
By: **Senator Kelley**

Introduced and read first time: February 17, 2006

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Child Welfare - Reports of Children at Risk of Abuse or Neglect**

3 FOR the purpose of requiring a person to notify the local department of social services

4 or the appropriate law enforcement agency if the person has reason to believe
5 that a child is at substantial risk of abuse or neglect because the child is living
6 with, is regularly in the presence of, or is in the care or custody of a certain
7 individual; providing certain exceptions; providing for the receipt and
8 investigation of a report that a child is at substantial risk of abuse or neglect;
9 requiring the local department or the appropriate law enforcement agency to
10 take certain actions within a certain time period after receiving a report;
11 requiring an investigation to be completed within a certain time period;
12 authorizing and requiring the local department to take certain actions after
13 completion of an investigation; authorizing the disclosure of reports or records
14 concerning child abuse or neglect to certain persons providing treatment or care
15 to a child who is the subject of a report of a substantial risk of abuse or neglect;
16 making certain technical and conforming changes; and generally relating to
17 reports and investigations regarding children at substantial risk of abuse or
18 neglect.

19 BY repealing and reenacting, with amendments,
20 Article 88A - Department of Human Resources
21 Section 6(b)(2)(v) and (ix)
22 Annotated Code of Maryland
23 (2003 Replacement Volume and 2005 Supplement)

24 BY adding to
25 Article - Family Law
26 Section 5-705.2 and 5-706.1
27 Annotated Code of Maryland
28 (2004 Replacement Volume and 2005 Supplement)

29 BY repealing and reenacting, with amendments,
30 Article - Family Law
31 Section 5-706.1, 5-707(b), 5-708, and 5-714(b) and (e)

1 Annotated Code of Maryland
2 (2004 Replacement Volume and 2005 Supplement)

3 Preamble

4 WHEREAS, No child should die from maltreatment by a parent or caregiver;
5 and

6 WHEREAS, Child fatalities represent the ultimate failure of our child
7 protection and community systems; and

8 WHEREAS, Child fatality review teams have seen multiple deaths as a result of
9 repeated patterns of abuse of multiple offspring; and

10 WHEREAS, Parents and caregivers with a history of abuse or neglect or
11 criminal injury to a child present a preventable threat to the safety of Maryland's
12 children; and

13 WHEREAS, Maryland courts have consistently interpreted the child in need of
14 assistance statute to allow judges to protect a sibling of a maltreated child; and

15 WHEREAS, Maryland courts have consistently held that a child can be
16 adjudicated a child in need of assistance after considering the prior conduct of a
17 parent or caregiver, that substantial risk of harm constitutes neglect, and that judges
18 in Maryland need not wait until a child suffers maltreatment before protecting the
19 child; and

20 WHEREAS, A court is unlikely to have the information necessary to protect a
21 child who is exposed to a person with a history of harming children unless a local
22 department of social services petitions the court to find that the child is in need of
23 assistance; and

24 WHEREAS, The Attorney General's office has interpreted the statutory scheme
25 requiring a local department of social services to investigate abuse and neglect to be
26 incident based and, thus, not in harmony with the child in need of assistance statute;
27 and

28 WHEREAS, Families at risk of repeat, preventable death or injury of a child
29 need to be closely monitored and provided appropriate services; and

30 WHEREAS, To prevent death and injuries to children at substantial risk of
31 harm, local departments of social services should have a positive obligation to assess
32 risk and protect children; now, therefore,

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
34 MARYLAND, That the Laws of Maryland read as follows:

1 **Article 88A - Department of Human Resources**

2 6.

3 (b) Except as otherwise provided in Title 5, Subtitles 7 and 12 of the Family
4 Law Article, and § 6A of this subtitle, and this section, all records and reports
5 concerning child abuse or neglect are confidential, and their unauthorized disclosure
6 is a criminal offense subject to the penalty set out in subsection (e) of this section.
7 Reports or records concerning child abuse or neglect:

8 (2) May be disclosed on request:

9 (v) To a licensed practitioner who, or an agency, institution, or
10 program which, is providing treatment or care to a child who is the subject of a report
11 of child abuse or neglect OR A REPORT OF A SUBSTANTIAL RISK OF ABUSE OR
12 NEGLECT UNDER § 5-705.2 OF THE FAMILY LAW ARTICLE for a purpose relevant to the
13 provision of the treatment or care;

14 (ix) To the Office of the Independent Juvenile Justice Monitor
15 [established under Article 49D of the Code]; or

16 **Article - Family Law**

17 5-705.2.

