

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

House Bill 1067

(Delegate McComas, *et al.*)

Judiciary

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**Child Abuse and Neglect - Failure to Provide Notice or Report - Civil Liability  
and Criminal Penalty**

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This bill adds medical examiners and parole and probation agents to those workers who, when they are acting in a professional capacity, are required to report suspected incidences of child abuse or neglect. The bill establishes immunity from civil liability and criminal penalties for workers who in good faith provide or participate in providing notice of abuse or neglect as required. The bill also makes it a misdemeanor for a worker in a professional capacity who is required to provide notice or to report suspected child abuse or neglect to knowingly fail to provide the required notice or report. A violator is guilty of a misdemeanor and is subject to a maximum fine of \$1,000. The bill exempts a medical examiner from making an oral or written report within specified timeframes. Instead, the Office of the Chief Medical Examiner is required to send a copy of the autopsy report of a child that may have been subjected to abuse or neglect to the appropriate authorities.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues due to the bill's monetary penalty provision. The bill's requirements can be enforced with existing resources.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

### Current Law:

*Penalties for Failure to Report:* State law does not criminalize the failure of a worker to report suspected abuse or neglect. 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.

According to the latest information available, at least 25 states and the District of Columbia require medical examiners to report suspected child abuse or neglect. At least 17 states require parole and probation officers to report. **Exhibit 1** shows those states that mandate reporting by medical examiners and parole and probation officers.

In addition, Arkansas, Idaho, Ohio, and South Dakota require coroners to report suspected child abuse and neglect.

*Failure to Report Penalties:* According to the Child Welfare Information Gateway, as of 2009, 47 states and the District of Columbia impose penalties 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.

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.

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**Exhibit 1**  
**Mandatory Reporters/Child Abuse or Neglect**

<u>Medical Examiners</u>	<u>Parole and Probation Officers</u>
Alabama	Arkansas
California	Colorado
Colorado	California
Connecticut	Connecticut
Delaware	Hawaii
District of Columbia	Illinois
Florida	Louisiana
Hawaii	Maryland
Illinois	Massachusetts
Kentucky	Minnesota
Louisiana	Missouri
Maine	Nevada
Massachusetts	North Dakota
Michigan	South Dakota
Missouri	Vermont
Montana	Virginia
Nevada	Washington
New Hampshire	
New York	
North Dakota	
Pennsylvania	
South Carolina	
Tennessee	
Vermont	
Washington	
Wisconsin	

Source: Child Welfare Information Gateway

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**State Revenues:** General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

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## Additional Information

**Prior Introductions:** SB 243 of 2008, a similar bill, passed the Senate as amended, but received an unfavorable report from the House Judiciary Committee. SB 106/HB 845 of 2005, which would have made the failure to report a misdemeanor, received unfavorable reports from the Senate Judicial Proceedings Committee and the House Judiciary Committee, respectively. Similar legislation was also considered in the 2004 and 2003 sessions.

**Cross File:** SB 63 (Senator Kelley, *et al.*) - Judicial Proceedings.

**Information Source(s):** Department of Human Resources; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; Kent, Montgomery, Washington, and Worcester counties; Baltimore City; Child Welfare Information Gateway; Department of Legislative Services

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mc/kdm

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