

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 1027

(Senator Klausmeier)(By Request)

Judicial Proceedings

Criminal Law - Abuse and Neglect of Vulnerable Adults - Notice of Report

This bill requires a copy of an initial report of alleged abuse or neglect of a vulnerable adult made to a State or local unit to be provided by the State or local unit to the individual alleged to have committed the abuse or neglect via certified mail or some other means reasonably calculated to provide actual notice.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not generally anticipated to materially affect local finances or operations in most jurisdictions, as discussed below. Potential increase in expenditures for Montgomery County.

Small Business Effect: None.

Analysis

Current Law:

Abuse and Neglect of Vulnerable Adults

Sections 3-604 and 3-605 of the Criminal Law Article prohibit the abuse or neglect of a vulnerable adult. “Abuse” means the sustaining of physical pain or injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the vulnerable adult’s health or welfare is harmed or threatened. “Abuse” includes the sexual abuse of a vulnerable adult. “Abuse” does not

include an accepted medical or behavioral procedure ordered by a health care provider authorized to practice under the Health Occupations Article or emergency medical personnel acting within the scope of the health care provider's practice.

A caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member.

A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000. A sentence imposed under this provision must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Under the second-degree prohibition, a caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult. A household member or family member may not cause abuse or neglect of a vulnerable adult. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a \$5,000 fine. A sentence imposed under this provision must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical. The second-degree prohibition does not apply to sexual abuse of a vulnerable adult.

Reporting and Investigating Allegations of Abuse and Neglect

Statutory provisions specify procedures for the reporting and investigation of reports of the abuse or neglect of a vulnerable adult, the specifics of which depend on the adult who is alleged to have been abused or neglected. For example, a person who believes that an individual with a developmental disability has been abused must report the alleged abuse to the executive officer or administrative head of the licensee; the report may be oral or written. The executive officer or administrative head must report the alleged abuse to an appropriate law enforcement agency, which must investigate, as specified. A written report of the law enforcement agency's findings must be provided to specified entities within 10 days after completion of the investigation; the Developmental Disabilities Administration must maintain a central registry of abuse reports and their disposition.

A person or an employee of a "facility" (a public or private clinic, hospital, or other institution that provides or purports to provide treatment or other services for individuals with mental disorders) or of the Maryland Department of Health (MDH) who receives a complaint of abuse must promptly report the alleged abuse to an appropriate law

enforcement agency or the administrative head of the facility, who must promptly report the alleged abuse to an appropriate law enforcement agency. A report may be oral or written. Within 10 working days after the investigation is complete, the law enforcement agency must submit a written report of its findings to specified entities.

A person who believes that a resident of a “related institution” has been abused must promptly report the alleged abuse to an appropriate law enforcement agency, the Secretary of Aging, or the Department of Aging. A “related institution” is an organized institution, environment, or home that (1) maintains conditions or facilities and equipment to provide domiciliary, personal, or nursing care for two or more unrelated individuals who are dependent on specified individuals for nursing care or the subsistence of daily living in a safe, sanitary, and healthful environment and (2) admits or retains the individuals for overnight care. A report may be oral or written; the recipient of the report must notify the other parties, as specified above. The law enforcement agency, with the assistance of the Secretary of Aging, must thoroughly investigate each report of alleged abuse; within 10 working days after completion of the investigation, the law enforcement agency must submit a written report of its findings to specified entities.

Statutory provisions also set forth procedures to report and investigate complaints regarding the abuse of funds of individuals within specified facilities, including related institutions. The complaint must be made to the local department of social services or, if the patient is older than age 65, to the Department of Aging. The recipient of the complaint must take specified actions, including investigating the complaint and giving the alleged abuser specific notice of the alleged abuse and an opportunity to reply to the charges stated in the complaint.

If an adult does not meet the criteria specified above, investigation procedures are governed by the Family Law Article. Specified individuals who contact, examine, attend, or treat an alleged vulnerable adult and who have reason to believe that the alleged vulnerable adult has been subjected to abuse, neglect, self-neglect, or exploitation must notify the local department of social services and, if acting as a staff member of a hospital or public health agency, immediately notify the head of the institution or the person’s designee, as specified. Other individuals may also file an oral or written report that alleges abuse, neglect, self-neglect, or exploitation with the local department. The local department must begin a thorough investigation, as specified, and may request assistance from other entities, including the State’s Attorney or law enforcement.

State/Local Fiscal Effect: MDH, the Department of Human Services, the Department of State Police, and the Department of Aging all advise that the bill has no fiscal impact. It is further assumed that most jurisdictions can use existing resources to provide a copy of an initial report of alleged abuse or neglect to the alleged abuser. However, Montgomery County advises that it anticipates the need to supplement its resources in order to ensure

that reports of suspected abuse and neglect are documented in a way as to mitigate the risk of retaliation against the vulnerable adult, the reporter, and staff. It also anticipates that its county attorney will review any reports sent to an alleged abuser. To the extent that an additional staff person is required to facilitate the anticipated increased workload, Montgomery County expenditures increase by at least \$105,000 annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Aging; Montgomery County; Maryland Association of Counties; cities of Bowie and Takoma Park; Maryland Municipal League; Maryland Department of Health; Department of Human Services; Department of State Police; Department of Legislative Services

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