

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1214 (Delegate McComas, *et al.*)  
Health and Government Operations

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**Maryland Child Protection Act of 2022**

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This bill specifies duties of a mandatory reporter and subjects such reporters to a civil penalty if they fail to report suspected abuse, sexual abuse, or a sexual crime (of or against a minor) to the appropriate authority. Among other things, the bill also (1) requires the preservation and submission to the Maryland Department of Health (MDH) of fetal tissue if an abortion is performed on a minor who is younger than age 14; (2) prohibits an individual from causing, abetting, or assisting a minor in obtaining an abortion without the consent of the minor's parent or guardian (with violators subject to civil liability and damages); and (3) authorizes a court to enjoin conduct that would be in violation of the bill on petition by the Attorney General, a district attorney, or any person adversely affected or who reasonably may be adversely affected by such conduct, as specified.

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**Fiscal Summary**

**State Effect:** General fund and special fund expenditures increase, potentially significantly, beginning in FY 2023 for State entities likely impacted by the bill, as discussed below. General fund revenues increase from filing fee and penalty revenues.

**Local Effect:** Local expenditures may increase to reflect additional legal costs, as discussed below. Local revenues are not affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary:

#### *Mandatory Reporting Requirements*

The bill specifies that a mandatory reporter must report in writing to the appropriate law enforcement or State agency every suspected instance of alleged or suspected abuse, sexual abuse, or sexual crimes against a minor in the mandatory reporter's care. The written report must be filed no later than 48 hours after the alleged or suspected abuse, sexual abuse, or sexual crime is brought to the attention of the mandatory reporter. A mandatory reporter may not delegate the responsibility for making such a report to another person. The report must include the name and address of the minor; the name and address of the person who is responsible for the care or custody of the minor; and any information pertaining to the alleged or suspected abuse, sexual abuse, or sexual crime.

A mandatory reporter who fails to report the suspected abuse, sexual abuse, or sexual crime to the appropriate authority is subject to a maximum civil penalty of \$5,000.

"Abuse," as defined in § 7-1005 of the Health General Article and made applicable to the bill, means (1) any physical injury that is inflicted willfully or with gross recklessness; (2) inhumane treatment; or (3) specified acts, as defined in the Criminal Law Article. "Abuse" does not include the performance of an accepted medical procedure that a physician orders; an accepted behavioral procedure that a licensed psychologist or psychiatrist, as appropriate, orders; or an action taken by an employee that complies with applicable State and federal laws, as specified.

#### *Preservation of Fetal Tissue*

A physician who performs an abortion on a minor who is younger than age 14 at the time of the procedure must preserve fetal tissue extracted during the abortion and submit it to MDH. The Secretary of Health must adopt regulations to implement these requirements, including those related to (1) the amount and type of tissue that must be preserved and submitted; (2) procedures for the proper preservation of fetal tissue for the purpose of DNA testing and examination; (3) procedures for documenting the chain of custody of fetal tissue for use as evidence in a court proceeding; (4) procedures for proper disposal of fetal tissue preserved in accordance with these requirements; (5) a standard reporting document to be used by physicians, as specified; and (6) procedures for communication with the Department of State Police regarding evidence obtained through these provisions.

If a physician fails to comply with the above provisions, the Secretary of Health may make a recommendation for discipline to the State Board of Physicians based on the severity of the physician's actions or inactions.

### *Abortion Services for a Minor*

A person may not intentionally cause, abet, or assist a minor to obtain an abortion without the consent of the minor's parent or guardian. A violator is subject to civil damages. A court may award damages to a person or persons adversely affected by a violation, including compensation for emotional injury without the adversely affected party needing to have been present when the abortion was performed. An adult who engages in or consents to another adult engaging in a sexual act with a minor may not be awarded damages, however. A defense may *not* include that the abortion was performed or induced in such a manner that was otherwise lawful in the State or place where the abortion was performed or induced. An unemancipated minor does not have the capacity to consent to any action in violation of these provisions.

A court of competent jurisdiction may enjoin conduct that would be in violation of the bill's provisions on petition by the Attorney General, a district attorney (presumed to be a State's Attorney), or any person adversely affected or who reasonably may be adversely affected by such conduct, on a showing that the conduct (1) is reasonably anticipated to occur in the future or (2) has occurred in the past, whether with the same minor or others, and that it is reasonable to expect the conduct will be repeated.

### **Current Law:**

#### *Mandatory Reporters*

*Reporting Requirements:* Under Title 5, Subtitle 7 of the Family Law Article, 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 (including sexual abuse) or neglect (as defined in § 5-701 of the Family Law Article), 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. Statutory provisions specify a required process for the investigation of such reports.

*Related Penalties:* 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 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.

*Immunity Provisions:* 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.

## *Abortion*

*Generally:* The State may not interfere with a woman's decision to end a pregnancy before the fetus is viable, or at any time during a woman's pregnancy, if the procedure is necessary to protect the life or health of the woman, or if the fetus is affected by a genetic defect or serious deformity or abnormality. This is consistent with the U.S. Supreme Court's holding in *Roe v. Wade*, 410 U.S. 113 (1973). A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. MDH may adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman. If an abortion is provided, it must be performed by a licensed physician. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician's best medical judgment using accepted standards of medical practice.

