

# SENATE BILL 559

D4, O4

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By: **Senators Kelley, Colburn, Conway, Currie, Della, Exum, Forehand, Lenett, Madaleno, McFadden, Muse, Pinsky, and Stone**  
Introduced and read first time: February 4, 2010  
Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Child Protection – Mandatory Reporting of Children Regularly in Contact**  
3 **with Persons Convicted of Child Abuse and Child Sexual Abuse**

4 FOR the purpose of requiring certain professionals to notify the local department of  
5 social services or the appropriate law enforcement agency if the professionals  
6 have reason to believe that a parent, guardian, or caregiver allows a child to  
7 reside with or regularly associate with a certain individual; providing certain  
8 exceptions; describing the information that is to be included in a certain report;  
9 providing for the receipt and investigation of a report that a child is at  
10 substantial risk of abuse; requiring the Secretary of Human Resources to adopt  
11 certain regulations; requiring the local department or the appropriate law  
12 enforcement agency to take certain actions within a certain time period after  
13 receiving a certain report; requiring an investigation to be completed within a  
14 certain time period; authorizing and requiring the local department to take  
15 certain actions after completion of an investigation; providing for expungement  
16 of certain reports; providing certain immunity for certain persons who make or  
17 participate in making certain reports; and generally relating to mandatory  
18 reporting of children regularly in contact with certain persons.

19 BY adding to

20 Article – Family Law  
21 Section 5–704.1 and 5–706.2  
22 Annotated Code of Maryland  
23 (2006 Replacement Volume and 2009 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Family Law  
26 Section 5–707(b) and 5–708  
27 Annotated Code of Maryland  
28 (2006 Replacement Volume and 2009 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



## 1 Preamble

2 WHEREAS, No child should suffer injury or death from maltreatment resulting  
3 from regular association with a person with a known criminal record of child abuse or  
4 child injury; and

5 WHEREAS, A child's regular association with a person with a history of abuse  
6 or criminal injury to a child presents a preventable threat to the safety of Maryland's  
7 children; and

8 WHEREAS, Maryland courts have consistently held that a child can be  
9 adjudicated a child in need of assistance under certain circumstances without waiting  
10 until a child suffers maltreatment before protecting the child; and

11 WHEREAS, A court is unlikely to have the information necessary to protect a  
12 child who is regularly exposed to a person with a history of harming children unless a  
13 local department of social services petitions the court to find that the child is in need of  
14 assistance; and

15 WHEREAS, The Office of the Attorney General has interpreted the statutory  
16 scheme requiring a local department of social services to investigate abuse to be  
17 incident-based and, thus, not in harmony with the child in need of assistance statute;  
18 and

19 WHEREAS, To prevent death and injuries to children at substantial risk of  
20 harm, local departments of social services should have an affirmative obligation to  
21 assess risk and protect children; now, therefore,

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Family Law**25 **5-704.1.**

26 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION AND**  
27 **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING ANY LAW ON**  
28 **PRIVILEGED COMMUNICATIONS, EACH HEALTH PRACTITIONER, POLICE**  
29 **OFFICER, PAROLE AND PROBATION AGENT, EDUCATOR, OR HUMAN SERVICE**  
30 **WORKER, ACTING IN A PROFESSIONAL CAPACITY IN THIS STATE, SHALL NOTIFY**  
31 **THE LOCAL DEPARTMENT OR THE APPROPRIATE LAW ENFORCEMENT AGENCY**  
32 **IF THE INDIVIDUAL HAS REASON TO BELIEVE THAT A PARENT, GUARDIAN, OR**  
33 **CAREGIVER OF A CHILD ALLOWS THE CHILD TO RESIDE OR REGULARLY**  
34 **ASSOCIATE WITH AN INDIVIDUAL, OTHER THAN THE CHILD'S PARENT OR**  
35 **GUARDIAN, WHO:**

1           **(1) IS IDENTIFIED IN THE CENTRAL REGISTRY UNDER § 5-714 OF**  
2 **THIS SUBTITLE AS AN INDIVIDUAL RESPONSIBLE FOR CHILD SEXUAL ABUSE; OR**

3           **(2) HAS BEEN CONVICTED IN THE STATE WITHIN THE PAST 10**  
4 **YEARS OF:**

5                   **(I) CHILD ABUSE UNDER § 3-601 OF THE CRIMINAL LAW**  
6 **ARTICLE; OR**

7                   **(II) CHILD SEXUAL ABUSE UNDER § 3-602 OF THE CRIMINAL**  
8 **LAW ARTICLE.**

9           **(B) AN INDIVIDUAL IS NOT REQUIRED TO PROVIDE NOTICE UNDER**  
10 **SUBSECTION (A) OF THIS SECTION:**

11                   **(1) IN VIOLATION OF THE PRIVILEGE DESCRIBED UNDER § 9-108**  
12 **OF THE COURTS ARTICLE;**

13                   **(2) IF THE NOTICE WOULD DISCLOSE MATTER COMMUNICATED IN**  
14 **CONFIDENCE BY A CLIENT TO THE CLIENT'S ATTORNEY OR OTHER**  
15 **INFORMATION RELATING TO THE REPRESENTATION OF THE CLIENT; OR**

