

HOUSE BILL 811

D4, O4

0lr2449

By: **Delegates Dumais, Conway, DeBoy, Malone, and Mathias**

Introduced and read first time: February 9, 2010

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2010

CHAPTER _____

1 AN ACT concerning

2 ~~Child Abuse and Neglect – Mandatory Reporting – Children in Contact with~~
3 Child Protection – Reporting of Children Living with or in the Regular
4 Presence of Registered Child Sexual Offenders

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
 2 Article – Family Law
 3 Section ~~5-705.2~~ 5-704.1 and 5-706.2
 4 Annotated Code of Maryland
 5 (2006 Replacement Volume and 2009 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Family Law
 8 Section ~~5-707(b)~~ and 5-708
 9 Annotated Code of Maryland
 10 (2006 Replacement Volume and 2009 Supplement)

11 **Preamble**

12 ~~WHEREAS, No child should suffer injury or death from maltreatment resulting~~
 13 ~~from regular association with an individual with a known criminal record of child~~
 14 ~~abuse or neglect; and~~

15 ~~WHEREAS, A child's regular association with an individual with a history of~~
 16 ~~child abuse or neglect presents a preventable threat to the safety of Maryland's~~
 17 ~~children; and~~

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

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

25 ~~WHEREAS, The Office of the Attorney General has interpreted the statutory~~
 26 ~~scheme requiring a local department of social services to investigate abuse and neglect~~
 27 ~~to be incident based and therefor not in harmony with the child in need of assistance~~
 28 ~~statutes; and~~

29 ~~WHEREAS, To prevent death and injuries to children at substantial risk of~~
 30 ~~harm, local departments of social services should have an obligation to assess risk and~~
 31 ~~protect children; now, therefore,~~

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

34 **Article – Family Law**

35 ~~5-705.2.~~

1 ~~(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING~~
2 ~~ANY LAW ON PRIVILEGED COMMUNICATIONS, AND EXCEPT AS PROVIDED IN~~
3 ~~SUBSECTION (B) OF THIS SECTION, EACH HEALTH PRACTITIONER, POLICE~~
4 ~~OFFICER, PAROLE AND PROBATION AGENT, JUDGE, EDUCATOR, AND HUMAN~~
5 ~~SERVICE WORKER, ACTING IN A PROFESSIONAL CAPACITY IN THIS STATE,~~
6 ~~SHALL NOTIFY THE LOCAL DEPARTMENT OR THE APPROPRIATE LAW~~
7 ~~ENFORCEMENT AGENCY IF THE INDIVIDUAL HAS REASON TO BELIEVE THAT THE~~
8 ~~CHILD IS AT SUBSTANTIAL RISK OF ABUSE OR NEGLECT BECAUSE A PARENT,~~
9 ~~GUARDIAN, OR CAREGIVER OF A CHILD ALLOWS THE CHILD TO RESIDE WITH OR~~
10 ~~TO ASSOCIATE REGULARLY WITH AN INDIVIDUAL OTHER THAN THE PARENT OR~~
11 ~~GUARDIAN WHO:~~

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

14 ~~(2) IS REGISTERED ON THE SEXUAL OFFENDER REGISTRY UNDER~~
15 ~~TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE ARTICLE.~~

16 ~~(B) AN INDIVIDUAL IS NOT REQUIRED TO PROVIDE NOTICE UNDER~~
17 ~~SUBSECTION (A) OF THIS SECTION:~~

18 ~~(1) IN VIOLATION OF THE PRIVILEGE DESCRIBED UNDER § 9-108~~
19 ~~OF THE COURTS ARTICLE;~~

20 ~~(2) IF THE NOTICE WOULD DISCLOSE MATTER COMMUNICATED IN~~
21 ~~CONFIDENCE BY A CLIENT TO THE CLIENT'S ATTORNEY OR OTHER~~
22 ~~INFORMATION RELATING TO THE REPRESENTATION OF THE CLIENT; OR~~

23 ~~(3) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO~~
24 ~~ASSISTANCE OF COUNSEL.~~

25 ~~(C) (1) AN INDIVIDUAL WHO NOTIFIES THE APPROPRIATE~~
26 ~~AUTHORITY UNDER SUBSECTION (A) OF THIS SECTION SHALL MAKE:~~

27 ~~(I) AN ORAL REPORT, BY TELEPHONE OR DIRECT~~
28 ~~COMMUNICATION, AS SOON AS POSSIBLE, TO THE LOCAL DEPARTMENT OR~~
29 ~~APPROPRIATE LAW ENFORCEMENT AGENCY; AND~~

