

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1402
Judiciary

(Delegate R. Jones, *et al.*)

Health Care Practitioners – Sexual Abuse – Reporting and Statute of Limitations

This bill alters the statute of limitations for prosecuting a violation of § 3-308(b)(1) of the Criminal Law Article (fourth-degree sexual offense – nonconsensual sexual contact) if, at the time of the offense, the defendant was a “health care practitioner” as defined in § 1-301 of the Health Occupations Article. The bill also requires a health care practitioner who suspects or has reason to believe that a patient has been sexually abused to report the conduct, as specified.

Fiscal Summary

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary: A “health care practitioner” is a person who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care services in the ordinary course of business or practice of a profession. “Sexual abuse” means cruel or inhumane treatment that causes a sexual act, sexual contact, or vaginal intercourse as those terms are defined in § 3-301 of the Criminal Law Article. Sexual abuse does not include the performance of an accepted medical procedure that a physician orders in a manner that is consistent with specified statutory provisions.

Notwithstanding any other provisions of law, including any law on privileged communications, a health care practitioner acting in a professional capacity in the State who suspects or has reason to believe a patient has been subjected to sexual abuse must notify (1) as appropriate, the patient, the patient's guardian, and the patient's health care agent of the suspected abuse and (2) the head of the hospital or related institution or their designee if the health care practitioner is acting as a staff member or under contract as a staff member of a hospital or related institution.

These notifications must be made through direct communication as promptly as possible and in writing within 24 hours. These notifications must include, to the best of the health care practitioner's knowledge, the nature and extent of the sexual abuse of the patient and the identity of any individual responsible for the sexual abuse.

Current Law:

Statute of Limitations

In general, a prosecution for a misdemeanor must be instituted within one year after the offense was committed. However, a prosecution for a misdemeanor offense under § 3-308(c) of the Criminal Law Article (fourth-degree sexual offense involving a "person in a position of authority" and a minor) or, if the victim was a minor at the time of the offense, § 3-308(b)(1) of the Criminal Law Article (fourth-degree sexual offense – nonconsensual sexual contact) must be instituted within three years after the offense was committed.

Mandatory Reporting of Child Abuse

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. Specified requirements apply to reporting suspected abuse under these circumstances.

The licensing boards for some workers who are mandated to report child abuse and neglect (nurses, physicians, and social workers are examples) are authorized to discipline workers for failing to report. In addition, a mandatory reporter may not knowingly fail to provide required notice or make the required written report if the individual has actual knowledge of the abuse or neglect. A violator is guilty of a misdemeanor and subject to a maximum

penalty of up to three years imprisonment and/or a \$10,000 fine. The provisions only apply to a failure to report child abuse or neglect that occurs during the time the child is a minor.

Reporting of Child Abuse by Other Individuals

Although the term “mandatory reporters” refers only to individuals who must report suspected child abuse or neglect because of their professional capacity, State law generally requires all individuals to report suspected child abuse and neglect. For example, pursuant to § 5-705 of the Family Law Article, 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. Unlike mandatory reporters, other individuals are not subject to criminal penalties for the failure to report suspected child abuse and neglect.

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.

Reporting of Abuse – Mental Health Facilities

In general, “abuse” means cruel or inhumane treatment that causes any physical injury or any kind of sexual abuse. “Abuse” does not include (1) the performance of an accepted medical procedure that a physician orders or (2) an action taken by an employee that complies with applicable State and federal laws and applicable Maryland Department of Health (MDH) policies on the use of physical intervention. “Sexual harassment” means intimidation, bullying, or coercion of a sexual nature or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive environment.

Under § 10-705 of the Health-General Article, a person or any employee of an inpatient mental health facility or of MDH who receives a complaint of abuse, or who observes or has reason to believe that abuse has occurred, must promptly report the alleged abuse to an appropriate law enforcement agency or the administrative head of the facility. The administrative head of the facility must promptly report the alleged abuse to an appropriate law enforcement agency. Reports of abuse may be oral or written and must contain as much information as the reporter is able to provide. A licensed residential treatment center, a State facility, or a hospital with a separately identified inpatient psychiatric service must report a complaint of sexual abuse or sexual harassment of a patient within 24 hours of receiving the complaint. A complaint must be reported to (1) the Behavioral Health Administration and the Office of Health Care Quality in MDH; (2) the Child Protective

Services unit in the Department of Human Services, if the complaint involves a minor; and (3) the State designated protection and advocacy system.

A person has immunity from liability for (1) making a report; (2) participating in an investigation arising out of a report; or (3) participating in a judicial proceeding arising out of a report.

Reporting of Abuse of a Developmentally Disabled Person

“Abuse” means any physical injury that is inflicted willfully or with gross recklessness; inhumane treatment; or a sexual act, sexual contact, or vaginal intercourse, as those terms are defined in § 3-301 of the Criminal Law Article. “Abuse” does not include (1) the performance of an accepted medical procedure that a physician orders; (2) an accepted behavioral procedure that a licensed psychologist or psychiatrist, as appropriate, orders; or (3) an action taken by an employee that complies with applicable State and federal laws and applicable MDH policies on the use of physical intervention.

Under § 7-1005 of the Health-General Article, in addition to any other reporting requirement of law, a person who believes that an individual with developmental disability has been abused must promptly report the alleged abuse to the executive officer or administrative head of the “licensee.” The executive officer or administrative head must report the alleged abuse to an appropriate law enforcement agency. Reports of abuse may be oral or written and must contain as much information as the reporter is able to provide. A person has immunity from liability for (1) making a report; (2) participating in an investigation arising out of a report; or (3) participating in a judicial proceeding arising out of a report.

Reporting and Investigating Abuse or Neglect of a Vulnerable Adult – Family Law Article

A vulnerable adult is an adult who lacks the physical or mental capacity to provide for the adult’s daily needs. “Abuse” means the sustaining of any physical injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act by any person. “Neglect” is the willful deprivation of a vulnerable adult of adequate food, clothing, essential medical treatment or rehabilitative therapy, shelter, or supervision. “Neglect” does not include the providing of nonmedical remedial care and treatment for the healing of injury or disease, with the consent of the vulnerable adult, recognized by State law instead of medical treatment.

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.

If a report does not involve the abuse of a patient in a mental health facility, a facility for individuals with an intellectual disability, a nursing home, or a hospital, investigation procedures are governed by the Family Law Article. Pursuant to the Family Law Article, any health care practitioner, police officer, or human service worker who contacts, examines, attends, or treats an alleged vulnerable adult, and who has 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. If the health care practitioner, police officer, or human service worker is a staff member of a hospital or public health agency, he or she must immediately notify and give all the information required by law to the head of the institution or its designee. The report must be made by telephone, in writing, or by direct communication as soon as possible. Individuals other than those required to report due to their professional responsibilities may also file a report with a 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.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Legislative Services

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