

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 757

(Senator King, *et al.*)

Judicial Proceedings

Crimes - Child Neglect - Penalties

This bill prohibits a parent or person who has permanent or temporary care, custody or supervisory responsibility for a minor from neglecting the minor in a manner that causes substantial risk of mental or physical injury or actual mental injury to the minor. Violators are guilty of child neglect, a felony subject to maximum penalties of 10 years imprisonment and/or a \$10,000 fine.

It is an affirmative defense that at the time of the neglect, there was a reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect would result in substantial bodily harm to the defendant or the minor. The bill defines “neglect” as a pattern of failure to provide assistance and resources for the basic needs of a minor, including, food, shelter, clothing, supervision, or essential medical treatment. Neglect does not include failure to provide for the basic needs of a minor due to a lack of resources or the failure to provide specified medical treatment that conflicts with the bona fide religious beliefs and practices of the parent or guardian. “Mental injury” means the observable, identifiable, and substantial impairment of a child’s mental or psychological ability to function.

Fiscal Summary

State Effect: Potential minimal increase in State expenditures due to the bill’s incarceration penalty. Potential minimal increase in State expenditures for the Office of the Public Defender (OPD) to hire additional personnel if certain case thresholds are met.

Local Effect: Potential minimal increase in local revenues due to the bill’s monetary penalties.

Small Business Effect: None.

Analysis

Current Law: While State law does not establish criminal penalties for a person accused of the neglect of a child, State law does prohibit an adult from willfully contributing to, encouraging, causing, or tending to cause any act, omission, or condition that renders a child in need of assistance. A “child in need of assistance” (CINA) is a child who requires court intervention because (1) of abuse, neglect, a developmental disability, or a mental disorder; and (2) the child’s parent, guardian, or custodian is unable or unwilling to give proper care and attention to the child and the child’s needs. The CINA statute has been used to prosecute cases of child neglect. Violators are guilty of a misdemeanor and subject to maximum penalties of three years imprisonment and/or a \$2,500 fine.

A person is required to report suspected child neglect and the State is required to intervene to protect the child. Specified professionals 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 or 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 CINA 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.

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 8,627 new allegations of neglect from July-December 2009. DHR made 1,985 findings of neglect during that same period. These allegations and findings include cases involving mental injury due to neglect.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities. 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.

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 felony offense created by the bill. However, if the bill results in 160 additional cases, OPD will require one Assistant Public Defender to assist with the increased workload. This would result in increased State expenditures of \$71,000 in fiscal 2011, which accounts for the bill's effective date.

Additional Information

Prior Introductions: None.

Cross File: HB 962 (Delegate G. Clagett, *et al.*) - Judiciary.

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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