

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 81
Judiciary

(Delegate Angel)

Family Law - Child Abuse and Neglect - Mental Injury

This bill alters the definition of “mental injury” in provisions of law governing the reporting and investigation of suspected child abuse and neglect to include the observable, identifiable, and substantial impairment of a child’s mental or psychological ability to function that results from the child’s exposure to an act that constitutes a crime of violence, as specified, committed by a parent or household or family member against a parent or household or family member.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State government operations or finances, as discussed below.

Local Effect: The bill is not anticipated to materially impact local government operations or finances, as discussed below.

Small Business Effect: None.

Analysis

Current Law:

Child Abuse

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 under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed by (1) a parent; (2) a household or family member; (3) a person who has permanent or temporary care or custody of the child; (4) a person who has responsibility for supervision of the child; or (5) a person who, because of the person's position or occupation, exercises authority over the child. "Abuse" also includes sexual abuse of a child, whether physical injuries are sustained or not, but does not include the physical injury of a child by accidental means. "Mental injury" means 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.

Crime of Violence

Section 14-101 of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

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, 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: According to the Department of Human Resources (DHS), there were seven indicated findings of mental injury to children in fiscal 2017.

State/Local Fiscal Effect: Although the bill may result in additional reports of abuse, it is assumed that any 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 of the Judiciary, the circuit courts, State's Attorneys' offices, the Office of Public Defender, or DHS. It is also assumed that individuals may already be reporting some of these incidents under current law (*e.g.*, based on the potential for a child's health or welfare to be harmed or placed at substantial risk of harm by being present when a crime of violence is committed), thus negating the need for additional resources.

Additional Information

Prior Introductions: HB 359 passed the House as amended and was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Human Services; Department of Legislative Services

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nb/kdm

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