

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 59

(Chair, Judicial Proceedings Committee, *et al.*) (By
Request - Departmental - Human Resources)

Judicial Proceedings

Judiciary

Child Abuse and Neglect - Disclosure of Information

This departmental bill requires the director of a local department of social services or the Secretary of Human Resources to disclose, on request, specified information regarding child abuse or neglect if: (1) it is determined that the sharing of the information is not contrary to the best interest of the child or other affected children; (2) the child named in a report has suffered a fatality or near fatality; and (3) the State's Attorney's Office has consulted with and advised the local director or Secretary that disclosure would not jeopardize or prejudice a related investigation or prosecution. The bill repeals a provision that permitted disclosure only if the alleged abuser or neglecter had been charged with a related crime and eliminates the requirement for the local director or the Secretary to consult with the primary law enforcement agency prior to the disclosure.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The bill's requirements can be handled with existing budgeted resources.

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

Analysis

Current Law: The director of a local department of social services or the Secretary of Human Resources *may* disclose certain information concerning child abuse or neglect if:

- it is determined that disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, family, or care of the alleged abuser or neglecter;
- the alleged abuser or neglecter has been charged with a crime related to a report of child abuse or neglect; and
- the child named in a report of abuse or neglect has died or suffered a serious physical injury. A serious physical injury is defined as a physical injury that (1) creates a substantial risk of death; or (2) causes permanent or protracted serious: (i) disfigurement; or (ii) loss or impairment of the function of any bodily member or organ.

In evaluating whether disclosure is contrary to the best interests of the child or other potentially affected children, the local director or the Secretary must consider the effect that disclosure may have on the provision of services to the child, the child's household or family members, and any children in the care of the alleged abuser or neglecter.

Prior to disclosing any information, the local director or the Secretary must consult with the primary law enforcement agency and the State's Attorney's Office to determine whether the disclosure would jeopardize or prejudice any related investigation or prosecution. The local director and the Secretary must also consult each other.

The local director or the Secretary may disclose:

- the name of the allegedly abused or neglected child;
- the dates of any reports of alleged abuse or neglect;
- the findings made by the local department at the conclusion of its investigation and the disposition;
- any services provided to the alleged abuser or neglecter, the allegedly abused or neglected child, and the household or family members;
- the number of referrals for professional services for the affected parties;
- any prior adjudication as child in need of assistance (CINA) of the child or the child's siblings, or another child in the household, family, or care of the alleged abuser or neglecter; and

- any information concerning the circumstances of the alleged child abuse or neglect and the investigation of the circumstances, if it is determined that disclosure is consistent with the public interest.

The local director or Secretary is prohibited from disclosing certain information, including the identity of an individual who made a report, the names of other family members of the allegedly abused or neglected child, and medical reports other than those related to the cause of the child's injury or death as a result of the alleged abuse or neglect.

The federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to adopt provisions allowing for the public disclosure of findings or information relating to a case of child abuse or neglect which resulted in a child fatality or near fatality.

Background: A 2008 report produced by the Children's Advocacy Institute and First Star compared and graded the child death and near death disclosure laws and policies of each state. The evaluation considered: (1) whether the state had a public disclosure policy as mandated by CAPTA; (2) whether the state's policy was codified in statute; (3) the ease of access to the information; (4) the scope of information authorized for release; and (5) whether the state allowed public access to abuse or neglect proceedings. Maryland, along with nine other states, received a grade of "F." In evaluating the ease of access to information about child abuse or neglect which resulted in a child fatality or near fatality, the report criticized Maryland's policy as being "permissive with severely restrictive conditional language."

DHR advises this bill responds to the report's criticism of State laws by allowing greater public disclosure of information from child welfare records. Such disclosure may increase public awareness and confidence that DHR is providing appropriate services and not using confidentiality as a shield from disclosing appropriate public information regarding service delivery in child protective services cases where there is a fatality or near fatality. The bill also makes State law more consistent with that found in CAPTA by replacing the term "serious physical injury" with "near fatality."

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of State Police, Harford County, Montgomery County, St. Mary's County, Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2009
JB/hlb

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Child Abuse and Neglect – Disclosure of Information

BILL NUMBER: SB 59

PREPARED BY: Maryland Department of Human Resources
Social Services Division

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.