*Minors:* With specified exceptions, a physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor. The postal receipt that shows an article of mail was sent by certified mail, return receipt requested, bearing a postmark from the U.S. Postal Service, to the last known address of a parent or guardian and that is attached to a copy of the notice letter that was sent in that article of mail must be conclusive evidence of notice or a reasonable effort to give notice. A physician may perform the abortion, without notice to a parent or guardian of a minor, if in the professional judgment of the physician (1) notice to the parent or guardian may lead to physical or emotional abuse of the minor; (2) the minor is mature and capable of giving informed consent to an abortion; or (3) notification would not be in the best interest of the minor. A physician is not liable for civil damages or subject to a criminal penalty for a decision not to give notice.

## *Sexual Crimes Against Minors*

Title 3, Subtitle 3 of the Criminal Law Article establishes numerous prohibitions against sexual acts with minors. For example, a person may not engage in vaginal intercourse or a sexual act with another under specified circumstances, including if the victim is younger than age 14 and the person performing the act is at least 4 years older than the victim. A violator is guilty of the felony of rape in the second degree and subject to a maximum penalty of 20 years imprisonment. Among other prohibitions, a person may not engage in a sexual act with another if a victim is 14 or 15 and the person performing the sexual act is at least 4 years older than the victim.

**State Revenues:** General fund revenues increase to the extent that (1) civil penalties are imposed on mandatory reporters who fail to report suspected abuse/sexual abuse and sexual crimes to the appropriate authorities and (2) civil actions are filed against individuals who

intentionally cause, abet, or assist a minor in obtaining an abortion without the consent of a parent or guardian or to enjoin conduct otherwise prohibited by the bill.

**State Expenditures:** State expenditures increase, potentially significantly, to account for costs associated with (1) MDH's receipt and analysis of fetal tissue; (2) additional cases filed with the Judiciary and any potential litigation involving the State; and (3) additional mandatory reports.

#### *Maryland Department of Health*

Under the bill, a physician who performs an abortion on a minor who is younger than age 14 must preserve the fetal tissue that is extracted during the procedure and submit the tissue to MDH. MDH advises that, while the Office of Health Care Quality oversees the regulation of forensic laboratories, no MDH-operated laboratory performs forensic analysis. To the extent that MDH is required to perform DNA testing and examination on the tissue it receives (and ensure that procedures to document the chain of custody are adequate in order to allow for the tissue to be used as evidence in a court proceeding), general fund expenditures increase. Anticipated expenditures include those associated with staff and laboratory equipment/supplies. Although MDH is unable to provide a precise estimate of the costs, MDH advises that they are substantial.

#### *Litigation-related Expenditures*

State expenditures (general/special funds) may also increase to the extent that additional cases are filed as a result of the bill. For example, the bill creates a broad civil action (which includes the possible award of damages) against any person who intentionally causes, abets, *or assists* a minor to obtain an abortion without the consent of the minor's parent or guardian. Furthermore, the purported adversely affected party does not need to be present when the abortion was performed and the defense that the resulting abortion was performed in a lawful manner (in the state or place where it occurred) is not available. Regardless of the potential merits of any particular case, the bill likely results in additional cases being filed by individuals seeking damages for alleged emotional injury. The bill also authorizes specified individuals – including any person adversely affected – to file a petition to enjoin conduct that would be in violation of the bill's provisions, which may be based on a showing that the conduct has occurred in the past, as specified.

To the extent that such cases are filed (including any potentially against a State employee), general/special fund expenditures for the Judiciary and any other potential participating State entities (such as the Office of the Attorney General or the State Treasurer's Office) may increase.

## *Department of Human Services*

As noted under the current law discussion, certain individuals are already required to report suspected child abuse (including sexual abuse) and neglect. However, the applicable definition of “abuse” under current law also incorporates the existence of specified relationships between the child and the alleged abuser (*e.g.*, a parent, household/family member, a person who, because of the person’s position or occupation, exercises authority over the child, *etc.*). Because the bill’s requirement to report sexual crimes and abuse (under the applicable definition in the bill) may result in additional reports to local departments of social services (and subsequent investigations) that may not have been required under current law, general fund expenditures for the Department of Human Services may increase. *For illustrative purposes only*, for every additional caseworker required, general fund expenditures increase by approximately \$80,000 annually.

**Local Expenditures:** Local expenditures may increase to the extent that any actions are brought against local employees who are alleged to have caused, abetted, or assisted a minor to obtain an abortion without the consent of the minor’s parents. For example, Frederick County notes that a civil action could potentially be brought against a member of the school health staff who provides information on pregnancy care services.

**Small Business Effect:** Health care practices that offer abortion services to minors are (1) subject to additional requirements regarding abortions performed on minors younger than age 14 and (2) subject to damages (and an injunction regarding the conduct) for causing, abetting, or assisting a minor to obtain an abortion without the consent of a parent or guardian.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Association of County Health Officers; Charles, Frederick, and Montgomery counties; City of Havre de Grace; Maryland State Treasurer’s Office; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Juvenile Services; Department of State Police; Department of Legislative Services

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