

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 866  
Judiciary

(Delegate Arora, *et al.*)

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**Criminal Procedure - Financial Crimes Against Vulnerable and Elder Adults -  
Petition to Freeze Assets**

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This bill authorizes a State's Attorney to file a petition to freeze assets of a defendant charged with exploitation of a vulnerable or elder adult if (1) the petition is filed within 60 days of the defendant being charged with the offense; (2) the alleged value of the lost or stolen property in the criminal charge is \$5,000 or more; (3) the amount of money or property subject to the petition does not exceed the value of the alleged value of the lost or stolen property in the criminal charge; and (4) the State's Attorney sends a notice of intent to file the petition to any lienholders on the property subject to the petition.

The bill also (1) specifies the content of a petition; (2) requires a petition to be served in accordance with the Maryland Rules; (3) establishes the conditions under which a court may grant a petition; and (4) specifies the duration of an order to freeze assets.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** The bill is not expected to materially affect local finances.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A court may grant a petition and freeze assets if the State's Attorney proves by a preponderance of the evidence that (1) the defendant has a legal, equitable, or possessory interest in the money or property listed in the petition and (2) the money or

property listed in the petition is not jointly held, unless the State's Attorney also proves by a preponderance of the evidence, that the defendant transferred the property to avoid being subject to an order to freeze assets, or the money or property listed in the petition was used in connection with the exploitation of a vulnerable or elder adult.

An order to freeze assets remains in effect until the earlier of (1) a dismissal, an entry of *nolle prosequi*, or an entry of a not guilty verdict for the criminal charge giving rise to the order to freeze assets; (2) the marking of the charge "stet" on the docket, the pronouncement of a sentence, or the imposition of probation before judgment for the criminal charge giving rise to the order to freeze assets, provided that the defendant has fulfilled any court-ordered restitution; or (3) one year after the final disposition of the criminal charge giving rise to the order to freeze assets. On motion, a court may modify an order to freeze assets to allow the defendant to make restitution, to allow the victim to collect restitution, or for good cause.

The bill's provisions do not prohibit a lienholder from exercising rights under applicable law, including the right to sell property that has been subject to an order to freeze assets under this section, if a default occurs in the obligation giving rise to the lien.

**Current Law:** A "vulnerable adult" is an adult who lacks the physical or mental capacity to provide for the adult's daily needs. A person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is a vulnerable adult or who is at least 68 years old with intent to deprive the individual of his/her property.

A person convicted of this offense when the value of the property is \$500 or more is guilty of a felony, punishable by imprisonment for up to 15 years and/or a \$10,000 maximum fine. A person convicted of this offense when the value of the property is less than \$500 is guilty of a misdemeanor, punishable by imprisonment for up to 18 months and/or a \$500 maximum fine. A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the offense.

A person convicted of this offense must also restore the property taken or its value to the owner, or, if the owner is deceased, restore the property or its value to the owner's estate. If a person convicted of this offense fails to fulfill this requirement, he/she is disqualified, to the extent of the person's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the defendant was convicted. The person convicted of this offense has the burden of proof to establish that the person has made complete restitution.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2013  
mlm/kdm

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