18 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION AND
19 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING ANY LAW ON
20 PRIVILEGED COMMUNICATIONS, A PERSON SHALL NOTIFY THE LOCAL DEPARTMENT
21 OR THE APPROPRIATE LAW ENFORCEMENT AGENCY IF THE PERSON HAS REASON TO
22 BELIEVE THAT A CHILD IS AT SUBSTANTIAL RISK OF ABUSE OR NEGLECT BECAUSE
23 THE CHILD IS LIVING WITH, IS REGULARLY IN THE PRESENCE OF, OR IS IN THE
24 PERMANENT OR TEMPORARY CARE OR CUSTODY OF AN INDIVIDUAL WHO:

25 (1) IS IDENTIFIED IN THE CENTRAL REGISTRY ESTABLISHED UNDER §
26 5-714 OF THIS SUBTITLE AS AN INDIVIDUAL RESPONSIBLE FOR CHILD ABUSE OR
27 NEGLECT;

28 (2) IS THE PARENT OF A CHILD FOUND TO BE A CHILD IN NEED OF
29 ASSISTANCE UNDER § 3-819 OF THE COURTS ARTICLE IN A PROCEEDING ON A
30 PETITION ALLEGING THAT THE CHILD WAS ABUSED OR NEGLECTED;

31 (3) HAS BEEN CONVICTED OF:

32 (I) CHILD ABUSE UNDER § 3-601 OF THE CRIMINAL LAW ARTICLE;

33 (II) CHILD SEXUAL ABUSE UNDER § 3-602 OF THE CRIMINAL LAW
34 ARTICLE; OR

1 (III) A CRIME OF VIOLENCE, AS DEFINED IN § 14-101 OF THE
2 CRIMINAL LAW ARTICLE OR § 5-101 OF THE PUBLIC SAFETY ARTICLE, AGAINST A
3 CHILD;

4 (4) IS THE MOTHER OF A DRUG-EXPOSED INFANT; OR

5 (5) IS OTHERWISE KNOWN TO HAVE ABUSED OR NEGLECTED A CHILD.

6 (B) A PERSON IS NOT REQUIRED TO PROVIDE NOTICE UNDER SUBSECTION (A)
7 OF THIS SECTION:

8 (1) IN VIOLATION OF THE PRIVILEGE DESCRIBED UNDER § 9-108 OF THE
9 COURTS ARTICLE;

10 (2) IF THE NOTICE WOULD DISCLOSE MATTER COMMUNICATED IN
11 CONFIDENCE BY A CLIENT TO THE CLIENT'S ATTORNEY OR OTHER INFORMATION
12 RELATING TO THE REPRESENTATION OF THE CLIENT; OR

13 (3) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO ASSISTANCE OF
14 COUNSEL.

15 (C) EACH HEALTH PRACTITIONER, POLICE OFFICER, EDUCATOR, OR HUMAN
16 SERVICE WORKER, ACTING IN A PROFESSIONAL CAPACITY IN THIS STATE, WHO
17 MAKES A REPORT UNDER SUBSECTION (A) OF THIS SECTION:

18 (1) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC HEALTH
19 AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER, SCHOOL, OR
20 SIMILAR INSTITUTION, SHALL IMMEDIATELY NOTIFY AND GIVE ALL PERTINENT
21 INFORMATION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE HEAD;
22 AND

23 (2) SHALL MAKE AN ORAL REPORT AND A WRITTEN REPORT.

24 5-706.1.

25 (A) (1) A LOCAL DEPARTMENT OR A LAW ENFORCEMENT AGENCY MAY
26 RECEIVE A REPORT UNDER § 5-705.2 OF THIS SUBTITLE THAT A CHILD IS AT
27 SUBSTANTIAL RISK OF ABUSE OR NEGLECT.

28 (2) IF A LAW ENFORCEMENT AGENCY RECEIVES THE REPORT, THE LAW
29 ENFORCEMENT AGENCY SHALL IMMEDIATELY REFER THE REPORT TO THE LOCAL
30 DEPARTMENT.

31 (3) THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT
32 REGULATIONS GOVERNING HOW STAFF IN A LOCAL DEPARTMENT SHOULD ELICIT
33 INFORMATION WHEN RECEIVING A REPORT UNDER § 5-705.2 OF THIS SUBTITLE.

34 (B) (1) AFTER CONFIRMING THAT THE ALLEGATIONS IN THE REPORT
35 REGARDING THE INDIVIDUAL'S HISTORY ARE TRUE, THE LOCAL DEPARTMENT SHALL
36 MAKE A THOROUGH INVESTIGATION TO PROTECT THE HEALTH, SAFETY, AND

1 WELFARE OF ANY CHILD OR CHILDREN WHO MAY BE AT SUBSTANTIAL RISK OF
2 ABUSE OR NEGLECT, EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION.

3 (2) THE LOCAL DEPARTMENT MAY CONDUCT THE INVESTIGATION
4 JOINTLY WITH AN APPROPRIATE LAW ENFORCEMENT AGENCY.

