

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 50
Judiciary

(Delegate G. Clagett)

Crimes - Child Endangerment

This bill establishes the crime of child endangerment. A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not recklessly act or fail to act in a manner that creates a substantial risk to a minor of: (1) death; or (2) permanent or protracted serious disfigurement, loss of or the impairment of the function of any bodily member or organ.

A violator is guilty of the misdemeanor of child endangerment and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: State law does not establish criminal penalties for an act or failure to act that leads to child endangerment.

Under Maryland's prohibition against child abuse, a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor

may not cause abuse to the minor. “Abuse” means physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor’s health or welfare is harmed or threatened by the treatment or act. A violator is guilty of the felony of child abuse in the second degree and on conviction is subject to imprisonment not exceeding 15 years. If the abuse results in the death of the minor or causes serious physical injury, a violator is guilty of the felony of child abuse in the first degree and on conviction is subject to imprisonment not exceeding 25 years or, if the violation results in the death of the victim, imprisonment not exceeding 30 years. (*See Criminal Law Article § 3-601.*)

A person may not recklessly engage in conduct that creates a substantial risk of death or serious physical injury to another. “Serious physical injury” means physical injury that: (1) creates a substantial risk of death; or (2) causes permanent or protracted serious (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ. A violator is guilty of the misdemeanor of reckless endangerment and on conviction is subject to imprisonment not exceeding five years and/or a fine not exceeding \$5,000. (*See Criminal Law Article § 3-204.*)

It is a crime for a person who is charged with the care of a child younger than age 8 to allow the child to be locked or confined in a building or motor vehicle while the person charged is absent and the building or motor vehicle is out of the sight of the person charged unless the person charged provides a reliable person at least age 13 to remain with the child to protect the child. This crime is a misdemeanor and a violator is subject to fine not exceeding \$500 and/or imprisonment not exceeding 30 days. (*See Family Law Article § 5-801.*)

A person is required to report suspected child neglect and the State is required to intervene to protect the child. Professional human services workers, as defined by statute, must adhere to specific oral and written report requirements.

State law defines neglect as leaving a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervising a child under circumstances that indicate: (1) the child’s health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury. (*See Family Law Article § 5-701.*)

Promptly after receiving a report of child neglect for a child who lives in Maryland and that is alleged to have occurred in the State, the local department of social services (LDSS) must thoroughly investigate the report. The investigation must include: (1) a determination of the nature, extent, and cause of the neglect, if any; (2) if mental injury is

suspected, an assessment by two of the following: a licensed physician, a licensed psychologist, or a licensed social worker; and (3) if neglect is verified, a determination of the identity of the person or persons responsible for the neglect, a determination of the name, age, and condition of any other child in the household, an evaluation of the parents and the home environment, a determination of any other pertinent facts or matters, and a determination of any needed services.

If a local department finds that neglect has occurred, the State is required to intervene to provide services to the family to prevent continued neglect. If child neglect continues, the State may petition to have the child declared a Child in Need of Assistance where the local department becomes guardian of the child until the child can be safely reunited with his/her family or placed in foster care. Continued instances of neglect by a parent could subject a parent to termination of parental rights. A person who is found to neglect children in his/her care or custody could be listed on the State Central Registry of Reported Child Abuse and Neglect Cases. (*See* Family Law Article § 5-706.)

The Department of Human Resources' Social Service Administration and each LDSS maintain a central registry of reported child abuse and neglect cases.

Background: **Exhibit 1** shows child neglect allegations and findings for each month in fiscal 2008. As shown in **Exhibit 2**, from calendar 2002 to 2006, 139 child deaths where child abuse or neglect was determined to be a contributing factor were reported to DHR, an average of 28 deaths annually.

Exhibit 1
Child Neglect Allegations and Findings
Fiscal 2008

<u>Month</u>	<u>New Allegations</u>	<u>Indicated Findings</u>	<u>Unsubstantiated Findings</u>	<u>Ruled Out Findings</u>
July	909	238	263	1,059
August	1,107	290	230	1,058
September	1,005	234	224	879
October	1,280	274	263	1,280
November	1,071	272	227	1,243
December	944	296	255	1,406
January	1,239	324	287	1,448
February	1,218	293	243	1,341
March	1,228	277	270	1,502
April	1,485	290	273	1,488
May	1,226	242	208	1,342
June	1,068	306	286	1,444
Total	13,780	3,336	3,029	15,490

Source: StateStat

Exhibit 2
Child Deaths Reported to DHR Where Child Abuse or Neglect Are Determined by
DHR Staff to Be a Contributing Factor
Calendar 2002-2006

County	2002	2003	2004	2005	2006	Total
Allegany	0	2	0	0	1	3
Anne Arundel	2	0	3	4	1	10
Baltimore City	7	7	10	3	5	32
Baltimore	2	1	3	7	3	16
Calvert	1	0	1	0	0	2
Caroline	2	0	0	2	0	4
Carroll	1	2	0	1	2	6
Cecil	0	0	0	1	3	4
Charles	1	0	0	0	0	1
Dorchester	0	1	0	0	0	1
Frederick	0	1	1	1	1	4
Garrett	0	0	0	0	0	0
Harford	2	0	2	1	0	5
Howard	3	1	0	1	0	5
Kent	0	0	0	0	0	0
Montgomery	2	2	1	1	2	8
Prince George's	5	3	2	4	6	20
Queen Anne's	0	0	0	0	0	0
St. Mary's	0	0	0	0	0	0
Somerset	1	0	1	0	0	2
Talbot	0	0	0	0	0	0
Washington	3	2	4	2	0	11
Wicomico	1	0	0	1	3	5
Worcester	0	0	0	0	0	0
Total	33	22	28	29	27	139

Source: Department of Human Resources

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of

inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: Similar bills were introduced in 2006 and 2008. HB 410 of 2008 passed the House, passed second reading in the Senate, and had no further action taken on it. HB 1399 of 2006, received a hearing before the House Judiciary Committee but received no further action.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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ncs/kdm

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