30 ~~(II) A WRITTEN REPORT NOT LATER THAN 48 HOURS AFTER~~
31 ~~THE CONTACT, EXAMINATION, ATTENTION, OR TREATMENT THAT CAUSED THE~~
32 ~~INDIVIDUAL TO BELIEVE THAT THE CHILD IS AT SUBSTANTIAL RISK OF ABUSE~~
33 ~~OR NEGLECT BECAUSE THE CHILD IS ALLOWED TO RESIDE WITH OR TO~~
34 ~~ASSOCIATE REGULARLY WITH AN INDIVIDUAL DESCRIBED IN SUBSECTION (A)~~
35 ~~OF THIS SECTION.~~

~~(2) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC HEALTH AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER, SCHOOL, OR SIMILAR INSTITUTION, AN INDIVIDUAL WHO NOTIFIES THE APPROPRIATE AUTHORITY UNDER SUBSECTION (A) OF THIS SECTION IMMEDIATELY SHALL NOTIFY AND GIVE ALL THE INFORMATION REQUIRED BY THIS SECTION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE HEAD.~~

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

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

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

~~(3) THE WHEREABOUTS OF THE CHILD;~~

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

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

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

~~(II) THE IDENTITY OF THE INDIVIDUAL DESCRIBED IN SUBSECTION (A)(1) OR (2) OF THIS SECTION.~~

5-704.1.

(A) AN INDIVIDUAL MAY 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 BE IN THE REGULAR PRESENCE OF AN INDIVIDUAL, OTHER THAN THE CHILD'S PARENT OR GUARDIAN, WHO:

(1) IS REGISTERED UNDER TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE ARTICLE AS A CHILD SEXUAL OFFENDER; AND

1 **(2) BASED ON ADDITIONAL INFORMATION, POSES A SUBSTANTIAL**
2 **RISK OF SEXUAL ABUSE TO THE CHILD.**

3 **(B) (1) A REPORT UNDER SUBSECTION (A) OF THIS SECTION MAY BE**
4 **ORAL OR IN WRITING.**

5 **(2) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC**
6 **HEALTH AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER,**
7 **SCHOOL, OR SIMILAR INSTITUTION, AN INDIVIDUAL WHO NOTIFIES THE**
8 **APPROPRIATE AUTHORITIES UNDER SUBSECTION (A) OF THIS SECTION**
9 **IMMEDIATELY SHALL NOTIFY AND GIVE ALL OF THE INFORMATION REQUIRED**
10 **BY THIS SECTION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE**
11 **HEAD OF THE INSTITUTION.**

12 **(C) TO THE EXTENT REASONABLY POSSIBLE, AN INDIVIDUAL WHO**
13 **MAKES A REPORT UNDER THIS SECTION SHALL INCLUDE IN THE REPORT THE**
14 **FOLLOWING INFORMATION:**

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

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

18 **(3) THE WHEREABOUTS OF THE CHILD;**

19 **(4) THE NATURE AND EXTENT OF THE SUBSTANTIAL RISK OF**
20 **SEXUAL ABUSE OF THE CHILD, INCLUDING ANY EVIDENCE OR INFORMATION**
21 **AVAILABLE TO THE REPORTER CONCERNING POSSIBLE PREVIOUS INSTANCES**
22 **OF SEXUAL ABUSE; AND**

23 **(5) ANY OTHER INFORMATION THAT WOULD HELP TO**
24 **DETERMINE:**

25 **(I) THE CAUSE OF THE SUBSTANTIAL RISK OF SEXUAL**
26 **ABUSE; AND**

27 **(II) THE IDENTITY OF ANY INDIVIDUAL RESPONSIBLE FOR**
28 **THE SUBSTANTIAL RISK OF SEXUAL ABUSE.**

29 **5-706.2.**

30 **(A) (1) A LOCAL DEPARTMENT OR A LAW ENFORCEMENT AGENCY**
31 **MAY RECEIVE A REPORT UNDER § ~~5-705.2~~ 5-704.1 OF THIS SUBTITLE THAT A**
32 **CHILD IS AT SUBSTANTIAL RISK OF ~~ABUSE OR NEGLECT~~ SEXUAL ABUSE.**

1 (2) ~~(I) A LOCAL DEPARTMENT THAT RECEIVES A REPORT~~
 2 ~~UNDER § 5-705.2 OF THIS SUBTITLE IMMEDIATELY SHALL NOTIFY THE~~
 3 ~~APPROPRIATE LAW ENFORCEMENT AGENCY AND THE DIVISION OF PAROLE AND~~
 4 ~~PROBATION.~~

5 ~~(II) A LAW ENFORCEMENT AGENCY THAT RECEIVES A~~
 6 ~~REPORT UNDER § 5-705.2 OF THIS SUBTITLE IMMEDIATELY SHALL NOTIFY THE~~
 7 ~~APPROPRIATE LOCAL DEPARTMENT AND THE DIVISION OF PAROLE AND~~
 8 ~~PROBATION.~~

9 ~~(3) (I)~~ IF A LAW ENFORCEMENT AGENCY RECEIVES THE
 10 REPORT, THE LAW ENFORCEMENT AGENCY ~~IMMEDIATELY SHALL~~ SHALL
 11 IMMEDIATELY REFER THE REPORT TO THE LOCAL DEPARTMENT.

