

HOUSE BILL 162

E1, D4

(11r0127)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **The Speaker (By Request – Administration) and Delegates Clagett, Arora, Cullison, Dumais, Lee, Mitchell, Niemann, Reznik, Stein, and Valderrama**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Child Neglect – ~~Penalties~~**

3 FOR the purpose of prohibiting a parent, family member, household member, or other
4 person who has permanent or temporary care or custody or responsibility for
5 supervision of a minor from neglecting the minor; establishing the misdemeanor
6 of child neglect and providing certain penalties for a violation of this Act;
7 ~~establishing a certain affirmative defense for a violation of this Act; providing~~
8 ~~that a sentence imposed for a violation of this Act may be separate from and~~
9 ~~consecutive to or concurrent with a certain other sentence; providing for the~~
10 ~~construction of this Act~~ that a sentence imposed under this Act is in addition to
11 a certain other sentence, except under certain circumstances; altering certain
12 procedures relating to the reporting and investigation of child neglect; defining
13 certain terms; and generally relating to child neglect.

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.

Italics indicate opposite chamber/conference committee amendments.



BY adding to
Article – Criminal Law
Section 3–602.1
Annotated Code of Maryland
(2002 Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Family Law
Section 5–704, 5–705, and 5–706
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

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

Article – Criminal Law

3–602.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
MEANINGS INDICATED.

(2) “FAMILY MEMBER” HAS THE MEANING STATED IN § 3–601 OF
THIS SUBTITLE.

(3) “HOUSEHOLD MEMBER” HAS THE MEANING STATED IN
§ 3–601 OF THIS SUBTITLE.

(4) “MENTAL INJURY” MEANS THE SUBSTANTIAL IMPAIRMENT OF
A MINOR’S MENTAL OR PSYCHOLOGICAL ABILITY TO FUNCTION.

(5) (I) “NEGLECT” MEANS THE INTENTIONAL FAILURE TO
PROVIDE NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS
OR MENTAL HEALTH OF A MINOR, INCLUDING:

~~(I) FOOD;~~

~~(II) CLOTHING;~~

~~(III) TOILETING;~~

~~(IV) ESSENTIAL MEDICAL TREATMENT;~~

~~(V) SHELTER; OR~~

1 ~~(VI) SUPERVISION THAT CREATES A SUBSTANTIAL RISK OF~~
2 HARM TO THE MINOR'S PHYSICAL HEALTH OR A SUBSTANTIAL RISK OF MENTAL
3 INJURY TO THE MINOR.

4 (II) "NEGLECT" DOES NOT INCLUDE THE FAILURE TO
5 PROVIDE NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS
6 OR MENTAL HEALTH OF A MINOR WHEN THE FAILURE IS DUE SOLELY TO A LACK
7 OF FINANCIAL RESOURCES OR HOMELESSNESS.

8 (B) A PARENT, FAMILY MEMBER, HOUSEHOLD MEMBER, OR OTHER
9 PERSON WHO HAS PERMANENT OR TEMPORARY CARE OR CUSTODY OR
10 RESPONSIBILITY FOR THE SUPERVISION OF A MINOR MAY NOT NEGLECT THE
11 MINOR.

12 (C) ~~(1)~~ A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE
13 ~~FELONY MISDEMEANOR~~ OF CHILD NEGLECT AND ON CONVICTION IS SUBJECT
14 TO IMPRISONMENT NOT EXCEEDING ~~10~~ 5 YEARS OR A FINE NOT EXCEEDING
15 ~~\$10,000~~ \$5,000 OR BOTH.

16 ~~(2) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING~~
17 ~~THIS SECTION THAT THE SOLE REASON FOR THE FAILURE TO PROVIDE THE~~
18 ~~NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS OF THE~~
19 ~~MINOR WAS A LACK OF FINANCIAL RESOURCES.~~

20 (D) ~~(1) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE~~
21 ~~SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE~~
22 ~~FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS~~
23 ~~SECTION.~~

24 ~~(2) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE~~
25 ~~PROSECUTION OF A PERSON FOR A VIOLATION OF § 3-601 OF THIS SUBTITLE~~
26 ~~FOR EVENTS ARISING FROM THE SAME FACTS AND CIRCUMSTANCES AS COULD~~
27 ~~BE CHARGED AS A VIOLATION OF THIS SECTION WHEN THE EVENTS RESULT IN~~
28 ~~PHYSICAL INJURY TO A MINOR. A SENTENCE IMPOSED UNDER THIS SECTION~~
29 SHALL BE IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR A CONVICTION
30 ARISING FROM THE SAME FACTS AND CIRCUMSTANCES UNLESS THE EVIDENCE
31 REQUIRED TO PROVE EACH CRIME IS SUBSTANTIALLY IDENTICAL.