5 (3) IF A SUBSEQUENT REPORT IS RECEIVED REGARDING AN INDIVIDUAL
6 WITH A HISTORY OF CHILD ABUSE OR NEGLECT THAT ALLEGES SUBSTANTIALLY THE
7 SAME FACTS AS A REPORT THAT THE LOCAL DEPARTMENT HAS PREVIOUSLY
8 INVESTIGATED, THE LOCAL DEPARTMENT MAY DECLINE TO MAKE AN
9 INVESTIGATION OF THE SUBSEQUENT REPORT.

10 (C) WITHIN 5 DAYS AFTER RECEIVING THE REPORT, THE LOCAL DEPARTMENT
11 OR THE APPROPRIATE LAW ENFORCEMENT AGENCY SHALL:

12 (1) SEE THE CHILD;

13 (2) ATTEMPT TO HAVE AN ON-SITE INTERVIEW WITH THE CHILD'S
14 CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS HAVING A
15 HISTORY OF ABUSE OR NEGLECT;

16 (3) DECIDE ON THE SAFETY AND LEVEL OF RISK OF THE CHILD,
17 WHEREVER THE CHILD IS, AND OF OTHER CHILDREN IN THE HOUSEHOLD; AND

18 (4) DECIDE ON THE SAFETY AND LEVEL OF RISK OF OTHER CHILDREN
19 IN THE CARE OR CUSTODY OF THE INDIVIDUAL IDENTIFIED IN THE REPORT AS
20 HAVING A HISTORY OF ABUSE OR NEGLECT.

21 (D) (1) TO THE EXTENT POSSIBLE, AN INVESTIGATION UNDER THIS SECTION
22 SHALL BE COMPLETED WITHIN 10 DAYS AFTER RECEIPT OF THE REPORT.

23 (2) AN INVESTIGATION THAT IS NOT COMPLETED WITHIN 30 DAYS
24 SHALL BE COMPLETED WITHIN 60 DAYS AFTER RECEIPT OF THE REPORT.

25 (E) IF, AFTER THE INVESTIGATION IS COMPLETED, THE LOCAL DEPARTMENT
26 DETERMINES THAT THE CHILD IS NOT SAFE OR IS AT SUBSTANTIAL RISK OF ABUSE
27 OR NEGLECT, THE LOCAL DEPARTMENT:

28 (1) MAY OFFER SERVICES TO THE FAMILY; AND

29 (2) SHALL IMMEDIATELY DECIDE WHETHER TO FILE A PETITION
30 ALLEGING THAT THE CHILD IS IN NEED OF ASSISTANCE.

31 (F) WITHIN 30 DAYS AFTER THE COMPLETION OF AN INVESTIGATION UNDER
32 THIS SECTION, THE LOCAL DEPARTMENT SHALL NOTIFY IN WRITING THE CHILD'S
33 CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS HAVING A
34 HISTORY OF ABUSE OR NEGLECT OF THE LOCAL DEPARTMENT'S DETERMINATION ON
35 THE SAFETY AND LEVEL OR RISK OF THE CHILD.

1 [5-706.1.] 5-706.2.

2 (a) Within 30 days after the completion of an investigation UNDER § 5-706 OF
3 THIS SUBTITLE in which there has been a finding of indicated or unsubstantiated
4 abuse or neglect, the local department shall notify in writing the individual alleged to
5 have abused or neglected a child:

6 (1) of the finding;

7 (2) of the opportunity to appeal the finding in accordance with this
8 section; and

9 (3) if the individual has been found responsible for indicated abuse or
10 neglect, that the individual may be identified in a central registry as responsible for
11 abuse or neglect under the circumstances specified in § 5-714(e) of this subtitle.

12 (b) (1) In the case of a finding of indicated abuse or neglect, an individual
13 may request a contested case hearing to appeal the finding in accordance with Title
14 10, Subtitle 2 of the State Government Article by responding to the notice of the local
15 department in writing within 60 days.

16 (2) Unless the individual and the department agree on another location,
17 a contested case hearing shall be held in the jurisdiction in which the individual
18 alleged to have abused or neglected a child resides.

19 (3) (i) If a criminal proceeding is pending on charges arising out of the
20 alleged abuse or neglect, the Office of Administrative Hearings shall stay the hearing
21 until a final disposition is made.

22 (ii) If after final disposition of the criminal charge, the individual
23 requesting the hearing is found guilty of any criminal charge arising out of the alleged
24 abuse or neglect, the Office of Administrative Hearings shall dismiss the
25 administrative appeal.

26 (4) (i) If a CINA case is pending concerning a child who has been
27 allegedly abused or neglected by the appellant or a child in the care, custody, or
28 household of the appellant, the Office of Administrative Hearings shall stay the
29 hearing until the CINA case is concluded.