12 ~~(II) ON REQUEST OF THE LOCAL DEPARTMENT, THE LAW~~
 13 ~~ENFORCEMENT AGENCY SHALL, WITHIN 48 HOURS, PROVIDE ANY NECESSARY~~
 14 ~~INFORMATION TO CONFIRM OR DENY REGISTRATION OF AN INDIVIDUAL ON THE~~
 15 ~~SEXUAL OFFENDER REGISTRY ALLEGED IN THE REPORT AS DESCRIBED IN §~~
 16 ~~5-705.2(A)(2) OF THIS SUBTITLE.~~

17 ~~(4) (3)~~ THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT
 18 REGULATIONS GOVERNING:

19 (I) HOW STAFF IN A LOCAL DEPARTMENT SHOULD ELICIT
 20 INFORMATION WHEN RECEIVING A REPORT UNDER ~~§ 5-705.2~~ 5-704.1 OF THIS
 21 SUBTITLE; AND

22 (II) THE DEFINITION OF SUBSTANTIAL RISK OF ~~ABUSE OR~~
 23 ~~NEGLECT~~, SEXUAL ABUSE AS USED IN ~~§ 5-705.2~~ OF THIS SUBTITLE.

24 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
 25 SUBSECTION, AFTER CONFIRMING THAT THE ALLEGATIONS IN THE REPORT
 26 REGARDING THE INDIVIDUAL'S HISTORY ARE ~~TRUE~~ ACCURATE AND THAT THERE
 27 IS SPECIFIC INFORMATION THAT THE CHILD IS AT SUBSTANTIAL RISK OF
 28 SEXUAL ABUSE, THE LOCAL DEPARTMENT SHALL MAKE A THOROUGH
 29 INVESTIGATION TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF ANY
 30 CHILD OR CHILDREN WHO MAY BE AT SUBSTANTIAL RISK OF ~~ABUSE OR~~
 31 ~~NEGLECT~~ SEXUAL ABUSE.

32 (2) ~~(I)~~ THE LOCAL DEPARTMENT SHALL CONDUCT THE
 33 INVESTIGATION JOINTLY WITH AN APPROPRIATE LAW ENFORCEMENT AGENCY.

34 ~~(II) THE LOCAL DEPARTMENT AND THE APPROPRIATE LAW~~
 35 ~~ENFORCEMENT AGENCY SHALL ENTER INTO A WRITTEN AGREEMENT THAT~~

1 ~~SPECIFIES STANDARD OPERATING PROCEDURES FOR AN INVESTIGATION UNDER~~
 2 ~~THIS SECTION.~~

3 ~~(H) THE INVESTIGATION PROCEDURE SHALL:~~

4 ~~1. INCLUDE APPROPRIATE TECHNIQUES DESIGNED~~
 5 ~~TO:~~

6 ~~A. EXPEDITE THE VALIDATION OF REPORTS;~~

7 ~~B. DECREASE THE POTENTIAL FOR PHYSICAL HARM~~
 8 ~~TO THE CHILD; AND~~

9 ~~C. DECREASE ANY TRAUMA EXPERIENCED BY THE~~
 10 ~~CHILD IN THE INVESTIGATION; AND~~

11 ~~2. ESTABLISH AN ONGOING TRAINING PROGRAM FOR~~
 12 ~~PERSONNEL INVOLVED IN THE INVESTIGATION.~~

13 (3) IF A SUBSEQUENT REPORT IS RECEIVED REGARDING AN
 14 INDIVIDUAL WITH A HISTORY OF SEXUAL ABUSE THAT ALLEGES SUBSTANTIALLY
 15 THE SAME FACTS AS A REPORT THAT THE LOCAL DEPARTMENT ~~PREVIOUSLY~~
 16 ~~HAS HAS PREVIOUSLY~~ INVESTIGATED, THE LOCAL DEPARTMENT MAY DECLINE
 17 TO MAKE AN INVESTIGATION OF THE SUBSEQUENT REPORT.

