

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1102
Judiciary

(Delegate Dumais, *et al.*)

Child Abuse - Failure to Report - Civil Penalty and Child Abuse Prevention Fund

This bill authorizes the Attorney General to institute a civil action against a worker who is required but fails to report abuse or neglect of a child. A civil penalty of up to \$100,000 may be recovered for each violation if (1) a child communicated directly with the person regarding the child's own abuse or neglect and the child was younger than 18 when the communication occurred; or (2) the person observed the abuse or neglect. A civil penalty must be deposited in the Child Abuse Prevention Fund, which is a special fund established under the bill to be administered by the Governor's Office of Crime Control and Prevention (GOCCP).

Fiscal Summary

State Effect: The bill's requirements can be handled by GOCCP and the Office of the Attorney General with existing budgeted resources. Special fund revenues increase to the extent that civil penalties are recovered, however the amount cannot be reliably estimated at this time.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The civil penalty established under the bill is in addition to any other penalty provided by law. The bill's provisions do not limit a victim's right to restitution, as provided in statute or any other cause of action against a person who violates the reporting requirement.

The Child Abuse Prevention Fund must be used to provide grants to programs for the purpose of preventing abuse and neglect. The grants (1) must be equitably distributed throughout the State; (2) must be made to recipients who have specialized expertise in responding to victims of abuse and neglect; and (3) may be made to private nonprofit organizations, public programs, or partnerships among these entities.

The fund consists of (1) money deposited from the civil penalty collected under the bill's provisions; (2) investment earnings; and (3) money from any source accepted for the benefit of the fund. The State Treasurer must invest and reinvest the fund in the same manner as other State funds and credit any investment earnings to the fund. Money expended from the fund for the purpose of preventing child abuse or neglect is supplemental to, and is not intended to take the place of, funding that otherwise would be appropriated for these programs.

Current Law:

Penalties for Failure to Report

State law does not criminalize the failure of a worker to report suspected abuse or neglect and there are no provisions for a civil penalty to be assessed. The licensing boards for some workers who are mandated to report child abuse and neglect (nurses, doctors, and social workers are examples) are authorized to discipline workers for failing to report.

Mandatory Reporters

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.

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, and 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.

In general, 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. Individuals (other than those who are required to report because of their professional capacity) 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.

Background:

Mandatory Reporters

According to the Child Welfare Information Gateway, every state and the District of Columbia have laws that identify those people who are required to report suspected incidences of child abuse and neglect. As of 2010 (the latest information available), 48 states and the District of Columbia specify professions for which the mandatory reporting requirements apply. Typically, mandated reporters include school personnel, social workers, health care workers, child care providers, medical examiners or coroners, and law enforcement officers. The other two states, New Jersey and Wyoming, do not specify professional workers who are required to report, but require all persons to report suspected child abuse or neglect. At least 18 states, including Maryland, require all citizens to report suspected abuse or neglect regardless of profession. In Maryland, however, the reporting requirements for a citizen are less stringent than the reporting requirements for covered professionals.

Failure to Report Penalties

According to the Child Welfare Information Gateway, as of 2009, 47 states and the District of Columbia impose penalties of some type on mandatory reporters who knowingly or willfully fail to report suspected child abuse or neglect. The states that do not impose a penalty, in addition to Maryland, are North Carolina and Wyoming.

In 39 of the 47 states that impose penalties, the penalty is a misdemeanor. The eight states that do not use the misdemeanor classification for the failure to report penalty are Connecticut, Delaware, Massachusetts, Mississippi, New Jersey, Vermont, Virginia, and Wisconsin. In Arizona, Florida, and Minnesota, misdemeanors become felonies for the failure to report serious or life-threatening situations. In Illinois, a second conviction for failure to report is a felony. Delaware imposes a civil penalty of up to \$5,000 for a first violation and up to \$50,000 for a subsequent violation.

A mandated reporter who fails to report can face jail terms ranging from 10 days to 5 years and/or fines ranging from \$100 to \$5,000. In Arkansas, Colorado, Iowa, Michigan, Montana, New York, and Rhode Island, mandatory reporters who fail to report face civil liability for any damages arising from that failure as well as criminal penalties.

State Fiscal Effect: GOCCP advises that although the amount of funding that may be derived from the collection of civil penalties is unknown, it estimates that it can administer the fund using existing budgeted resources. The Office of the Attorney General advises it will need one additional assistant Attorney General to handle the additional cases. The Department of Legislative Services disagrees with this assessment, and estimates that any increase in workload due to civil actions the Office of the Attorney General elects to pursue can be handled using existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: SB 626 (Senator Forehand, *et al.*) - Judicial Proceedings.

Information Source(s): Office of the Attorney General, Governor's Office of Crime Control and Prevention, Maryland State Department of Education, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Child Welfare Information Gateway, Department of Legislative Services

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