

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 1141

(Delegate Dumais)

Judiciary

Judicial Proceedings

Child Abuse and Neglect - Disclosure of Information

This bill requires the director of a local department of social services or the Secretary of Human Resources to disclose, on request, specified information regarding child abuse or neglect if: (1) the information is limited to actions or omissions of the local department, the Department of Human Resources (DHR), or an agent of DHR; (2) the child named in a report has suffered a fatality or near fatality; and (3) the State's Attorney's Office has consulted with and advised the local director or Secretary that disclosure would not jeopardize or prejudice a related investigation or prosecution.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The bill's requirements can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: If the local director or the Secretary does not disclose information because the State's Attorney has advised that disclosure would jeopardize or prejudice a related investigation or prosecution, the State's Attorney must notify the local director or the Secretary within 10 days after the conclusion of the related investigation or prosecution. Within 30 days after this notification, the local director or the Secretary must disclose the information.

The bill repeals a provision that permitted disclosure only if the alleged abuser or neglecter had been charged with a related crime and eliminates the requirement for the

local director or the Secretary to consult with the primary law enforcement agency prior to the disclosure. The bill also repeals a provision that permitted disclosure only if the local director or the Secretary determines that the disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, family, or care of the alleged abuser or neglector.

Subject to specified limitations, the local director or the Secretary must also disclose: (1) the status of any case involving the child that was open at the time of the fatality or near fatality; and (2) a summary of the facts of the fatality or near fatality, including the date, and, if applicable, the cause of death reported by the medical examiner. The bill prohibits the local director or the Secretary from disclosing the name of the alleged abuser or neglector.

Current Law: The director of a local department of social services or the Secretary of Human Resources *may* disclose certain information concerning child abuse or neglect if:

- it is determined that disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, family, or care of the alleged abuser or neglector;
- the alleged abuser or neglector has been charged with a crime related to a report of child abuse or neglect; and
- the child named in a report of abuse or neglect has died or suffered a serious physical injury. A serious physical injury is defined as a physical injury that (1) creates a substantial risk of death; or (2) causes permanent or protracted serious: (i) disfigurement; or (ii) loss or impairment of the function of any bodily member or organ.

In evaluating whether disclosure is contrary to the best interests of the child or other potentially affected children, the local director or the Secretary must consider the effect that disclosure may have on the provision of services to the child, the child's household or family members, and any children in the care of the alleged abuser or neglector.

Prior to disclosing any information, the local director or the Secretary must consult with the primary law enforcement agency and the State's Attorney's Office to determine whether the disclosure would jeopardize or prejudice any related investigation or prosecution. The local director and the Secretary must also consult each other.

The local director or the Secretary may disclose:

- the name of the allegedly abused or neglected child;
- the dates of any reports of alleged abuse or neglect;
- the findings made by the local department at the conclusion of its investigation and the disposition;
- any services provided to the alleged abuser or neglecter, the allegedly abused or neglected child, and the household or family members;
- the number of referrals for professional services for the affected parties;
- any prior adjudication as child in need of assistance of the child or the child's siblings, or another child in the household, family, or care of the alleged abuser or neglecter; and
- any information concerning the circumstances of the alleged child abuse or neglect and the investigation of the circumstances, if it is determined that disclosure is consistent with the public interest.

The local director or Secretary is prohibited from disclosing certain information, including the identity of an individual who made a report, the names of other family members of the allegedly abused or neglected child, and medical reports other than those related to the cause of the child's injury or death as a result of the alleged abuse or neglect.

The federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to adopt provisions allowing for the public disclosure of findings or information relating to a case of child abuse or neglect which resulted in a child fatality or near fatality.

Background: A 2008 report produced by the Children's Advocacy Institute and First Star compared and graded the child death and near death disclosure laws and policies of each state. The evaluation considered: (1) whether the state had a public disclosure policy as mandated by CAPTA; (2) whether the state's policy was codified in statute; (3) the ease of access to the information; (4) the scope of information authorized for release; and (5) whether the state allowed public access to abuse or neglect proceedings. While the State is technically in compliance with CAPTA, this report gave Maryland, along with nine other states, a grade of "F." In evaluating the ease of access to information about child abuse or neglect which resulted in a child fatality or near fatality, the report criticized Maryland's policy as being "permissive with severely restrictive conditional language."

DHR previously advised on a similar introduction of this bill that the provisions were intended to respond to the report's criticism of State laws by allowing greater public disclosure of information from child welfare records. The bill also makes State law more consistent with that found in CAPTA by replacing the term "serious physical injury" with "near fatality."

Additional Information

Prior Introductions: SB 59 of 2009, a similar bill, passed the Senate but received an unfavorable report from the House Judiciary Committee.

Cross File: SB 948 (Senator Raskin) - Judicial Proceedings.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Department of Human Resources; Judiciary (Administrative Office of the Courts); Department of State Police; State's Attorneys' Association; Department of Legislative Services

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