

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 876
Judiciary

(Delegates Dumais and Rosenberg)

Child Abuse - Failure to Report - Civil Penalty, Fund, and Task Force

This bill authorizes the Attorney General to institute a civil action against a worker who is required but fails to report abuse or neglect of a child. A civil penalty of up to \$100,000 may be recovered for each violation if (1) a child communicated directly with the person regarding the child's own abuse or neglect and the child was younger than 18 when the communication occurred or (2) the person observed the abuse or neglect. A civil penalty must be deposited in the Child Abuse Prevention Fund, which is a special fund established under the bill to be administered by the Governor's Office of Crime Control and Prevention (GOCCP). 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, 2013, and terminate May 31, 2014. Otherwise, the bill takes effect October 1, 2013.

Fiscal Summary

State Effect: The bill's requirements can be handled by GOCCP and the Office of the Attorney General (OAG) with existing budgeted resources. Special fund revenues and expenditures increase to the extent that civil penalties are recovered; however, any such increase cannot be reliably estimated at this time.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Civil Actions and Penalties

The civil penalty established under the bill is in addition to any other penalty provided by law. The bill's provisions do not limit a victim's right to restitution, as provided in statute or any other cause of action against a person who violates the reporting requirement.

If the Attorney General institutes a civil action, the Attorney General must report the violation to the appropriate board or agency that licenses, certifies, or registers a person for appropriate action as provided by law.

Child Abuse Prevention Fund

The Child Abuse Prevention Fund must be used to provide grants to programs for the purpose of preventing abuse and neglect. The grants (1) must be equitably distributed throughout the State; (2) must be made to recipients who have specialized expertise in responding to victims of abuse and neglect; and (3) may be made to private nonprofit organizations, public programs, or partnerships among these entities.

The fund consists of (1) money deposited from the civil penalty collected under the bill's provisions; (2) investment earnings; and (3) money from any source accepted for the benefit of the fund. Money expended from the fund for the purpose of preventing child abuse or neglect is supplemental to, and is not intended to take the place of, funding that otherwise would be appropriated for these programs.

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 must designate the chair of the task force, which is to be staffed by GOCCP. 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, 2013.

Task force members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law:

Penalties for Failure to Report

State law does not criminalize the failure of a worker to report suspected abuse or neglect and there are no provisions for a civil penalty to be assessed. 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 impose sanctions on licensees 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 August 2012, 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 four states (Louisiana, Oregon, Virginia, and Washington) designate as mandatory reporters faculty, administrators, athletics staff, and other employees and volunteers at institutions of higher learning, including public and private colleges and universities and vocational and technical schools.

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 (the latest information readily available), 47 states and the District of Columbia impose penalties of some type 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. Delaware imposes a civil penalty of up to \$10,000 for a first violation and up to \$50,000 for a subsequent violation.

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 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 Fiscal Effect: GOCCP advises that although the amount of funding that may be derived from the collection of civil penalties and ultimately spent from the new special fund in the form of grants is unknown, it estimates that it can administer the fund using existing budgeted resources. Any expense reimbursements for task force members and staffing costs for GOCCP are assumed to be minimal and absorbable within existing budgeted resources.

Because it is assumed that this bill will apply in a limited number of cases, it is also anticipated that any increase in workload due to civil actions OAG elects to pursue can be handled using existed budgeted resources.

Additional Information

Prior Introductions: HB 1102 of 2012, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 626, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Governor's Office of Crime Control and Prevention, Maryland State Department of Education, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Child Welfare Information Gateway, Department of Legislative Services

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