

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 63

(Senator Kelley, *et al.*)

Judicial Proceedings

Rules and Executive Nominations

Child Abuse and Neglect - Notice and Reporting Requirements, Disclosure, and Task Force

This bill makes it a misdemeanor for a worker in a professional capacity who is required to report suspected abuse to knowingly and willfully fail to provide the required report under specified circumstances. The bill establishes immunity from civil liability and criminal penalties for workers who in good faith provide or participate in providing notice of abuse or neglect as required. The bill also establishes the Task Force to Study Training for School Employees and Volunteers on the Prevention, Identification, and Reporting of Child Sexual Abuse.

The provisions of the bill establishing the task force take effect June 1, 2012, and terminate May 31, 2013. Otherwise, the bill takes effect October 1, 2012.

Fiscal Summary

State Effect: General fund expenditures increase by \$21,700 in FY 2013, which reflects the cost of hiring one part-time contractual employee to staff the task force and produce the required report. Reimbursements for task force members can be handled with existing resources. Potential minimal increase in general fund revenues due to the bill's penalty provision.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	21,700	0	0	0	0
Net Effect	(\$21,700)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in revenues due to the bill's penalty provision. Expenditures are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A worker required to file a report under existing law may not knowingly and willfully fail to file a required report of abuse if the individual has actual and direct knowledge of the abuse and knows or should have known that the abuse is likely to cause or has caused serious physical injury or death to a child or the individual has actual and direct knowledge that there has been a violation of specified crimes in which the victim is a child. The crimes specified are a first or second degree rape, a first or second degree sexual offense, or sexual abuse of a minor. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of one year imprisonment and/or a \$10,000 fine.

The bill exempts a medical examiner from making an oral or written report within specified timeframes. Instead, the Office of the Chief Medical Examiner is required to send a copy of the autopsy report of a child that may have been subjected to abuse or neglect to the appropriate authorities.

Any public or private entity that employs or contracts with a person who is required to report abuse or neglect due to his or her professional capacity is required to (1) have a policy requiring compliance with all laws and regulations regarding child abuse and neglect; and (2) provide employees and contractors with information regarding how to report child abuse and neglect.

A person is authorized, under the bill, to disclose a report or record concerning child abuse or neglect to the president of a public institution of higher education or the Chancellor of the University System of Maryland to carry out appropriate personnel or administrative action following a report of suspected child abuse committed (1) by a current employee; (2) by a contractor, employee of a contractor, or volunteer of the institution who has on-campus contact with children; (3) in connection with an institution sponsored, recognized, or approved program, camp, or other activity; or (4) on institution property.

Task Force Establishment

The bill also establishes the Task Force to Study Training for School Employees and Volunteers on the Prevention, Identification, and Reporting of Child Sexual Abuse. The Governor is to designate the chair of the task force, which is to be staffed by the Maryland State Department of Education. The task force is required to study (1) current practices and resources used by local school systems to train employees and volunteers

on the prevention, identification, and reporting of child sexual abuse; (2) nationally recognized model programs for training professional school employees on the prevention, identification, and reporting of child sexual abuse; (3) the current child sexual abuse prevention curriculum in schools; and (4) the resources currently available in the State for the prevention, identification, and reporting of child sexual abuse, including resources available through sexual assault programs, child advocacy centers, and nonprofit organizations.

The task force is also required to make recommendations regarding (1) whether training on child sexual abuse should be incorporated into broader training on all child abuse and neglect, should be addressed separately, or both; (2) whether certain school-based employees, including guidance counselors and psychologists, should receive additional training on the identification and reporting of child sexual abuse; (3) whether an age-appropriate statewide child sexual abuse curriculum is advisable for elementary school students; and (4) the best practices for training school employees and volunteers on the prevention, identification, and reporting of child sexual abuse.

The task force must report its findings and recommendations on the best practices for training school employees and volunteers on the prevention, identification, and reporting of child sexual abuse to the Governor and specified committees of the General Assembly by December 1, 2012.

Current Law:

Penalties for Failure to Report

State law does not criminalize the failure of a worker to report suspected abuse or neglect. The licensing boards for some workers who are mandated to report child abuse and neglect (nurses, doctors, and social workers are examples) are authorized to discipline workers for failing to report.

