

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 632
Judiciary

(The Speaker, *et al.*) (By Request - Administration)

Judicial Proceedings

Child Abuse - Sex Trafficking (Protecting Victims of Sex Trafficking Act of 2017)

This emergency Administration bill alters the definition of “sexual abuse” in provisions of law relating to the reporting and investigation of suspected child abuse and neglect to include “sex trafficking” of a child, regardless of the victim’s relationship with the alleged abuser. “Sex trafficking” is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

Fiscal Summary

State Effect: The bill is intended to protect significant federal fund revenues by ensuring that the State is in compliance with federal law, as discussed below. Otherwise, the bill is not anticipated to materially impact the workload or finances of the Judiciary, the Office of the Public Defender (OPD), or the Department of Human Resources (DHR).

Local Effect: The bill is not anticipated to materially impact the workload of State’s Attorneys’ offices, the circuit courts, or law enforcement agencies.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: As discussed below, statutory provisions set forth a process by which individuals are required to report suspected child abuse and neglect; local departments of social services must take specified action upon receiving such reports. Pursuant to the Family Law Article, “child abuse” includes “sexual abuse.” “Sexual abuse” is any act that

involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member. Sexual abuse includes (1) allowing or encouraging a child to engage in obscene or pornographic photography, films, poses, or similar activities or prostitution; (2) human trafficking; (3) incest; (4) rape; (5) sexual offense in any degree; (6) sodomy; and (7) unnatural or perverted sexual practices.

Reporting of Suspected Child Abuse or Neglect

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.

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 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.

Child Abuse and Neglect Investigations

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 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 a child abuse or neglect investigation if requested to do so by a local department of social services. The local departments, appropriate law enforcement agencies, the State's Attorneys in the counties and Baltimore City, and the local health officers must enter into a written agreement pertaining to standard operating procedures for investigations of suspected abuse or neglect. A joint investigation procedure must be implemented for conducting investigations of sexual abuse, which must include techniques for expediting validation of sexual abuse complaints and other techniques to decrease trauma to the child.

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. Within 10 days after receiving the first notice of suspected abuse or neglect of a child, the local department of social services or law enforcement agency must report the preliminary investigation findings to the local State's Attorney. Within 5 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.

Background: The federal Justice for Victims of Trafficking Act of 2015 requires states receiving federal funds under the Child Abuse Prevention and Treatment Act (CAPTA) to take specific steps to address sex trafficking. By May 29, 2017, in order to be in compliance with CAPTA, states must consider a child to be a victim of child abuse and neglect and of sexual abuse if the child is identified by a State or local agency as being a victim of sex trafficking or a victim of severe forms of trafficking in persons. The proposed definition of sex trafficking in this bill is identical to the federal definition. The State receives more than \$450,000 annually in federal funds through CAPTA. This funding is distributed to all 24 local departments of social services to support child protective services programs that benefit at-risk families and children.

Chapter 91 of 2015 established the Workgroup to Study Safe Harbor Policy for Youth Victims of Human Trafficking. The workgroup was tasked with various responsibilities relating to human trafficking, including making recommendations regarding legislation to address the provision of services and legal protections for youth victims of human

trafficking in the State. The bill also aligns with a recommendation of the workgroup, which noted in its 2016 report that in sex trafficking cases, the relationship between the victim and the trafficker is often not clear. It further indicated that pursuant to the definition in current law, in order for local departments of social services to investigate an allegation of human trafficking with law enforcement and provide services, it must have evidence that the alleged perpetrator was the victim's parent, family or household member, or caretaker. The bill is intended to permit local departments to (1) respond immediately to trafficking allegations regardless of any relationship between the child victim and the trafficker; (2) work with law enforcement; and (3) provide services to victims.

State/Local Fiscal Effect: Although the bill may result in additional reports of child abuse, it is assumed that any potential minimal increase in expenditures to handle additional investigations, as well as potential actions resulting from information learned during the investigations, such as additional child in need of assistance petitions or criminal charges, does not materially impact the workload or finances of the Judiciary, the circuit courts, State's Attorneys' offices, OPD, or DHR.

Additional Information

Prior Introductions: None.

Cross File: SB 308 (The President, *et al.*) (By Request - Administration) - Judicial Proceedings.

Information Source(s): Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; U.S. Congress; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2017
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Sexual Abuse – Human Trafficking - Definition

BILL NUMBER: SB 308/HB 632

PREPARED BY: Department of Human Resources
(Dept./Agency)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS