

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 644
Judiciary

(Delegate Crutchfield)

Family Law - Caretaker Bill of Rights

This bill requires a local department of social services or law enforcement agency to provide oral and written notice of specified rights (and potential consequences of exercising such rights) to a parent or caretaker at the time of initial contact during an investigation of child abuse or neglect. The bill also (1) specifies the applicable rights; (2) establishes requirements for the delivery and acknowledgement of the notice of rights; and (3) prohibits evidence obtained in violation of the bill's requirements from being admitted in any judicial or administrative proceeding arising from the investigation.

Fiscal Summary

State Effect: General fund expenditures increase beginning in FY 2025, potentially significantly, as discussed below. Revenues are not materially affected.

Local Effect: Any potential expenditures for local law enforcement agencies to implement the bill's requirements are assumed to be minimal, with no material impact on local finances. Revenues are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary: Among other things, a parent or caretaker must be notified of the following:

- the parent or caretaker is not required to allow the investigator to enter the residence of the parent or caretaker, unless the entry is ordered by a court or is authorized by § 5-709 of the Family Law Article;
- the parent or caretaker is entitled to be informed of all the allegations being investigated;
- the parent or caretaker is not required to speak with the investigator without an opportunity to consult an attorney and is entitled to have an attorney review any documents before agreeing to sign;
- the parent or caretaker is not required to allow the investigator to interview or examine a child, unless the interview or examination is ordered by a court or otherwise required by statute, as specified;
- any statement made by the parent, caretaker, or other family member or occupant of the home may be used against the parent or caretaker in an administrative or court proceeding; and
- the exercise of any of the rights described in the bill, including refusing to speak with the investigator or denying entry into the home, may have serious consequences, which may include the investigator filing a petition for the removal of the child from the home of the parent or caretaker.

The notice must be written in a clear, simple manner and in a language the parent or caretaker understands. If the parent or caretaker is unable to read, or on request, the investigator must read the notice to the parent or caretaker. The investigator must request that the parent or caretaker sign and date the notice as recognition of receipt; on a refusal to do so, the investigator must specifically indicate the refusal on the notice and sign the notice as witness to the refusal. The investigator must provide a copy of the signed notice to the parent or caretaker at the time of the investigator's initial face-to-face contact.

Current Law:

Child Abuse and Neglect Investigations – Generally

Generally, 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 and thoroughly 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 the investigations if requested to do so by a local department of social services.

Generally, the local departments, appropriate law enforcement agencies, the State's Attorneys in the counties and Baltimore City, and other specified entities must enter into a written agreement pertaining to standard operating procedures for investigations of suspected abuse or neglect (and the prosecution of reported cases). Additional requirements are also specified for joint investigation procedures regarding suspected child sexual abuse. 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. An investigation that is not completed within 30 days must be completed within 60 days of receipt of the first notice of the suspected abuse or neglect.

Within five 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.

Reports of child abuse and neglect may also be referred for an alternative response in specified circumstances. An "alternative response" means a component of the child protective services program that provides for a comprehensive assessment of (1) risk of harm to the child; (2) risk of subsequent child abuse or neglect; (3) family strengths and needs; and (4) the provision of or referral for necessary services. An alternative response does not include an investigation or a formal determination as to whether child abuse or neglect has occurred. Only a low-risk report of abuse or neglect may be considered for an alternative response. Statutory provisions also set forth procedures for an alternative response, including timeframes by which assessments and written reports must be completed.

Family Law Article § 5-709 – Exception for Law Enforcement Entering Households

If a representative of a local department is conducting an investigation of child maltreatment, the representative may enter the household if the representative previously has been denied the right of entry *and* has probable cause to believe the child is in serious, immediate danger. A police officer must accompany the representative and may use reasonable force to gain entry to the household, if necessary. The representative may temporarily remove the child from the home, without prior approval from the juvenile court, on a belief that the child is in serious, immediate danger. A removed child must be thoroughly examined by a physician, and a report of the examination must be included in the representative's report, as specified.

State Expenditures: General fund expenditures increase, *potentially* significantly, beginning in fiscal 2025 to implement the provisions of the bill.

The Department of Human Services (DHS) advises that while the bill does not grant new rights for caretakers, it requires DHS to frame preexisting rights in a manner resembling Miranda rights. It estimates, as a result, more families will be less inclined to cooperate with DHS in investigations of child maltreatment. As referenced above, if a parent has previously denied entry to a local department *and* the local department has probable cause to believe that a child is in serious, immediate danger, it may request assistance from law enforcement to gain entry.

Although DHS acknowledges that the bill does not result in an increase in overall investigations, it anticipates an increase in *court-involved* investigations and subsequent child in need (CINA) of petitions. To facilitate the legal representation required for an anticipated increase in CINA petitions (and subsequent hearings), DHS estimates the need for 30 additional attorneys, with associated costs of approximately \$3.0 million in fiscal 2024, which accounts for the bill's October 1, 2024 effective date, and \$3.8 million on an annual basis. The estimate also includes costs associated with printing the required notices and annual staff training.

The Department of Legislative Services, while generally acknowledging that the legislation may result in increased court involvement for maltreatment investigations (and subsequent CINA petitions), advises that, without experience under the bill, it is unable to independently verify that additional staffing – particularly at the magnitude of that estimated by DHS – is required.

To the extent that additional CINA petitions are filed, general fund expenditures for the Office of the Public Defender, whose Parental Defense Division represents parents/guardians in child welfare cases, likely increase. Any such impact has not specifically been accounted for in this analysis.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Human Services; Department of Legislative Services

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