

SENATE BILL 121

D4, O4

9lr0462

By: **Senators Kelley, Astle, Brochin, Colburn, Conway, Currie, Della, Dyson, Forehand, Glassman, Jones, Lenett, Madaleno, Middleton, Robey, and Stone**

Introduced and read first time: January 16, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Child Protection – Mandatory Reporting of Children Regularly in Contact**
3 **with Persons Convicted of Child Sexual Abuse**

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

19 BY adding to
20 Article – Family Law
21 Section 5–704.1 and 5–706.2
22 Annotated Code of Maryland
23 (2006 Replacement Volume and 2008 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Family Law
26 Section 5–707(b) and 5–708
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2006 Replacement Volume and 2008 Supplement)

Preamble

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

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

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

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

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

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

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

Article – Family Law

5-704.1.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING ANY LAW ON PRIVILEGED COMMUNICATIONS, EACH HEALTH PRACTITIONER, POLICE OFFICER, PAROLE AND PROBATION AGENT, EDUCATOR, OR HUMAN SERVICE WORKER, ACTING IN A PROFESSIONAL CAPACITY IN THIS STATE, SHALL NOTIFY THE LOCAL DEPARTMENT OR THE APPROPRIATE LAW ENFORCEMENT AGENCY IF THE INDIVIDUAL HAS REASON TO BELIEVE THAT A PARENT, GUARDIAN, OR CAREGIVER OF A CHILD ALLOWS THE CHILD TO RESIDE WITH OR TO REGULARLY ASSOCIATE WITH AN INDIVIDUAL, OTHER THAN THE PARENT OR GUARDIAN, WHO:

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

3 (2) HAS BEEN CONVICTED IN THE STATE WITHIN THE PAST 10
4 YEARS OF:

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

7 (II) CHILD SEXUAL ABUSE UNDER § 3-602 OF THE CRIMINAL
8 LAW ARTICLE.

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

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

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

16 (3) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO
17 ASSISTANCE OF COUNSEL.

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

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

23 (II) A WRITTEN REPORT NOT LATER THAN 48 HOURS AFTER
24 THE CONTACT, EXAMINATION, ATTENTION, OR TREATMENT THAT CAUSED THE
25 INDIVIDUAL TO BELIEVE THAT THE CHILD IS AT SUBSTANTIAL RISK OF ABUSE
26 OR NEGLECT BECAUSE THE CHILD IS ALLOWED TO RESIDE WITH OR TO
27 REGULARLY ASSOCIATE WITH AN INDIVIDUAL DESCRIBED IN SUBSECTION (A)
28 OF THIS SECTION.

29 (2) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC
30 HEALTH AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER,
31 SCHOOL, OR SIMILAR INSTITUTION, AN INDIVIDUAL WHO NOTIFIES THE
32 APPROPRIATE AUTHORITIES UNDER SUBSECTION (A) OF THIS SECTION SHALL

1 IMMEDIATELY NOTIFY AND GIVE ALL OF THE INFORMATION REQUIRED BY THIS
2 SECTION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE HEAD.

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

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

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

9 (3) THE WHEREABOUTS OF THE CHILD;

10 (4) THE NATURE AND EXTENT OF THE SUBSTANTIAL RISK OF
11 ABUSE OR NEGLECT OF THE CHILD, INCLUDING ANY EVIDENCE OR
12 INFORMATION AVAILABLE TO THE REPORTER CONCERNING POSSIBLE
13 PREVIOUS INSTANCES OF ABUSE OR NEGLECT; AND

14 (5) ANY OTHER INFORMATION THAT WOULD HELP TO
15 DETERMINE:

16 (I) THE CAUSE OF THE SUBSTANTIAL RISK OF ABUSE OR
17 NEGLECT; AND

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

20 **5-706.2.**

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

24 (2) (I) IF A LAW ENFORCEMENT AGENCY RECEIVES THE
25 REPORT, THE LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REFER THE
26 REPORT TO THE LOCAL DEPARTMENT.

27 (II) ON REQUEST OF THE LOCAL DEPARTMENT, THE LAW
28 ENFORCEMENT AGENCY SHALL, WITHIN 48 HOURS, PROVIDE ANY NECESSARY
29 INFORMATION TO CONFIRM OR DENY CONVICTIONS ALLEGED IN THE REPORT AS
30 DESCRIBED IN § 5-704.1(A)(2) OF THIS SUBTITLE.

1 **(3) THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT**
2 **REGULATIONS GOVERNING:**

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

6 **(II) THE DEFINITION OF SUBSTANTIAL RISK OF ABUSE OR**
7 **NEGLECT AS USED IN § 5-704.1 OF THIS SUBTITLE.**

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

14 **(2) THE LOCAL DEPARTMENT MAY CONDUCT THE INVESTIGATION**
15 **JOINTLY WITH AN APPROPRIATE LAW ENFORCEMENT AGENCY.**

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

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

23 **(1) SEE THE CHILD IN PERSON;**

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

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

29 **(4) DECIDE ON THE SAFETY AND LEVEL OF RISK OF OTHER**
30 **CHILDREN IN THE CARE OR CUSTODY OF THE INDIVIDUAL IDENTIFIED IN THE**
31 **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
33 described under § 5-620 of the Courts and Judicial Proceedings Article from civil
34 liability or criminal penalty.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2009.