32 Article – Family Law

33 5-704.

1 (a) Notwithstanding any other provision of law, including any law on
2 privileged communications, each health practitioner, police officer, educator, or human
3 service worker, acting in a professional capacity in this State:

4 (1) [(i)] who has reason to believe that a child has been subjected to
5 abuse OR NEGLECT, shall notify the local department or the appropriate law
6 enforcement agency]; or

7 (ii) who has reason to believe that a child has been subjected to
8 neglect, shall notify the local department]; and

9 (2) if acting as a staff member of a hospital, public health agency, child
10 care institution, juvenile detention center, school, or similar institution, shall
11 immediately notify and give all information required by this section to the head of the
12 institution or the designee of the head.

13 (b) (1) An individual who notifies the appropriate authorities under
14 subsection (a) of this section shall make:

15 (i) an oral report, by telephone or direct communication, as
16 soon as possible];

17 1.] to the local department or appropriate law
18 enforcement agency [if the person has reason to believe that the child has been
19 subjected to abuse; or

20 2. to the local department if the person has reason to
21 believe that the child has been subjected to neglect]; and

22 (ii) a written report:

23 1. to the local department not later than 48 hours after
24 the contact, examination, attention, or treatment that caused the individual to believe
25 that the child had been subjected to abuse or neglect; and

26 2. with a copy to the local State's Attorney [if the
27 individual has reason to believe that the child has been subjected to abuse].

28 (2) (i) An agency to which an oral report of suspected abuse OR
29 NEGLECT is made under paragraph (1) of this subsection shall immediately notify the
30 other agency.

31 (ii) This paragraph does not prohibit a local department and an
32 appropriate law enforcement agency from agreeing to cooperative arrangements.

1 (c) Insofar as is reasonably possible, an individual who makes a report under
2 this section shall include in the report the following information:

3 (1) the name, age, and home address of the child;

4 (2) the name and home address of the child's parent or other person
5 who is responsible for the child's care;

6 (3) the whereabouts of the child;

7 (4) the nature and extent of the abuse or neglect of the child, including
8 any evidence or information available to the reporter concerning possible previous
9 instances of abuse or neglect; and

10 (5) any other information that would help to determine:

11 (i) the cause of the suspected abuse or neglect; and

12 (ii) the identity of any individual responsible for the abuse or
13 neglect.

14 5-705.

15 (a) (1) Except as provided in paragraphs (2) and (3) of this subsection,
16 notwithstanding any other provision of law, including a law on privileged
17 communications, a person in this State other than a health practitioner, police officer,
18 or educator or human service worker who has reason to believe that a child has been
19 subjected to abuse or neglect shall]:

20 (i) if the person has reason to believe the child has been
21 subjected to abuse,] notify the local department or the appropriate law enforcement
22 agency]; or

23 (ii) if the person has reason to believe the child has been
24 subjected to neglect, notify the local department].

25 (2) A person is not required to provide notice under paragraph (1) of
26 this subsection:

27 (i) in violation of the privilege described under § 9-108 of the
28 Courts Article;

29 (ii) if the notice would disclose matter communicated in
30 confidence by a client to the client's attorney or other information relating to the
31 representation of the client; or

1 (iii) in violation of any constitutional right to assistance of
2 counsel.

3 (3) A minister of the gospel, clergyman, or priest of an established
4 church of any denomination is not required to provide notice under paragraph (1) of
5 this subsection if the notice would disclose matter in relation to any communication
6 described in § 9–111 of the Courts Article and:

7 (i) the communication was made to the minister, clergyman, or
8 priest in a professional character in the course of discipline enjoined by the church to
9 which the minister, clergyman, or priest belongs; and

10 (ii) the minister, clergyman, or priest is bound to maintain the
11 confidentiality of that communication under canon law, church doctrine, or practice.

12 (b) (1) An agency to which a report of suspected abuse **OR NEGLECT** is
13 made under subsection (a) of this section shall immediately notify the other agency.

14 (2) This subsection does not prohibit a local department and an
15 appropriate law enforcement agency from agreeing to cooperative arrangements.

16 (c) A report made under subsection (a) of this section may be oral or in
17 writing.

18 (d) (1) To the extent possible, a report made under subsection (a) of this
19 section shall include the information required by § 5–704(c) of this subtitle.

20 (2) A report made under subsection (a) of this section shall be
21 regarded as a report within the provisions of this subtitle, whether or not the report
22 contains all of the information required by § 5–704(c) of this subtitle.

23 5–706.

