

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 178

(The President, *et al.*) (By Request - Administration)

Judicial Proceedings

Judiciary

Criminal Law - Child Neglect

This Administration bill establishes the crime of child neglect. 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 a minor. A violator is guilty of the misdemeanor of child neglect and on conviction is subject to maximum penalties of five years imprisonment and/or a \$5,000 fine.

Fiscal Summary

State Effect: 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. State revenues are not affected.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's monetary penalty.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill defines "neglect" as the intentional failure to provide necessary assistance and resources for the physical needs or mental health of a minor that creates a substantial risk of harm to the minor's physical health or a substantial risk of mental injury. "Neglect" does not include the failure to provide necessary assistance and

resources for the physical needs or mental health of a minor when the failure is due solely to a lack of financial resources or homelessness. “Mental injury” is defined as the substantial impairment of a minor’s mental or psychological ability to function. “Family member” is defined as a relative of a minor by blood, adoption, or marriage. “Household member” means a person who lives with or is a regular presence in a home of a minor at the time of the alleged neglect.

A sentence imposed for the crime of child neglect is 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.

The bill conforms the reporting and investigation requirements for child neglect to the reporting and investigation requirements for child abuse, with the exception of the requirement to notify the State’s Attorney.

Current Law:

Reporting and Investigation of Suspected Child Neglect: State law does not criminalize the act of child neglect. However, State law prohibits 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) the child has been abused, has been neglected, has a developmental disability, or has 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. “Neglect” is defined 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 (1) that the child’s health or welfare is harmed or placed at substantial risk of harm or (2) 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 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 and to commit the child to the custody of the local department 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 have neglected 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 Services Administration (SSA) and each local department 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.

Reporting and Investigation of Suspected Child Abuse: Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity and have reason to believe that a child has been subjected to abuse must notify the local department of social services or the appropriate law enforcement agency. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee.

A worker who notifies the appropriate authorities must make an oral report by telephone or direct communication as soon as possible to the local department or the appropriate law enforcement agency if the worker has reason to believe the child has been subjected to abuse. A written report to the local department is required not later than 48 hours after the contact, examination, or treatment that caused the worker to believe that the child had been subjected to abuse (or neglect). A copy of the written report must be provided to the local State's Attorney if the worker has reason to believe the child has been subjected to abuse.

An agency that receives an oral report of suspected abuse must immediately notify the other agency. Local departments and law enforcement agencies are not prohibited from agreeing to cooperative arrangements.

As far as reasonably possible, a worker who makes a report must include the name, age, and home address of the child; the name and home address of the child's parent or other person responsible for the child's care; the whereabouts of the child and the nature and extent of the child abuse or neglect. The report must include any available evidence about previous instances of abuse or neglect, and any information that would help to determine the cause of the suspected abuse or neglect and the identity of any person responsible for the abuse (or neglect).

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse must notify the local department of social services or the appropriate law enforcement agency. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse through privileged communications, as specified in statute.

Within 30 days after completion of an investigation of child abuse in which there is a finding of either indicated or unsubstantiated abuse, the local department must notify the individual alleged to have abused the child of the finding and the opportunity to appeal the finding, as specified in statute. If the finding is for indicated abuse, the individual must also be notified that he/she is subject to identification in a central registry of individuals responsible for abuse. If the finding is for unsubstantiated abuse, an individual may request a conference with a supervisor in the local department by responding to the notice within 60 days. The individual has the right to review a summary of the conference and request a contested case hearing, as provided by statute.

Crimes Involving the Care of Children: While State law does not criminalize the act of child neglect, State law prohibits 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 (CINA).

Additionally, 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 injury that (1) creates a substantial risk of death; or (2) causes permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ. In *State v. Kanavy*, 416 Md. 1 (2010), the Court of Appeals held that the term "conduct" in this statute includes the willful failure to perform a legal duty. A violator is guilty of the misdemeanor or reckless endangerment and on conviction is subject to imprisonment not exceeding five years or a fine not exceeding \$5,000 or both.

It is also a crime for a person who is charged with the care of a child younger than the age of 8 to allow that child to be locked or confined in a building or motor vehicle. This

confinement may not occur while the person charged is absent and the building or motor vehicle is out of the sight of the person in charge, unless that person provides another reliable person at least 13 years old to remain with the child for the child's protection. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of 30 days imprisonment and/or a fine of \$500.

Background: According to the National Center for Prosecution of Child Abuse of the National District Attorneys Association, as of October 2009 (the latest information available) the District of Columbia and at least 20 states have enacted statutes that criminalize child neglect. Those states are: Arizona, Delaware, Florida, Illinois, Indiana, Michigan, Minnesota, Mississippi, Nevada, North Carolina, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. In addition, nearly every state (including Maryland) includes a provision that criminalizes the failure of parents to provide necessities to their children.

According to StateStat, DHR received 18,113 new allegations of child neglect for fiscal 2010. DHR made 4,140 indicated findings of child neglect during that same period. Unsubstantiated cases of neglect totaled 3,420. These allegations and findings include cases involving mental injury due to child 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 \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 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 DOC

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, 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 about \$71,000 in fiscal 2012, which accounts for the bill's effective date.

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 have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: SB 757 of 2010, a similar bill, received a favorable report, as amended from the Senate Judicial Proceedings Committee but was recommitted and no further action was taken. Its cross file, HB 962, passed the House, as amended, and was referred to the Senate Judicial Proceedings Committee but no further action was taken.

Cross File: HB 162 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

Information Source(s): Baltimore, Garrett, Howard, and Montgomery counties; Commission on Criminal Sentencing Policy; Department of Human Resources; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; National District Attorneys Association; National Conference of State Legislatures; Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2011
ncs/kdm Revised - Senate Third Reader - March 29, 2011
Revised - Enrolled Bill - May 4, 2011

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Criminal Law - Child Neglect - Penalties**

BILL NUMBER: **SB 178/HB162**

PREPARED BY: **Governor's Legislative Office**

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.