

HOUSE BILL 400

D4, O4

8lr1882
CF SB 241

By: **Delegate Dumais**

Introduced and read first time: January 28, 2008

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of requiring certain professionals to notify the local department of
4 social services or the appropriate law enforcement agency if the professionals
5 have reason to believe that a child is at substantial risk of abuse or neglect
6 because the child is regularly permitted to associate with a certain individual;
7 providing certain exceptions; describing the information that is to be included in
8 a certain report; providing for the receipt and investigation of a report that a
9 child is at substantial risk of abuse or neglect; requiring the Secretary of
10 Human Resources to adopt certain regulations; requiring the local department
11 or the appropriate law enforcement agency to take certain actions within a
12 certain time period after receiving a report; requiring an investigation to be
13 completed within a certain time period; authorizing and requiring the local
14 department to take certain actions after completion of an investigation;
15 providing for expungement of certain reports; providing certain liability for
16 certain persons who make or participate in making certain reports; and
17 generally relating to reports of children at substantial risk of abuse or neglect.

18 BY adding to

19 Article – Family Law
20 Section 5–704.1 and 5–706.2
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2007 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article – Family Law
25 Section 5–707(b) and 5–708
26 Annotated Code of Maryland
27 (2006 Replacement Volume and 2007 Supplement)

28 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, No child should suffer injury or death from maltreatment resulting
2 from regular association with a person with a known criminal record of child abuse,
3 neglect, or child injury; and

4 WHEREAS, A child's regular association with a person with a history of abuse,
5 neglect, or criminal injury to a child presents a preventable threat to the safety of
6 Maryland's children; and

7 WHEREAS, Maryland courts have consistently held that a child can be
8 adjudicated a child in need of assistance under certain circumstances without waiting
9 until a child suffers maltreatment before protecting the child; and

10 WHEREAS, A court is unlikely to have the information necessary to protect a
11 child who is regularly exposed to a person with a history of harming children unless a
12 local department of social services petitions the court to find that the child is in need of
13 assistance; and

14 WHEREAS, The Office of the Attorney General has interpreted the statutory
15 scheme requiring a local department of social services to investigate abuse and neglect
16 to be incident-based and, thus, not in harmony with the child in need of assistance
17 statute; and

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

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

23 **Article - Family Law**

24 **5-704.1.**

25 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION AND
26 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING ANY LAW ON
27 PRIVILEGED COMMUNICATIONS, EACH HEALTH PRACTITIONER, MEDICAL
28 EXAMINER, CORONER, POLICE OFFICER, PAROLE AND PROBATION AGENT,
29 EDUCATOR, HUMAN SERVICE WORKER, OR COMPUTER TECHNICIAN, ACTING IN
30 A PROFESSIONAL CAPACITY IN THIS STATE, SHALL NOTIFY THE LOCAL
31 DEPARTMENT OR THE APPROPRIATE LAW ENFORCEMENT AGENCY IF THE
32 INDIVIDUAL HAS REASON TO BELIEVE THAT A CHILD IS AT SUBSTANTIAL RISK
33 OF ABUSE OR NEGLECT BECAUSE THE CHILD IS REGULARLY PERMITTED BY A
34 PARENT, GUARDIAN, OR CAREGIVER TO ASSOCIATE WITH AN INDIVIDUAL WHO:

1 (1) IS IDENTIFIED IN THE CENTRAL REGISTRY UNDER § 5-714 OF
2 THIS SUBTITLE AS AN INDIVIDUAL RESPONSIBLE FOR CHILD SEXUAL ABUSE;

3 (2) HAS BEEN CONVICTED OF:

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

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

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

11 (3) COMMITTED AN ACT IN ANOTHER STATE EQUIVALENT TO AN
12 ACT DESCRIBED IN ITEM (1) OR (2) OF THIS SUBSECTION.

13 (B) AN INDIVIDUAL IS NOT REQUIRED TO PROVIDE NOTICE UNDER
14 SUBSECTION (A) OF THIS SECTION:

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

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

20 (3) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO
21 ASSISTANCE OF COUNSEL.

22 (C) (1) AN INDIVIDUAL WHO NOTIFIES THE APPROPRIATE
23 AUTHORITIES UNDER SUBSECTION (A) OF THIS SECTION SHALL MAKE:

24 (I) AN ORAL REPORT, BY TELEPHONE OR DIRECT
25 COMMUNICATION, AS SOON AS POSSIBLE, TO THE LOCAL DEPARTMENT OR
26 APPROPRIATE LAW ENFORCEMENT AGENCY; AND

27 (II) A WRITTEN REPORT NOT LATER THAN 48 HOURS AFTER
28 THE CONTACT, EXAMINATION, ATTENTION, OR TREATMENT THAT CAUSED THE
29 INDIVIDUAL TO BELIEVE THAT THE CHILD IS AT SUBSTANTIAL RISK OF ABUSE
30 OR NEGLECT.

1 (2) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC
2 HEALTH AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER,
3 SCHOOL, OR SIMILAR INSTITUTION, AN INDIVIDUAL WHO NOTIFIES THE
4 APPROPRIATE AUTHORITIES UNDER SUBSECTION (A) OF THIS SECTION SHALL
5 IMMEDIATELY NOTIFY AND GIVE ALL INFORMATION REQUIRED BY THIS
6 SECTION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE HEAD.

