

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 999
Judiciary

(Delegate McDermott, *et al.*)

Crimes - Child Abuse and Neglect - Failure to Report

This bill makes it a misdemeanor for a person to knowingly fail to provide a required notice or make a required report of suspected child abuse or neglect. A violator is guilty of a misdemeanor and subject to a maximum penalty of up to one year imprisonment and/or a \$1,000 fine.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

Local Effect: Minimal increase in expenditures due to the bill's penalty provision.

Small Business Effect: None.

Analysis

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. State law similarly does not criminalize the failure of other individuals to report suspected abuse or neglect.

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 also 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.

Background:

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.

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, 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.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

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 facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: SB 243 of 2008, a similar bill that would have made the failure to report a misdemeanor, passed the Senate as amended, but received an unfavorable report from the House Judiciary Committee. SB 106/HB 845 of 2005 received unfavorable reports from the Senate Judicial Proceedings Committee and the House Judiciary Committee, respectively.

Cross File: Although not designated as a cross file, SB 140 is identical.

Information Source(s): Commission on Criminal Sentencing Policy; Maryland State Department of Education; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of State Police; Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Human Resources; Caroline, Howard, Montgomery, and Prince George's counties; Baltimore City; Child Welfare Information Gateway; Department of Legislative Services

Fiscal Note History: First Reader - March 12, 2012
ncs/kdm

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