

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1263
Judiciary

(Delegate Dumais)

Judicial Proceedings

Family Law - Child Abuse and Neglect - Definitions

This bill alters the definition of “abuse,” in provisions of law relating to the reporting and investigation of suspected child abuse and neglect, to include acts by a person who, because of the person’s position or occupation, exercises authority over the child. It also specifies that abuse does not include the physical injury of a child by accidental means. The bill makes conforming changes to the definition of “sexual abuse.” It also alters the definition of “mental injury” to mean the observable, identifiable, and substantial impairment of a child’s mental or psychological ability to function *caused by an intentional act or series of acts, regardless of whether there was an intent to harm the child.*

Fiscal Summary

State Effect: The bill is not anticipated to materially impact the workload or finances of the Judiciary, the Office of the Public Defender (OPD), or the Department of Human Resources (DHR).

Local Effect: The bill is not anticipated to materially impact the workload of State’s Attorneys’ offices, the circuit courts, or law enforcement agencies.

Small Business Effect: None.

Analysis

Current Law: As discussed below, statutory provisions set forth a process by which individuals are required to report suspected child abuse and neglect; local departments of social services must take specified action upon receiving such reports. “Abuse” means the physical or mental injury of a child by any 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 under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed. "Abuse" also includes sexual abuse of a child, whether physical injuries are sustained or not. "Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.

"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 photography, films, poses, or similar 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.

Reporting of Suspected Child Abuse or Neglect

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.

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 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.

Child Abuse and Neglect Investigations

After receiving a report of suspected abuse or neglect of a child who lives in Maryland that is alleged to have occurred in the State, the local department of social services and/or the appropriate law enforcement agency must promptly investigate the report to protect the health, safety, and welfare of the child or children. Within 24 hours after receiving a report of suspected physical or sexual child abuse, and within five days after receiving a report of suspected child neglect or mental injury, the local department or law enforcement agency must (1) see the child; (2) attempt to have an on-site interview with the child's caretaker; (3) decide on the safety of the child and of other children in the household; and (4) decide on the safety of the other children in the care or custody of the alleged abuser. The determinations and assessments that are required during an abuse or neglect investigation are specified in statute.

The local State's Attorney must assist in a child abuse or neglect investigation if requested to do so by a local department of social services. The local departments, appropriate law enforcement agencies, the State's Attorneys in the counties and Baltimore City, and the local health officers must enter into a written agreement pertaining to standard operating procedures for investigations of suspected abuse or neglect. A joint investigation procedure must be implemented for conducting investigations of sexual abuse, which must include techniques for expediting validation of sexual abuse complaints and other techniques to decrease trauma to the child.

To the extent possible, a child abuse or neglect investigation must be completed within 10 days after receiving the notice of the suspected abuse or neglect. Within 10 days after receiving the first notice of suspected abuse or neglect of a child, the local department of social services or law enforcement agency must report the preliminary investigation findings to the local State's Attorney. Within 5 business days after the investigation is completed, the local department and the law enforcement agency, if the law enforcement agency participated in the investigation, must make a complete written report of findings to the local State's Attorney.

Background: The bill addresses issues raised in two recent Court of Appeals decisions. In *McClanahan v. Washington County Department of Social Services*, 445 Md. 691 (2015) a local department of social services (department) conducted investigations of the mother's alleged abuse and neglect of her daughter. The investigation was triggered by multiple allegations by the daughter that her biological father had sexually abused her when she visited him. The mother took her daughter to numerous health care providers where she

was subjected to eight vaginal exams over the course of several years. These exams triggered at least several sexual abuse investigations. The department asked two experts to assess the daughter; the experts diagnosed the daughter as suffering from several mental disorders and identified the mother as the cause of the daughter's injuries. An administrative law judge (ALJ) affirmed the department's finding and authorized the department to identify the mother as being responsible for child abuse mental injury in the department's database concerning information regarding child abuse investigations. The ALJ concluded that the mother's actions were either intentional attempts to manipulate and influence the outcome of an ongoing custody dispute with the child's father or the result of a subconscious effort to have the daughter remain close to her. The ALJ rejected the mother's arguments that she had acted reasonably, noting that no medical evidence justified the repeated allegations of sexual abuse made by the mother and daughter.

On appeal, after examining the relevant statutory language, the Court of Appeals reversed and held that a person can only be identified within the department's database as responsible for child abuse if the person intended to injure the child or acted with reckless disregard of the child's welfare. The case was remanded to the ALJ to make conclusions consistent with the court's opinion.

In *Wicomico County Department of Social Services v. B.A.*, 449 Md. 122 (2016) the Court of Appeals upheld an ALJ's conclusion that because a martial arts instructor did not have "temporary care or custody or responsibility for supervision of a child" when he engaged in sexually suggestive electronic and telephone communications with his 15-year old student, he could not be found responsible for indicated child sexual abuse. While the ALJ found that it was undisputed that the instructor had engaged in inappropriate sexually exploitive communications, all of the inappropriate communications took place while the instructor and the student were in separate locations. The ALJ also noted that there was a clear temporal break between the instructor-student relationship when they were together at the martial arts studio and the communications that took place when they were not physically together.

State/Local Fiscal Effect: Although the bill may result in additional reports of child abuse, it is assumed that any potential minimal increase in expenditures to handle additional investigations, as well as potential actions resulting from information learned during the investigations, such as additional child in need of assistance petitions or criminal charges, do not materially impact the workload or finances of the Judiciary, the circuit courts, State's Attorneys' offices, OPD, or DHR.

Additional Information

Prior Introductions: None.

Cross File: SB 996 (Senators Lee and Muse) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Human Resources; Department of Legislative Services

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