16                   **(3) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO**  
17 **ASSISTANCE OF COUNSEL.**

18           **(C) (1) AN INDIVIDUAL WHO NOTIFIES THE APPROPRIATE**  
19 **AUTHORITIES UNDER SUBSECTION (A) OF THIS SECTION SHALL MAKE:**

20                           **(I) AN ORAL REPORT, BY TELEPHONE OR DIRECT**  
21 **COMMUNICATION, AS SOON AS POSSIBLE, TO THE LOCAL DEPARTMENT OR**  
22 **APPROPRIATE LAW ENFORCEMENT AGENCY; AND**

23                           **(II) A WRITTEN REPORT NOT LATER THAN 48 HOURS AFTER**  
24 **THE CONTACT, EXAMINATION, ATTENTION, OR TREATMENT THAT CAUSED THE**  
25 **INDIVIDUAL TO BELIEVE THAT THE CHILD IS AT SUBSTANTIAL RISK OF ABUSE**  
26 **BECAUSE THE CHILD IS ALLOWED TO RESIDE OR REGULARLY ASSOCIATE WITH**  
27 **AN INDIVIDUAL DESCRIBED IN SUBSECTION (A) OF THIS SECTION.**

28                   **(2) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC**  
29 **HEALTH AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER,**  
30 **SCHOOL, OR SIMILAR INSTITUTION, AN INDIVIDUAL WHO NOTIFIES THE**  
31 **APPROPRIATE AUTHORITIES UNDER SUBSECTION (A) OF THIS SECTION**  
32 **IMMEDIATELY SHALL NOTIFY AND GIVE ALL OF THE INFORMATION REQUIRED**

1 BY THIS SECTION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE  
2 HEAD OF THE INSTITUTION.

3 (D) TO THE EXTENT REASONABLY POSSIBLE, AN INDIVIDUAL WHO  
4 MAKES A REPORT UNDER THIS SECTION SHALL INCLUDE IN THE REPORT THE  
5 FOLLOWING INFORMATION:

6 (1) THE NAME, AGE, AND HOME ADDRESS OF THE CHILD;

7 (2) THE NAME AND HOME ADDRESS OF THE CHILD'S PARENT OR  
8 OTHER PERSON WHO IS RESPONSIBLE FOR THE CHILD'S CARE;

9 (3) THE WHEREABOUTS OF THE CHILD;

10 (4) THE NATURE AND EXTENT OF THE SUBSTANTIAL RISK OF  
11 ABUSE OF THE CHILD, INCLUDING ANY EVIDENCE OR INFORMATION AVAILABLE  
12 TO THE REPORTER CONCERNING POSSIBLE PREVIOUS INSTANCES OF ABUSE;  
13 AND

14 (5) ANY OTHER INFORMATION THAT WOULD HELP TO  
15 DETERMINE:

16 (I) THE CAUSE OF THE SUBSTANTIAL RISK OF ABUSE; AND

17 (II) THE IDENTITY OF ANY INDIVIDUAL RESPONSIBLE FOR  
18 THE SUBSTANTIAL RISK OF ABUSE.

19 **5-706.2.**

20 (A) (1) A LOCAL DEPARTMENT OR A LAW ENFORCEMENT AGENCY  
21 MAY RECEIVE A REPORT UNDER § 5-704.1 OF THIS SUBTITLE THAT A CHILD IS  
22 AT SUBSTANTIAL RISK OF ABUSE.

23 (2) (I) IF A LAW ENFORCEMENT AGENCY RECEIVES THE  
24 REPORT, THE LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REFER THE  
25 REPORT TO THE LOCAL DEPARTMENT.

26 (II) ON REQUEST OF THE LOCAL DEPARTMENT, THE LAW  
27 ENFORCEMENT AGENCY SHALL, WITHIN 48 HOURS, PROVIDE ANY NECESSARY  
28 INFORMATION TO CONFIRM OR DENY CONVICTIONS ALLEGED IN THE REPORT AS  
29 DESCRIBED IN § 5-704.1(A)(2) OF THIS SUBTITLE.