30 (ii) After the conclusion of the CINA case, the Office of
31 Administrative Hearings shall vacate the stay and schedule further proceedings in
32 accordance with this section.

33 (c) (1) In the case of a finding of unsubstantiated abuse or neglect, an
34 individual may request a conference with a supervisor in the local department by
35 responding to the notice of the local department in writing within 60 days.

36 (2) In response to a timely request for a conference, a local department
37 supervisor shall schedule a conference, to occur within 30 days after the supervisor

1 receives the request, to allow the individual an opportunity to review the redacted
2 record and request corrections or to supplement the record.

3 (3) Within 10 days after the conference, the local department shall send
4 to the individual:

5 (i) a written summary of the conference and of any modifications
6 to be made in the record; and

7 (ii) notice of the individual's right to request a contested case
8 hearing in accordance with paragraph (4) of this subsection.

9 (4) (i) The individual may request a contested case hearing in
10 accordance with subsection (b) of this section to appeal the outcome of the conference
11 by responding to the summary in writing within 60 days.

12 (ii) If the individual does not receive the written summary and
13 notice specified in paragraph (3) of this subsection within 20 days, the individual may
14 request a contested case hearing.

15 (iii) An individual may request a contested case hearing in the case
16 of a finding of unsubstantiated abuse or neglect only as provided in this paragraph.

17 (d) In the case of an unexpunged finding of indicated or unsubstantiated
18 abuse or neglect made prior to June 1, 1999, the local department shall provide the
19 individual with an opportunity to appeal the finding in accordance with this section if
20 the individual:

21 (1) requests such an appeal;

22 (2) has not been offered an opportunity to request a contested case
23 hearing; and

24 (3) has not been found guilty of any criminal charge arising out of the
25 alleged abuse or neglect.

26 5-707.

27 (b) The local department shall expunge a report of suspected abuse or neglect
28 and all assessments and investigative findings:

29 (1) within 5 years after the date of referral if the investigation under §
30 5-706 of this subtitle concludes that the report is unsubstantiated, and no further
31 reports of abuse or neglect UNDER § 5-704 OR § 5-705 OF THIS SUBTITLE OR OF A
32 SUBSTANTIAL RISK OF ABUSE OR NEGLECT UNDER § 5-705.2 OF THIS SUBTITLE are
33 received during the 5 years; and

34 (2) within 120 days after the date of referral if the report is ruled out,
35 and no further reports of abuse or neglect UNDER § 5-704 OR § 5-705 OF THIS

1 SUBTITLE OR OF A SUBSTANTIAL RISK OF ABUSE OR NEGLECT UNDER § 5-705.2 OF
2 THIS SUBTITLE are received during the 120 days.

3 5-708.

4 Any person who makes or participates in making a report of abuse or neglect
5 under § 5-704, § 5-705, [or] § 5-705.1, OR § 5-705.2 of this subtitle or participates in
6 an investigation or a resulting judicial proceeding shall have the immunity described
7 under § 5-620 of the Courts and Judicial Proceedings Article from civil liability or
8 criminal penalty.

9 5-714.

10 (b) (1) Each local department shall provide the information for a central
11 registry.

12 (2) Except for identifying information authorized under subsection (d) of
13 this section, a central registry may not include information from a local department
14 case file until any individual found responsible for indicated or unsubstantiated child
15 abuse or neglect has:

16 (i) been found guilty of any criminal charge arising from the
17 alleged abuse or neglect;

18 (ii) unsuccessfully appealed the finding in accordance with the
19 procedures established under [§ 5-706.1] § 5-706.2 of this subtitle; or

20 (iii) failed to exercise the appeal rights within the time frames
21 specified in [§ 5-706.1] § 5-706.2 of this subtitle, Title 10, Subtitle 2 of the State
22 Government Article, or the Maryland Rules.

23 (e) (1) The Department or a local department may identify an individual as
24 responsible for abuse or neglect in a central registry only if the individual:

25 (i) has been found guilty of any criminal charge arising out of the
26 alleged abuse or neglect; or

27 (ii) has been found responsible for indicated abuse or neglect and
28 has:

29 1. unsuccessfully appealed the finding in accordance with
30 the procedures established under [§ 5-706.1] § 5-706.2 of this subtitle; or

31 2. failed to exercise the individual's appeal rights within the
32 time frames specified in [§ 5-706.1] § 5-706.2 of this subtitle, Title 10, Subtitle 2 of
33 the State Government Article, or the Maryland Rules.

34 (2) The Department without the necessity of a request shall remove from
35 the name of an individual described in paragraph (1) of this subsection the
36 identification of that individual as responsible for abuse or neglect if no entry has

1 been made for that individual for 7 years after the entry of the individual's name in a
2 registry.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2006.