

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 63

(Delegate Anderson)

Judiciary

Family Law - Central Registry - Conviction for Child Abuse or Neglect

This bill provides that a central registry for child abuse or neglect may not include information, except for identifying information, from a local department of social services (LDSS) case file until the individual found responsible for indicated or unsubstantiated child abuse or neglect has been convicted, as opposed to having been found guilty, of any criminal charge arising from the alleged abuse or neglect. Furthermore, the Department of Human Resources (DHR) or an LDSS may identify an individual as responsible for abuse or neglect in a central registry only if the individual has been convicted of any criminal charge arising out of the alleged abuse or neglect.

Fiscal Summary

State Effect: None. The bill's provisions are not expected to require substantive changes in State operations.

Local Effect: None. The provisions of this bill are not expected to substantively affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: The Social Services Administration (SSA) of DHR and each LDSS may maintain a central registry of reported child abuse or neglect cases. Each LDSS must provide the information for a central registry. Except for providing identifying information, a central registry may not include information from a local department case

file until any individual found responsible for indicated or unsubstantiated child abuse or neglect has: (1) been found guilty of any criminal charge arising from alleged abuse or neglect; (2) unsuccessfully appealed the finding; or (3) failed to exercise appeal rights within specified time frames. In the event that DHR finds indicated abuse or neglect, the individual found responsible may request a hearing, called a contested case hearing, to appeal the finding and inclusion of information in the central registry.

Identifying information means the name of: (1) a child who is alleged to have been abused or neglected; (2) a member of the child's household; (3) a child's parent or legal guardian; or (4) an individual suspected of being responsible for abuse or neglect of a child. A local department case file is that component of the DHR confidential computerized database that contains information regarding child abuse and neglect investigations, with access limited to LDSS staff responsible for the investigation. Central registry information is at the disposal of the protective services staff of SSA, LDSS protective services staffs, and law enforcement personnel who are investigating reports of abuse or neglect.

A central registry may not contain identifying information related to an investigation of abuse or neglect if abuse or neglect has been ruled out or the abuse or neglect finding has been expunged. DHR or an LDSS may identify an individual as responsible for abuse or neglect in a central registry only if the individual has been: (1) found guilty of any criminal charge arising out of the alleged abuse or neglect; or (2) found responsible for indicated abuse or neglect and has unsuccessfully appealed the finding or failed to exercise appeal rights within specified time frames.

Without the necessity of a request, DHR must remove a notation that an individual is responsible for abuse or neglect from the central registry if no entry has been made for that individual for seven years after the prior entry of the individual's name. Information in a central registry may not be used as a sole basis for responding to any request for background information regarding employment or voluntary service, except as provided by law. Any official or employee of DHR or an LDSS who releases information from a central registry in violation of this prohibition is guilty of a misdemeanor and subject to a maximum of 90 days imprisonment, a maximum fine of \$500, or both.

The central registry may not include an individual related to an investigation for neglect or found responsible for neglect when a child has been released from a hospital or other facility; a child has been diagnosed with a mental disorder or developmental disability; and the individual has not taken the child home due to a reasonable fear for the safety of the child or the child's family. The Secretary of Human Resources is required to adopt regulations to protect the rights of individuals suspected of abuse or neglect and is authorized to adopt other regulations pertaining to the central registry.

Background: DHR has been upheld in cases that challenge the department's authority to include identifying and other information, without an administrative contested case hearing, about individuals under investigation for indicated or unsubstantiated abuse or neglect, if the individual has admitted guilt and accepted probation before judgment. An individual who is found guilty does not have the right to a contested case hearing before DHR enters information about him or her into the central registry. DHR has been able to prevail by arguing that in spite of any leniency that a judge may provide in a sentence, the imposition of probation before judgment necessitates a finding of guilt, as required by law. As a result, DHR is able to maintain identifying and other information in a central registry about individuals who have received probation before judgment for criminal charges arising from alleged abuse and neglect of children.

In fiscal 2003, there were 32,936 child protective service investigations that occurred statewide. DHR reports that about 44% of these cases were neglect investigations, 37% were physical abuse investigations, and 12% were sexual abuse investigations. Of the 32,936 investigations, 7,294 of the cases were closed with indications of abuse or neglect and 8,435 were closed as unsubstantiated with regard to abuse or neglect. Of the 7,294 cases with indications of abuse or neglect, 53% had indications of neglect, 29% of the cases had indications of physical abuse, and 18% had indications of sexual abuse. Of the 8,435 cases closed with unsubstantiated findings, about 45% were physical abuse cases, 43% were neglect cases, and about 12% were sexual abuse cases.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mh/jr

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