24 (a) Promptly after receiving a report of suspected abuse or neglect of a child
25 who lives in this State that is alleged to have occurred in this State[:

26 (1)], the local department or the appropriate law enforcement agency, or
27 both, if jointly agreed on, shall make a thorough investigation of a report of suspected
28 abuse **OR NEGLECT** to protect the health, safety, and welfare of the child or children[:
29 or

30 (2) the local department shall make a thorough investigation of a
31 report of suspected neglect to protect the health, safety, and welfare of the child or
32 children].

1 (b) Within 24 hours after receiving a report of suspected physical or sexual
2 abuse of a child who lives in this State that is alleged to have occurred in this State,
3 and within 5 days after receiving a report of suspected neglect or suspected mental
4 injury of a child who lives in this State that is alleged to have occurred in this State,
5 the local department or the appropriate law enforcement agency shall:

6 (1) see the child;

7 (2) attempt to have an on-site interview with the child's caretaker;

8 (3) decide on the safety of the child, wherever the child is, and of other
9 children in the household; and

10 (4) decide on the safety of other children in the care or custody of the
11 alleged abuser.

12 (c) The investigation under subsection (b) of this section shall include:

13 (1) a determination of the nature, extent, and cause of the abuse or
14 neglect, if any;

15 (2) if mental injury is suspected, an assessment by two of the
16 following:

17 (i) a licensed physician, as defined in § 14-101 of the Health
18 Occupations Article;

19 (ii) a licensed psychologist, as defined in § 18-101 of the Health
20 Occupations Article; or

21 (iii) a licensed social worker, as defined in § 19-101 of the Health
22 Occupations Article; and

23 (3) if the suspected abuse or neglect is verified:

24 (i) a determination of the identity of the person or persons
25 responsible for the abuse or neglect;

26 (ii) a determination of the name, age, and condition of any other
27 child in the household;

28 (iii) an evaluation of the parents and the home environment;

29 (iv) a determination of any other pertinent facts or matters; and

30 (v) a determination of any needed services.

1 (d) On request by the local department, the local State's Attorney shall assist
2 in an investigation under subsections (b) and (c) of this section.

3 (e) The local department, the appropriate law enforcement agencies, the
4 State's Attorney within each county and Baltimore City, the local department's office
5 responsible for child care regulation, and the local health officer shall enter into a
6 written agreement that specifies standard operating procedures for the investigation
7 under subsections (b) and (c) of this section and prosecution of reported cases of
8 suspected abuse OR NEGLECT.

9 (f) (1) The agencies responsible for investigating reported cases of
10 suspected sexual abuse, including the local department, the appropriate law
11 enforcement agencies, and the local State's Attorney, shall implement a joint
12 investigation procedure for conducting joint investigations of sexual abuse under
13 subsections (b) and (c) of this section.

14 (2) The joint investigation procedure shall:

15 (i) include appropriate techniques for expediting validation of
16 sexual abuse complaints;

17 (ii) include investigation techniques designed to:

18 1. decrease the potential for physical harm to the child;
19 and

20 2. decrease any trauma experienced by the child in the
21 investigation and prosecution of the case; and

22 (iii) establish an ongoing training program for personnel
23 involved in the investigation or prosecution of sexual abuse cases.

24 (g) (1) To the extent possible, an investigation under subsections (b) and
25 (c) of this section shall be completed within 10 days after receipt of the first notice of
26 the suspected abuse or neglect by the local department or law enforcement agencies.

27 (2) An investigation under subsections (b) and (c) of this section which
28 is not completed within 30 days shall be completed within 60 days of receipt of the
29 first notice of the suspected abuse or neglect.

30 (h) Within 10 days after the local department or law enforcement agency
31 receives the first notice of suspected abuse ~~OR NEGLECT~~ of a child who lives in this
32 State that is alleged to have occurred in this State, the local department or law
33 enforcement agency shall report to the local State's Attorney the preliminary findings
34 of the investigation.

1 (i) Within 5 business days after completion of the investigation of suspected
2 abuse ~~OR NEGLECT~~ of a child who lives in this State that is alleged to have occurred
3 in this State, the local department and the appropriate law enforcement agency, if
4 that agency participated in the investigation, shall make a complete written report of
5 its findings to the local State's Attorney.

6 (j) Promptly after receiving a report of suspected abuse or neglect of a child
7 who lives in this State that is alleged to have occurred outside of this State, the local
8 department shall:

9 (1) forward the report to the appropriate agency outside of this State
10 that is authorized to receive and investigate reports of suspected abuse or neglect;

11 (2) cooperate to the extent requested with the out-of-state agency
12 investigating the report; and

13 (3) if determined appropriate by the local department:

14 (i) interview the child to assess whether the child is safe; and

15 (ii) provide services to the child and the child's family.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.