

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 149

(Chair, Judicial Proceedings Committee) (By Request –
Departmental – Human Resources)

Judicial Proceedings

Family Law - Child Abuse and Neglect - Definition of Abuse - Clarification

This departmental bill alters the definition of “abuse” to clarify that the physical or mental injury of a child by a parent or other person with responsibility for a child or by a household or family member is abuse regardless of whether the injury was caused during corporal punishment, if the circumstances of the physical or mental injury indicate that the child’s health or welfare is harmed or at substantial risk of being harmed.

Fiscal Summary

State Effect: None. The bill clarifies current law.

Local Effect: None.

Small Business Effect: The Department of Human Resources has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: “Abuse” means the physical or mental injury of a child by any parent or other person with permanent or temporary care, custody, or responsibility for a child’s supervision, or by any household or family member, under circumstances that indicate the child’s health or welfare is harmed or at substantial risk of being harmed. Abuse also means the sexual abuse of a child, whether physical injuries are sustained or not.

A report of suspected child abuse triggers an investigation by the local department of social services or the appropriate law enforcement agency. If the local department finds that the abuse is “indicated” (*i.e.*, that there is credible evidence, which has not been satisfactorily refuted, that the abuse did occur) the name of the individual found responsible may be entered into a central registry. The individual has the right to appeal the finding to the Office of Administrative Hearings. A finding of indicated child abuse may also result in the filing of a Child in Need of Assistance petition and the removal of the child from the home.

Background: This bill is intended to clarify the definition of “abuse” in light of the Court of Appeals decision in *Charles County Department of Social Services v. Vann*, 382 Md. 286 (2004). In this case, the Charles County Department of Social Services found the respondent, Mr. Vann, responsible for “indicated” child abuse. In the course of administering corporal punishment to his son, the parent inadvertently injured his son when the child attempted to escape the punishment. The parent filed an administrative appeal and the administrative law judge ruled in favor of the department. The parent then asked the circuit court to review the administrative decision and the circuit court ruled in favor of the department. On appeal, the Court of Special Appeals reversed the lower court decision, holding that the parent could not be responsible for indicated child abuse. The Court of Special Appeals ruled that, as a matter of law, the exercise of reasonable corporal punishment could not be child abuse.

The department filed an appeal with the Court of Appeals, arguing that the definition of abuse does not contain an exception for reasonable corporal punishment. The Court of Appeals ruled in favor of the department and overturned the decision of the Court of Special Appeals, finding that it was reasonable to conclude that the parent’s actions (swinging a belt buckle at the child who was running away) did create a substantial risk of harm. Accordingly, the decisions by the administrative law judge and the circuit court ruling that the parent could be held responsible for indicated child abuse were not in error.

While the Court of Appeals upheld the actions of the department, it also took pains to state that the belief of the department that the statutory definition of child abuse could include some forms of corporal punishment was erroneous. The Court of Appeals stated that it agreed with the Court of Special Appeals that “...there can be no definition of child abuse that includes reasonable corporal punishment.” The Department of Human Resources is concerned that the rationale of the court could suggest that there are forms of corporal punishment that could not be classified as child abuse even if the punishment harmed the child’s health or welfare or created a substantial risk of harm. This bill is intended to clarify that if the criteria established in the statutory definition of abuse are

met, child abuse has in fact, occurred, even if the risk or substantial risk to the health or welfare to the child occurred in the course of delivering corporal punishment.

According to the Child Welfare Information Gateway, all states define child abuse in statute. Generally, physical abuse is defined as "...any nonaccidental physical injury to the child, including striking, kicking, burning or biting, or any action that results in physical impairment to the child." In Maryland and 35 other states, the definition of abuse includes acts or circumstances that cause harm to the child or create a substantial risk of harm to the child's health or welfare.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mll/hlb

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