18 (C) WITHIN 5 DAYS AFTER RECEIVING THE REPORT, THE LOCAL
 19 DEPARTMENT ~~OR~~ AND THE APPROPRIATE LAW ENFORCEMENT AGENCY SHALL:

20 (1) SEE THE CHILD IN PERSON;

21 (2) ATTEMPT TO HAVE AN ON-SITE INTERVIEW WITH THE CHILD'S
 22 CAREGIVER AND THE INDIVIDUAL ~~DESCRIBED IN § 5-705.2(A)(1) OR (2) OF THIS~~
 23 ~~SUBTITLE~~ IDENTIFIED IN THE REPORT AS A CHILD SEXUAL OFFENDER;

24 (3) ~~DETERMINE~~ DECIDE ON THE SAFETY ~~OF~~ AND LEVEL OF RISK
 25 TO THE CHILD, WHEREVER THE CHILD IS, AND ~~TO~~ OF OTHER CHILDREN IN THE
 26 HOUSEHOLD; AND

27 (4) ~~DETERMINE~~ DECIDE ON THE SAFETY ~~OF~~ AND LEVEL OF RISK
 28 TO OF OTHER CHILDREN IN THE CARE OR CUSTODY OF THE INDIVIDUAL
 29 DESCRIBED IN § 5-705.2(A)(1) OR (2) OF THIS SUBTITLE IDENTIFIED IN THE
 30 REPORT AS A CHILD SEXUAL OFFENDER.

1 (D) TO THE EXTENT POSSIBLE, AN INVESTIGATION UNDER THIS
 2 SECTION SHALL BE COMPLETED ~~WITHIN~~ AS SOON AS PRACTICABLE BUT NOT
 3 LATER THAN 30 DAYS AFTER RECEIPT OF THE REPORT.

4 (E) ~~IF, AFTER THE INVESTIGATION IS COMPLETED, THE LOCAL~~
 5 ~~DEPARTMENT DETERMINES THAT THE CHILD IS NOT SAFE OR IS AT~~
 6 ~~SUBSTANTIAL RISK OF ABUSE OR NEGLECT, THE LOCAL DEPARTMENT SHALL:~~

7 (1) ~~OFFER SERVICES TO THE FAMILY;~~

8 (2) ~~PROVIDE THE CHILD'S CAREGIVER WITH INFORMATION ON~~
 9 ~~CHILD SEXUAL ABUSE; AND~~

10 (3) ~~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, THE INDIVIDUAL DESCRIBED IN § 5-705.2(A)(1) OR (2) OF~~
 15 ~~THIS SUBTITLE, LOCAL LAW ENFORCEMENT, AND THE DIVISION OF PAROLE~~
 16 ~~AND PROBATION OF THE LOCAL DEPARTMENT'S DETERMINATION ON THE~~
 17 ~~SAFETY OF AND LEVEL OF RISK TO THE CHILD.~~

18 ~~5-707.~~

19 (b) ~~The local department shall expunge a report of suspected abuse or~~
 20 ~~neglect OR OF SUBSTANTIAL RISK OF ABUSE OR NEGLECT and all assessments and~~
 21 ~~investigative findings:~~

22 (1) ~~within 5 years after the date of referral if the investigation under §~~
 23 ~~5-706 OR § 5-706.2 of this subtitle concludes that the report is unsubstantiated, and~~
 24 ~~no further reports of abuse or neglect OR SUBSTANTIAL RISK OF ABUSE OR~~
 25 ~~NEGLECT are received during the 5 years; and~~

26 (2) ~~within 120 days after the date of referral if the report is ruled out,~~
 27 ~~and no further reports of abuse or neglect OR SUBSTANTIAL RISK OF ABUSE OR~~
 28 ~~NEGLECT are received during the 120 days~~ AS PART OF THE INVESTIGATION, THE
 29 LOCAL DEPARTMENT SHALL:

30 (1) DETERMINE WHETHER THE CHILD IS SAFE;

31 (2) DETERMINE WHETHER SEXUAL ABUSE OF THE CHILD HAS
 32 OCCURRED;

33 (3) IF APPROPRIATE, OFFER SERVICES TO THE FAMILY; AND

1 **(4) IMMEDIATELY DECIDE WHETHER TO FILE A PETITION**
2 **ALLEGING THAT THE CHILD IS IN NEED OF ASSISTANCE.**

3 5-708.

4 Any person who makes or participates in making a report of abuse or neglect
5 under § 5-704, § 5-705, or § 5-705.1 of this subtitle **OR A REPORT OF SUBSTANTIAL**
6 **RISK OF ~~ABUSE OR NEGLECT~~ SEXUAL ABUSE UNDER § ~~5-705.2~~ 5-704.1 OF THIS**
7 **SUBTITLE** or participates in an investigation or a resulting judicial proceeding shall
8 have the immunity described under § 5-620 of the Courts and Judicial Proceedings
9 Article from civil liability or criminal penalty.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.