30 (3) THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT  
31 REGULATIONS GOVERNING:

1                   **(I) HOW STAFF IN A LOCAL DEPARTMENT SHOULD ELICIT**  
2 **INFORMATION WHEN RECEIVING A REPORT UNDER § 5-704.1 OF THIS SUBTITLE;**  
3 **AND**

4                   **(II) THE DEFINITION OF SUBSTANTIAL RISK OF ABUSE AS**  
5 **USED IN § 5-704.1 OF THIS SUBTITLE.**

6           **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**  
7 **SUBSECTION, AFTER CONFIRMING THAT THE ALLEGATIONS IN THE REPORT**  
8 **REGARDING THE INDIVIDUAL'S HISTORY ARE TRUE, THE LOCAL DEPARTMENT**  
9 **SHALL MAKE A THOROUGH INVESTIGATION TO PROTECT THE HEALTH, SAFETY,**  
10 **AND WELFARE OF ANY CHILD OR CHILDREN WHO MAY BE AT SUBSTANTIAL RISK**  
11 **OF ABUSE.**

12                   **(2) THE LOCAL DEPARTMENT MAY CONDUCT THE INVESTIGATION**  
13 **JOINTLY WITH AN APPROPRIATE LAW ENFORCEMENT AGENCY.**

14                   **(3) IF A SUBSEQUENT REPORT IS RECEIVED REGARDING AN**  
15 **INDIVIDUAL WITH A HISTORY OF CHILD ABUSE THAT ALLEGES SUBSTANTIALLY**  
16 **THE SAME FACTS AS A REPORT THAT THE LOCAL DEPARTMENT HAS**  
17 **PREVIOUSLY INVESTIGATED, THE LOCAL DEPARTMENT MAY DECLINE TO MAKE**  
18 **AN INVESTIGATION OF THE SUBSEQUENT REPORT.**

19           **(C) WITHIN 5 DAYS AFTER RECEIVING THE REPORT, THE LOCAL**  
20 **DEPARTMENT OR THE APPROPRIATE LAW ENFORCEMENT AGENCY SHALL:**

21                   **(1) SEE THE CHILD IN PERSON;**

22                   **(2) ATTEMPT TO HAVE AN ON-SITE INTERVIEW WITH THE CHILD'S**  
23 **CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS HAVING A**  
24 **HISTORY OF ABUSE;**

25                   **(3) DECIDE ON THE SAFETY AND LEVEL OF RISK OF THE CHILD,**  
26 **WHEREVER THE CHILD IS, AND OF OTHER CHILDREN IN THE HOUSEHOLD; AND**

27                   **(4) DECIDE ON THE SAFETY AND LEVEL OF RISK OF OTHER**  
28 **CHILDREN IN THE CARE OR CUSTODY OF THE INDIVIDUAL IDENTIFIED IN THE**  
29 **REPORT AS HAVING A HISTORY OF ABUSE.**

30           **(D) (1) TO THE EXTENT POSSIBLE, AN INVESTIGATION UNDER THIS**  
31 **SECTION SHALL BE COMPLETED WITHIN 10 DAYS AFTER RECEIPT OF THE**  
32 **REPORT.**

1           **(2) AN INVESTIGATION THAT IS NOT COMPLETED WITHIN 30 DAYS**  
2 **SHALL BE COMPLETED WITHIN 60 DAYS AFTER RECEIPT OF THE REPORT.**

3           **(E) IF, AFTER THE INVESTIGATION IS COMPLETED, THE LOCAL**  
4 **DEPARTMENT DETERMINES THAT THE CHILD IS NOT SAFE OR IS AT**  
5 **SUBSTANTIAL RISK OF ABUSE, THE LOCAL DEPARTMENT SHALL:**

6                   **(1) OFFER SERVICES TO THE FAMILY; AND**

7                   **(2) IMMEDIATELY DECIDE WHETHER TO FILE A PETITION**  
8 **ALLEGING THAT THE CHILD IS IN NEED OF ASSISTANCE.**

9           **(F) WITHIN 30 DAYS AFTER THE COMPLETION OF AN INVESTIGATION**  
10 **UNDER THIS SECTION, THE LOCAL DEPARTMENT SHALL NOTIFY IN WRITING THE**  
11 **CHILD'S CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS**  
12 **HAVING A HISTORY OF ABUSE OF THE LOCAL DEPARTMENT'S DETERMINATION**  
13 **ON THE SAFETY AND LEVEL OF RISK OF THE CHILD.**

14 5-707.

15           (b) The local department shall expunge a report of suspected abuse or  
16 neglect **OR OF SUBSTANTIAL RISK OF ABUSE** and all assessments and investigative  
17 findings:

18                   (1) within 5 years after the date of referral if the investigation under §  
19 **5-706 OR § 5-706.2** of this subtitle concludes that the report is unsubstantiated, and  
20 no further reports of abuse or neglect **OR OF SUBSTANTIAL RISK OF ABUSE** are  
21 received during the 5 years; and

22                   (2) within 120 days after the date of referral if the report is ruled out,  
23 and no further reports of abuse or neglect **OR OF SUBSTANTIAL RISK OF ABUSE** are  
24 received during the 120 days.

25 5-708.

26           Any person who makes or participates in making a report of abuse or neglect  
27 under § 5-704, § 5-705, or § 5-705.1 of this subtitle **OR A REPORT OF SUBSTANTIAL**  
28 **RISK OF ABUSE UNDER § 5-704.1 OF THIS SUBTITLE** or participates in an  
29 investigation or a resulting judicial proceeding shall have the immunity described  
30 under § 5-620 of the Courts and Judicial Proceedings Article from civil liability or  
31 criminal penalty.

32           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2010.