Mandatory Reporters

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. An “educator or human service worker” includes any teacher, counselor, social worker, caseworker, and parole or probation officer. 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 or neglect. 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. An agency that receives an oral report of suspected abuse or neglect must immediately notify the other agency.

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 or neglect 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 or neglect through privileged communications, as specified in statute. Individuals (other than those who are required to report because of their professional capacity) who in good faith make or participate in making a report of abuse or neglect or participate in an investigation or resulting judicial proceeding are immune from civil liability or criminal penalties.

Background:

Mandatory Reporters

According to the Child Welfare Information Gateway, every state and the District of Columbia have laws that identify those people who are required to report suspected incidences of child abuse and neglect. As of 2010 (the latest information available), 48 states and the District of Columbia specify professions for which the mandatory reporting requirements apply. Typically, mandated reporters include school personnel, social workers, health care workers, child care providers, medical examiners or coroners and law enforcement officers. The other two states, New Jersey and Wyoming, do not specify professional workers who are required to report, but require all persons to report suspected child abuse or neglect. At least 18 states, including Maryland, require all citizens to report suspected abuse or neglect regardless of profession. In Maryland, however, the reporting requirements for a citizen are less stringent than the reporting requirements for covered professionals.

Failure to Report Penalties

According to the Child Welfare Information Gateway, as of 2009, 47 states and the District of Columbia impose penalties on mandatory reporters who knowingly or willfully fail to report suspected child abuse or neglect. The states that do not impose a penalty, in addition to Maryland, are North Carolina and Wyoming.

In 39 of the 47 states that impose penalties, the penalty is a misdemeanor. The eight states that do not use the misdemeanor classification for the failure to report penalty are Connecticut, Delaware, Massachusetts, Mississippi, New Jersey, Vermont, Virginia, and Wisconsin. In Arizona, Florida, and Minnesota, misdemeanors become felonies for the failure to report serious or life-threatening situations. In Illinois, a second conviction for failure to report is a felony.

A mandated reporter who fails to report can face jail terms ranging from 10 days to 5 years and/or fines ranging from \$100 to \$5,000. In Arkansas, Colorado, Iowa, Michigan, Montana, New York, and Rhode Island, mandatory reporters who fail to report face civil liability for any damages arising from that failure as well as criminal penalties.

Training of School Employees

It is estimated that one in four girls and one in six boys will have experienced an episode of sexual abuse while younger than 18 years. Many sexually abused children exhibit physical and behavioral symptoms. *Practical Strategies for School Counselors* developed by the Maryland State Department of Education (MSDE) lists some of these indicators of sexual abuse.

MSDE reports that because educators are required to report child abuse and neglect under the Family Law Article, all local school systems currently provide training to all school personnel on child abuse and neglect policies and procedures. According to statute, child abuse specifically includes sexual abuse. The training also includes symptoms of child abuse and neglect as well as the related programs and services available. As part of the curriculum, local school systems also have a child abuse and neglect awareness and prevention education program for all students.

State Revenues: Potential minimal general fund revenue increase as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase by \$21,700 in fiscal 2013 for the cost of hiring one part-time contractual employee within MSDE to staff the task force and produce the required report. It includes a part-time salary, fringe benefits, one-time start-up costs, ongoing operating expenses, and termination of the contractual employee

on December 31, 2012. This estimate assumes that MSDE will absorb any additional expenditures related to reimbursements for the task force members and the preparation and distribution of materials to be used during task force meetings.

	<u>FY 2013</u>
Salary and Fringe Benefits	\$19,285
Operating Expenses and Start-Up Costs	<u>2,450</u>
Total	\$21,735

Local Revenues: Potential minimal revenue increase as a result of the bill's monetary penalty provision from cases heard in the circuit court.

Additional Information

Prior Introductions: SB 243 of 2008, a similar bill, passed the Senate as amended, but received an unfavorable report from the House Judiciary Committee. SB 106/HB 845 of 2005, which would have made the failure to report a misdemeanor, received unfavorable reports from the Senate Judicial Proceedings Committee and the House Judiciary Committee, respectively. Similar legislation was also considered in the 2004 and 2003 sessions.

Cross File: None.

Information Source(s): Department of Human Resources; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; Kent, Montgomery, Washington, and Worcester counties; Baltimore City; Child Welfare Information Gateway; Department of Legislative Services

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