

Chapter 398

(Senate Bill 178)

AN ACT concerning

Criminal Law – Child Neglect – ~~Penalties~~

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

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.

~~(4) (5) (I) “NEGLECT” MEANS THE INTENTIONAL FAILURE TO PROVIDE NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS OR FOR THE SAFETY MENTAL HEALTH OF A MINOR, INCLUDING:~~

~~(I) FOOD;~~

~~(II) CLOTHING;~~

~~(III) TOILETING;~~

~~(IV) ESSENTIAL MEDICAL TREATMENT;~~

~~(V) SHELTER; OR~~

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

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

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

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

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

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

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

Article – Family Law

5-704.

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

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

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

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

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

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

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

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

(ii) a written report:

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

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

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

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

(c) Insofar as is 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 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 suspected abuse or neglect; and

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

5-705.

(a) (1) Except as provided in paragraphs (2) and (3) of this subsection, notwithstanding any other provision of law, including a law on privileged communications, a person in this State other than a health practitioner, police officer,

or educator or human service worker who has reason to believe that a child has been subjected to abuse or neglect shall]:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5-706.

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

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

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

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

(1) see the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) a determination of any needed services.

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

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

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

(2) The joint investigation procedure shall:

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

(ii) include investigation techniques designed to:

1. decrease the potential for physical harm to the child;

and

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

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

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

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

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

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

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

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

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

(3) if determined appropriate by the local department:

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

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

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

Approved by the Governor, May 19, 2011.