. A person who makes or participates in making a report of abuse or neglect that may have occurred outside Maryland regarding a victim currently under 18 who lives outside Maryland, is immune from the civil liability or criminal penalty that would otherwise result from making or participating in such a report.

Promptly after receiving a report of suspected abuse or neglect that occurred outside Maryland regarding a victim who is currently a child and lives outside of Maryland, the LDSS must forward the report to the appropriate agency outside of Maryland that is authorized to receive and investigate reports of suspected abuse.

Promptly after receiving a report of suspected abuse or neglect that is alleged to have occurred outside of Maryland to a child victim who lives in Maryland, the LDSS must forward the report to the appropriate agency outside of Maryland that is authorized to receive and investigate reports of suspected abuse or neglect. The LDSS must cooperate to the extent requested with the investigating out-of-state agency. If determined appropriate by the LDSS, the LDSS must interview the child to assess whether the child is safe and provide services to the child and the child's family.

Current Law: There is no provision of law that requires or expressly authorizes a person to report suspected abuse or neglect that occurred outside of Maryland regarding a child victim who lives outside of Maryland. The established immunity from criminal penalty or civil liability applies to persons who report suspected child abuse or neglect that occurred within Maryland or occurred to child victims who live in Maryland.

“Abuse” is defined as the physical or mental injury of a child by a parent or other person with permanent or temporary care, custody or responsibility of a child, or by a household or family member under circumstances that indicate the child's welfare or health is

harmed or is at substantial risk of being harmed. Abuse includes sexual abuse, whether injuries are sustained or not.

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, must notify the LDSS or the appropriate law enforcement agency. If the individual has reason to believe a child has been subjected to neglect, then that person must notify the local department. If the individual 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 individual has reason to believe the child has been subjected to abuse. If the individual has reason to believe the child has been subjected to neglect, then the individual must make an oral report to the LDSS. A written report to the local department is required not later than 48 hours after the contact, examination, or treatment that caused the individual 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 if the individual has reason to believe the child has been subjected to abuse.

An agency that receives an oral report of suspected abuse must immediately notify the other agency. Local departments and law enforcement agencies are not prohibited from agreeing to cooperative arrangements.

As far as reasonably possible, an individual 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, including any available evidence about previous instances of abuse or neglect; and 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, must notify the LDSS or the appropriate law enforcement agency. If the person has reason to believe a child has been subjected to neglect, then that person must notify the LDSS.

A person is not required to provide notice of suspected abuse or neglect in violation of the attorney-client privilege if the notice would disclose matter communicated in

confidence by a client to the client's attorney, other information relating to client representation, or in violation of any constitutional right to assistance of counsel.

A minister of the gospel, clergyman, or priest of an established church of any denomination is not required to provide notice of suspected abuse or neglect if the notice would disclose matter in relation to any communication under the priest-penitent privilege and the communication was made to the minister, clergyman, or priest in a professional character in the course of discipline enjoined by the religious institution and the minister, clergyman, or priest is bound to maintain the confidentiality of that communication under canon law, church doctrine, or practice.

An LDSS or law enforcement agency that receives an oral report of suspected abuse must immediately notify the other agency. Local departments and law enforcement agencies are not prohibited from agreeing to cooperative arrangements. A report made by a person covered under these provisions may be oral or in writing. To the extent possible, a report must include identifying and other information about the suspected abuse or neglect. However, a report made will be regarded as an official report, whether or not the report contains all the required information about the suspected abuse or neglect. Promptly after receiving a report of suspected abuse or neglect, the appropriate agency must conduct an investigation.

Background: This bill arises out of a concern with the policies of St. Luke Institute, a Silver Spring psychiatric hospital that treats Catholic priests who have sexually abused children. The institute has a policy of not reporting suspected child abuse to authorities if the abuse occurred outside of Maryland. According to the Office of Attorney General (OAG), Maryland law does not require the reporting of child abuse or neglect that occurred outside the State, unless the child victim lives in Maryland. In a July 1991 letter, the OAG asked the Governor's Council on Child Abuse and Neglect to consider whether the current child abuse and neglect reporting statute should be altered to include reporting of out-of-state abuse and neglect.

According to the *Washington Post*, victim advocates are concerned that the interpretation of current law fosters a climate of secrecy. On the other hand, the chief executive of St. Luke Institute has stated that limiting the doctor-patient confidentiality provision could inhibit some priests from seeking treatment.

The State Council on Child Abuse and Neglect states that failure to report is a problem nationwide. The Congressionally mandated *Third National Incidence Study* found that only 28% of the children recognized by community professionals as having been harmed were reported to and investigated by child protective services agencies.

Additional Information

Prior Introductions: A similar bill, SB 73, was introduced in the 1998 session. SB 73 passed the Senate and was referred to the Judiciary Committee, where it was not reported out. Another similar bill, HB 1067, was referred to the Judiciary Committee, where it received an unfavorable report.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Department of Legislative Services

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