

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 121
Judicial Proceedings

(Senator Kelley, *et al.*)

**Child Protection - Mandatory Reporting of Children Regularly in Contact with
Persons Convicted of Child Sexual Abuse**

This bill applies reporting and investigating requirements to children who may be at substantial risk of abuse or neglect (in addition to those children suspected of being subjected to abuse or neglect). A person must notify the local department of social services or the appropriate law enforcement agency if the person has reason to believe that a child is at substantial risk of abuse or neglect because the child's caretaker permits the child to reside with or to regularly associate with certain individuals as specified in the bill.

Fiscal Summary

State Effect: None. Any increase in the workload for the Department of Human Resources (DHR) can be absorbed within existing budgeted resources. Any increase in the workload for the Judiciary as a result of additional Child in Need of Assistance (CINA) petitions is expected to be minimal and can be absorbed within existing budgeted resources. Revenues are not affected.

Local Effect: Any increase in the workload for law enforcement or the circuit courts can be absorbed within existing budgeted resources. Local school systems will be required to train staff on the new reporting protocol, but any costs will be minimal.

Small Business Effect: None.

Analysis

Bill Summary: A health practitioner, police officer, parole and probation agent, educator, or human services worker acting in a professional capacity in this State must

notify the local department or the appropriate law enforcement agency if the worker has reason to believe that a parent, guardian, or caregiver allows the child to reside with or to regularly associate with an individual, other than the parent or guardian, who:

- is identified in the central registry as an individual responsible for child sexual abuse; or
- has been convicted of the crimes of child abuse or child sexual abuse within the past 10 years.

An individual is not required to provide notice if: (1) it would violate the attorney-client privilege established in State law; (2) the notice would disclose confidential information communicated by a client to his/her attorney or other information relating to the client's representation; or (3) the disclosure would violate any constitutional right to assistance of counsel.

An individual who notifies the appropriate authorities must make an oral report as soon as possible to the local department or the appropriate law enforcement agency and a written report no later than 48 hours after the contact, examination, attention, or treatment that caused the worker to believe the child is at substantial risk of abuse or neglect. To the extent reasonably possible, an individual who makes a report must include information about the child, the child's parents, the circumstances that led to the suspicion that the child is at substantial risk of abuse or neglect, and any other information that would help to determine the cause of the substantial risk and the individual responsible.

If the individual is acting as a staff member at a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, the individual must immediately notify and give all required information to the head of the institution or that individual's designee.

A local department or law enforcement agency may receive a report of substantial risk of abuse or neglect. A law enforcement agency must immediately refer the report to the local department and, if requested by the local department, provide, within 48 hours, any necessary information to confirm or deny a conviction for any of the aforementioned crimes that indicate substantial risk of abuse or neglect.

The Secretary of Human Resources must adopt regulations on eliciting information from individuals that provide a report of substantial risk of abuse or neglect and adopt regulations to define "substantial risk of abuse or neglect."

After confirming that the report's allegations regarding the history of an individual who is the subject of the report are true, the local department must thoroughly investigate the

allegations. This may be done jointly with a law enforcement agency. If a subsequent report is received about an individual with a history of child abuse or neglect that alleges substantially the same facts as a report previously investigated by the local department, the local department may decline to investigate.

Within five days after receiving a substantial risk report, the local department or law enforcement agency must see the child, attempt an on-site interview with the caregiver and the individual identified as having the history of abuse or neglect, and decide on the safety and the level of risk to the child and other children in the individual's care and custody. To the extent possible, an investigation must be completed within 10 days after receipt of the report; otherwise an investigation has to be completed within 60 days.

If the local department determines that the child is not safe or is at substantial risk of abuse or neglect, the local department must offer services to the family and must immediately decide whether to file a CINA petition. The child's caregiver and the individual identified with the history of abuse or neglect must be notified within 30 days of the local department's determination of the safety and level of risk to the child.