7 (D) TO THE EXTENT REASONABLY POSSIBLE, AN INDIVIDUAL WHO
8 MAKES A REPORT UNDER THIS SECTION SHALL INCLUDE IN THE REPORT THE
9 FOLLOWING INFORMATION:

10 (1) THE NAME, AGE, AND HOME ADDRESS OF THE CHILD;

11 (2) THE NAME AND HOME ADDRESS OF THE CHILD'S PARENT OR
12 OTHER PERSON WHO IS RESPONSIBLE FOR THE CHILD'S CARE;

13 (3) THE WHEREABOUTS OF THE CHILD;

14 (4) THE NATURE AND EXTENT OF THE SUBSTANTIAL RISK OF
15 ABUSE OR NEGLECT OF THE CHILD, INCLUDING ANY EVIDENCE OR
16 INFORMATION AVAILABLE TO THE REPORTER CONCERNING POSSIBLE
17 PREVIOUS INSTANCES OF ABUSE OR NEGLECT; AND

18 (5) ANY OTHER INFORMATION THAT WOULD HELP TO
19 DETERMINE:

20 (I) THE CAUSE OF THE SUBSTANTIAL RISK OF ABUSE OR
21 NEGLECT; AND

22 (II) THE IDENTITY OF ANY INDIVIDUAL RESPONSIBLE FOR
23 THE SUBSTANTIAL RISK OF ABUSE OR NEGLECT.

24 **5-706.2.**

25 (A) (1) A LOCAL DEPARTMENT OR A LAW ENFORCEMENT AGENCY
26 MAY RECEIVE A REPORT UNDER § 5-704.1 OF THIS SUBTITLE THAT A CHILD IS
27 AT SUBSTANTIAL RISK OF ABUSE OR NEGLECT.

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

31 (II) ON REQUEST OF THE LOCAL DEPARTMENT, THE LAW
32 ENFORCEMENT AGENCY SHALL, WITHIN 48 HOURS, PROVIDE ANY NECESSARY

1 INFORMATION TO CONFIRM OR DENY CONVICTIONS ALLEGED IN THE REPORT AS
2 DESCRIBED IN § 5-704.1(A)(2) OF THIS SUBTITLE.

3 (3) THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT
4 REGULATIONS GOVERNING:

5 (I) HOW STAFF IN A LOCAL DEPARTMENT SHOULD ELICIT
6 INFORMATION WHEN RECEIVING A REPORT UNDER § 5-704.1 OF THIS SUBTITLE;
7 AND

8 (II) THE DEFINITION OF SUBSTANTIAL RISK OF ABUSE OR
9 NEGLECT AS USED IN § 5-704.1(A) OF THIS SUBTITLE.

10 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
11 SUBSECTION, AFTER CONFIRMING THAT THE ALLEGATIONS IN THE REPORT
12 REGARDING THE INDIVIDUAL'S HISTORY ARE TRUE, THE LOCAL DEPARTMENT
13 SHALL MAKE A THOROUGH INVESTIGATION TO PROTECT THE HEALTH, SAFETY,
14 AND WELFARE OF ANY CHILD OR CHILDREN WHO MAY BE AT SUBSTANTIAL RISK
15 OF ABUSE OR NEGLECT.

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

18 (3) IF A SUBSEQUENT REPORT IS RECEIVED REGARDING AN
19 INDIVIDUAL WITH A HISTORY OF CHILD ABUSE OR NEGLECT THAT ALLEGES
20 SUBSTANTIALLY THE SAME FACTS AS A REPORT THAT THE LOCAL DEPARTMENT
21 HAS PREVIOUSLY INVESTIGATED, THE LOCAL DEPARTMENT MAY DECLINE TO
22 MAKE AN INVESTIGATION OF THE SUBSEQUENT REPORT.

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

25 (1) SEE THE CHILD;

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

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

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

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

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

6 **(E) IF, AFTER THE INVESTIGATION IS COMPLETED, THE LOCAL**
7 **DEPARTMENT DETERMINES THAT THE CHILD IS NOT SAFE OR IS AT**
8 **SUBSTANTIAL RISK OF ABUSE OR NEGLECT, THE LOCAL DEPARTMENT SHALL:**

9 **(1) OFFER SERVICES TO THE FAMILY; AND**

10 **(2) IMMEDIATELY DECIDE WHETHER TO FILE A PETITION**
11 **ALLEGING THAT THE CHILD IS IN NEED OF ASSISTANCE.**

12 **(F) WITHIN 30 DAYS AFTER THE COMPLETION OF AN INVESTIGATION**
13 **UNDER THIS SECTION, THE LOCAL DEPARTMENT SHALL NOTIFY IN WRITING THE**
14 **CHILD'S CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS**
15 **HAVING A HISTORY OF ABUSE OR NEGLECT OF THE LOCAL DEPARTMENT'S**
16 **DETERMINATION ON THE SAFETY AND LEVEL OF RISK OF THE CHILD.**

17 5-707.

18 (b) The local department shall expunge a report of suspected abuse or
19 neglect **OR OF SUBSTANTIAL RISK OF ABUSE OR NEGLECT** and all assessments and
20 investigative findings:

21 (1) within 5 years after the date of referral if the investigation under §
22 5-706 **OR § 5-706.2** of this subtitle concludes that the report is unsubstantiated, and
23 no further reports of abuse or neglect **OR SUBSTANTIAL RISK OF ABUSE OR**
24 **NEGLECT** are received during the 5 years; and

25 (2) within 120 days after the date of referral if the report is ruled out,
26 and no further reports of abuse or neglect **OR SUBSTANTIAL RISK OF ABUSE OR**
27 **NEGLECT** are received during the 120 days.

28 5-708.

29 Any person who makes or participates in making a report of abuse or neglect
30 under § 5-704, § 5-705, or § 5-705.1 of this subtitle **OR A REPORT OF SUBSTANTIAL**
31 **RISK OF ABUSE OR NEGLECT UNDER § 5-704.1 OF THIS SUBTITLE** or participates
32 in an investigation or a resulting judicial proceeding shall have the immunity

1 described under § 5-620 of the Courts and Judicial Proceedings Article from civil
2 liability or criminal penalty.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2008.