

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 962
Judiciary

(Delegate G. Clagett, *et al.*)

Judicial Proceedings

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 fail to act in a manner that creates a substantial risk to the minor of: (1) death; or (2) 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 child endangerment and on conviction is subject to imprisonment not exceeding five years and/or a fine not exceeding \$5,000.

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.

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 a maximum term of 15 years imprisonment. 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 up to 25 years or, if the violation results in the death of the victim, imprisonment up to 30 years.

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 maximum penalties of imprisonment for five years and/or a fine of \$5,000.

It is a crime for a person who is charged with the care of a child younger than age eight 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 so charged unless that person provides another 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 maximum penalties of a fine of \$500 and/or imprisonment of 30 days.

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.

Section 5-701 of the Family Law Article 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, custody, or responsibility for supervising a child under circumstances that indicate the child's health or welfare is harmed or placed at substantial risk of harm or mental injury to the child or a substantial risk of mental injury.

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 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.

The Department of Human Resources' Social Service Administration and each LDSS may maintain a central registry of reported child abuse and neglect cases. The Executive Director of SSA must provide the Secretary of Health and Mental Hygiene with identifying information regarding individuals who have had their parental rights terminated and have been identified as responsible for abuse or neglect in a central registry.

The Department of Human Resources' (DHR) Social Service Administration (SSA) and each LDSS may maintain a central registry of reported child abuse and neglect cases. The Executive Director of SSA must provide the Secretary of Health and Mental Hygiene with identifying information regarding individuals who have had their parental rights terminated and have been identified as responsible for abuse or neglect in a central registry.

Background: According to StateStat, DHR received 11,219 new allegations of neglect from July 2009-February 2010. DHR made 2,449 findings of neglect during that same period.

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

State Expenditures: General fund expenditures may increase minimally as a result of the bill's incarceration penalty 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.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,750 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 \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

In calendar 2009, OPD handled 250 cases of child abuse. OPD advises that it cannot predict the number of additional cases it will receive as a result of the new offense created by the bill. However, given that an Assistant Public Defender in the District Court handles approximately 688 cases per year, Legislative Services advises that OPD can handle the bill's requirements with existing budgeted resources.

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 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 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: House Bill 410 of 2008, a similar bill, passed the House and received a favorable report from the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 757 (Senator King, *et al.*) - Judicial Proceedings.

Information Source(s): Howard and Prince George's counties, Commission on Criminal Sentencing Policy, Office of the Public Defender, StateStat, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510