

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 237 (Senator Kelley, *et al.*)
Judicial Proceedings

Family Law - Child Abuse and Neglect - Reporting by Members of the Clergy

This bill alters a provision that exempts members of the clergy from reporting requirements for child abuse and neglect.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A minister of the gospel, clergyman, or priest of an established church of any denomination is not required to provide notice of child abuse or neglect if the notice would disclose matter communicated to the minister, clergyman, or priest in the course of a confidential, penitential communication and the minister, clergyman, or priest is specifically bound to maintain the confidentiality of the communication under canon law or church doctrine.

This exemption may not be construed to modify or limit the duty to report suspected child abuse or neglect whenever a member of the clergy functions in a role that would otherwise require the person to report suspected abuse or neglect, or:

- if information regarding the suspected abuse or neglect was obtained in any manner other than a confidential, penitential communication, including personal

observation of the victim even though that information may also have been obtained in the course of a confidential, penitential communication;

- information was communicated to the minister, clergyman, or priest in the presence of a third party; or
- information was disclosed by a minister, priest, or clergyman to a third party.

The bill repeals the existing exemption from reporting requirements that applies if the notice would disclose matter in relation to any communication under the priest-penitent privilege and the minister, clergyman, or priest is bound to maintain the confidentiality of that communication under canon law, church doctrine, or practice.

Current Law: 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 local department of social services 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 local department. (Health care practitioners, police officers, educators, and human service workers are also required to report suspected child abuse or neglect, but are subject to different reporting requirements.)

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 clergy-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.

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 local department of social services 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 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: Every state and the District of Columbia have laws that identify those people who are required to report suspected incidents of child abuse and neglect. As of 2003, according to the National Clearinghouse on Child Abuse and Neglect, there are 18 states in which clergy are specifically required to report incidents of child abuse and neglect, but the clergy-penitent privilege applies in the case of “pastoral communications.” In seven states, including Maryland, “any person” is required to report child abuse and neglect and clergy are included with that designation. However, the clergy-penitent privilege applies and may eliminate the mandate for clergy to report abuse or neglect in the case of pastoral communications. (The other states are Delaware, Florida, Idaho, Kentucky, Utah, and Wyoming.)

In the states of New Hampshire and West Virginia, clergy are specifically required to report child abuse and neglect and the laws specify that the clergy-penitent privilege cannot be asserted regarding cases of child abuse and neglect. In the states of North Carolina, Rhode Island, and Texas, “any person” including clergy, is required to report child abuse and neglect and the laws specify that the clergy-penitent privilege cannot be asserted.

In Connecticut and Mississippi, clergy are required to report child abuse and neglect, but the state laws do not specify whether the clergy-penitent privilege may be asserted. In Indiana, Nebraska, New Jersey, Oklahoma, and Tennessee, where clergy may be included with the mandate for “any person” to reported child abuse or neglect, the status of the clergy-penitent privilege is also not specified. In 11 states, (Alabama, Alaska, Georgia, Hawaii, Iowa, Kansas, New York, Ohio, South Dakota, Virginia, and Wisconsin) and the District of Columbia, there is no specific requirement for “any person,” including clergy, to report incidents of child abuse and neglect.

Additional Information

Prior Introductions: Two similar bills, SB 412/HB 823 were introduced in the 2003 session. SB 412 was referred to the Judicial Proceedings Committee, but received an unfavorable report. HB 823 was heard in the Judiciary Committee, but was subsequently withdrawn.

Cross File: HB 1098 (Delegate Menes, *et al.*) – Judiciary.

Information Source(s): Department of Human Resources, National Clearinghouse on Child Abuse and Neglect, Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2004
lc/jr

Analysis by: Karen D. Morgan

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