

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 856
Judiciary

(Delegate McComas, *et al.*)

Child Abuse and Neglect - Failure to Report - Penalties and Training

This bill makes it a civil offense for a worker in a professional capacity who is required to report suspected child abuse to knowingly and willfully fail to provide the required report. The bill makes it a misdemeanor for workers in a professional capacity to knowingly and willfully fail to provide a required report under specified circumstances. The provisions apply only if the failure to report child abuse occurs during the time the child is a minor. The bill also establishes training responsibilities for the Department of Human Resources (DHR).

The provisions of the bill establishing penalties for the failure to report suspected child abuse take effect July 1, 2016. Otherwise, the bill takes effect October 1, 2015.

Fiscal Summary

State Effect: DHR can handle the bill's requirements using existing resources. The bill is not anticipated to materially impact incarceration costs. Potential minimal increase in general fund revenues due to the bill's penalty provisions.

Local Effect: Potential minimal increase in local revenues due to the bill's penalty provisions. The bill is not anticipated to materially impact local incarceration costs.

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. For a first violation, an individual has committed a civil offense and is subject to a civil fine not exceeding \$250 and a requirement

to complete training developed by DHR. For a second or subsequent violation, an individual is guilty of a misdemeanor and subject to maximum penalties of six months imprisonment and/or a \$1,000 fine.

The bill authorizes a police officer to issue a citation for a first-time violation. Adjudication of a first-time violation is not a criminal conviction for any purpose and does not impose any of the civil disabilities that may result from a criminal conviction.

A worker required to file a report under existing law may not knowingly and willfully fail to file a required report of abuse if (1) the person witnesses the abuse and the person knows that the abuse is likely to cause or has caused serious physical injury or death to a child or (2) the person witnesses “sexual abuse” as defined in the Family Law Article. A violator of these provisions is guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$5,000 fine.

DHR, in consultation with other stakeholders, as appropriate, must develop training on the identification and reporting of abuse and neglect. In developing the training, DHR must provide to organizations representing health practitioners, police officers, educators, and human service workers an opportunity to provide input specific to those professions. DHR must make the training available at no cost to the public in person and online by January 1, 2016.

Current Law:

“Sexual Abuse”

Pursuant to § 5-701 of the Family Law Article, “sexual abuse” is any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member. Sexual abuse includes (1) allowing or encouraging a child to engage in obscene or pornographic activities or prostitution; (2) human trafficking; (3) incest; (4) rape; (5) sexual offense in any degree; (6) sodomy; and (7) unnatural or perverted sexual practices.

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, 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 November 2013 (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 November 2013, 48 states and the District of Columbia impose penalties on mandatory reporters who knowingly or willfully fail to report suspected child abuse or neglect. The only other state that does not impose a penalty, in addition to Maryland, is Wyoming.

In 39 of the 48 states that impose penalties, the penalty is a misdemeanor. In Arizona and Minnesota, misdemeanors are upgraded to felonies for failure to report more serious situations, while in Illinois and Kentucky, second or subsequent violations are classified as felonies.

A mandated reporter who fails to report can face jail terms ranging from 30 days to five years and/or fines ranging from \$300 to \$10,000. In California and Massachusetts, harsher penalties are imposed when the failure to report results in the child's death or serious bodily injury. Louisiana imposes harsher penalties when the reporter fails to report sexual abuse or serious bodily injury. Delaware and Virginia impose harsher penalties upon second or subsequent convictions for failure to report. Vermont imposes its fine for failure to report when the reporter willfully failed to report with the intent to conceal the abuse.

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

State Expenditures: 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. The bill is not anticipated to materially impact State incarceration costs.

Local Revenues: Local revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: 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. The bill is not anticipated to materially impact local incarceration costs.

Additional Information

Prior Introductions: SB 210 of 2014, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 1053, received an unfavorable report from the House Judiciary Committee. SB 94 of 2013, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Numerous similar bills were introduced in 2012 (SB 63, SB 140, HB 496, HB 999, and HB 1067).

Cross File: SB 571 (Senator Kelley, *et al.*) - Judicial Proceedings..

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

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