The bill applies the local department's duties relating to expungement of reports and records to a person who is the subject of a substantial risk report. The bill also applies the immunity from civil liability that applies to other reporters of abuse and neglect to those who make reports of substantial risk of abuse or neglect.

Current Law: Statutory requirements regarding the reporting of child abuse and neglect apply if the reporter suspects that abuse or neglect has occurred. State law does not establish reporting requirements if a reporter believes that a child may be at substantial risk of abuse or neglect. (*See Family Law Article § 5-703.*)

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity and have reason to believe that a child has been subjected to abuse must notify the local department of social services or the appropriate law enforcement agency. If the worker has reason to believe a child has been subjected to neglect, then that person must notify the local department. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee. (*See Family Law Article § 5-704.*)

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse must notify the local department of social services or the appropriate law enforcement agency. If the person has reason to believe a child has been subjected to neglect, then that person must notify the local department. Attorneys and clergy are generally exempt

from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute. (*See Family Law Article § 5-705.*)

Within 30 days after completion of an investigation of child abuse and neglect in which there is a finding of either indicated or unsubstantiated abuse or neglect, the local department must notify the individual alleged to have abused or neglected the child of the finding and the opportunity to appeal the finding, as specified in statute. If the finding is for indicated abuse or neglect, the individual must also be notified that he/she is subject to identification in a central registry of individuals responsible for abuse or neglect. If the finding is for unsubstantiated abuse or neglect, an individual may request a conference with a supervisor in the local department by responding to the notice within 60 days. The individual has the right to review a summary of the conference and request a contested case hearing, as provided by statute. (*See Family Law Article § 5-706.1.*)

The local department must expunge a report of suspected abuse or neglect, all assessments, and investigative findings if the local department concludes that the report is unsubstantiated and no further reports of abuse or neglect are received during the next five years. The local department must expunge such a report within 120 days if the report is ruled out and no further reports of abuse or neglect are received during the next 120 days. DHR must automatically expunge information on an individual from the registry without a request if no entry has been made for seven years. A person who makes or participates in a report generally has immunity from civil liability, as provided in statute.

Except for identifying information, a central registry of individuals responsible for child abuse or neglect may not include information from the case file until the individual alleged responsible for abuse or neglect has been found guilty of criminal charges arising from the allegation of abuse or neglect, has unsuccessfully appealed the finding, or has failed to exercise appeal rights. The authority of DHR to identify an individual in a central registry as responsible for abuse or neglect applies only to those individuals who have been found guilty of the criminal charge arising from the allegation or if the individual has been found responsible for the abuse or neglect and has unsuccessfully appealed the finding or failed to exercise appeal rights. (*See Family Law Article § 5-714.*)

State and Local Fiscal Effect: The Department of Legislative Services (DLS) advises that the requirements of this bill can be met with the existing resources of DHR, although it is anticipated that this bill may cause an increase in the workload of local departments of social services. The bill is expected to impact a relatively narrow population of individuals who will be referred to child protective services based on their abusive history or criminal background. Unlike prior introductions of similar bills, this bill does not require individuals to report on those who have committed crimes against children outside of Maryland or those who have committed violent crimes against children that are

not child abuse or child sexual abuse. The bill also does not require the reporting of parents or guardians with an abusive or criminal history. DHR estimates that the bill may cause an increase of 240 new referrals each year and advises that these investigations can be absorbed by existing workers. Any increase in the caseload for in-home services can also be absorbed by existing workers. DLS agrees with this assessment.

Additional Information

Prior Introductions: SB 241 of 2008, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 400, received an unfavorable report by the House Judiciary Committee. Other similar bills, SB 792/HB 1124 of 2007, both received no action after being heard by Senate Judicial Proceedings and the House Judiciary committees, respectively. This bill is also similar to SB 935/HB 1474 of 2006. Both bills were withdrawn after being heard.

Cross File: None.

Information Source(s): Baltimore City; Cecil, Carroll, Harford, and Montgomery counties; Department of Human Resources; Maryland State Department of Education; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

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