

# SENATE BILL 435

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CF 4r1267

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By: **Senators Frosh, Forehand, and Stone**

Introduced and read first time: January 24, 2014

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Damages for Crimes Against Vulnerable or Elderly Adults –**  
3 **Standing**

4 FOR the purpose of authorizing the Attorney General to bring a civil action for  
5 damages against a certain person who violates certain provisions of criminal  
6 law on behalf of a certain person; providing that a certain criminal conviction is  
7 not a prerequisite for maintenance of an action under this Act; providing that  
8 the Attorney General may recover certain damages under this Act; providing,  
9 under certain circumstances, for the recovery of certain costs by the Attorney  
10 General; and generally relating to the authority of the Attorney General to  
11 bring a certain cause of action.

12 BY repealing and reenacting, without amendments,  
13 Article – Criminal Law  
14 Section 3–604, 3–605, and 8–801  
15 Annotated Code of Maryland  
16 (2012 Replacement Volume and 2013 Supplement)

17 BY adding to  
18 Article – Courts and Judicial Proceedings  
19 Section 3–1901 to be under the new subtitle “Subtitle 19. Civil Damages for  
20 Crimes Against Vulnerable or Elderly Adults”  
21 Annotated Code of Maryland  
22 (2013 Replacement Volume and 2013 Supplement)

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

25 **Article – Criminal Law**

26 3–604.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) In this section and §§ 3–605 and 3–606 of this subtitle the  
2 following words have the meanings indicated.

3 (2) (i) “Abuse” means the sustaining of physical pain or injury by a  
4 vulnerable adult as a result of cruel or inhumane treatment or as a result of a  
5 malicious act under circumstances that indicate that the vulnerable adult’s health or  
6 welfare is harmed or threatened.

7 (ii) “Abuse” includes the sexual abuse of a vulnerable adult.

8 (iii) “Abuse” does not include an accepted medical or behavioral  
9 procedure ordered by a health care provider authorized to practice under the Health  
10 Occupations Article or § 13–516 of the Education Article acting within the scope of the  
11 health care provider’s practice.

12 (3) “Caregiver” means a person under a duty to care for a vulnerable  
13 adult because of a contractual undertaking to provide care.

14 (4) “Family member” means a relative of a vulnerable adult by blood,  
15 marriage, adoption, or the marriage of a child.

16 (5) “Household” means the location:

17 (i) in which the vulnerable adult resides;

18 (ii) where the abuse or neglect of a vulnerable adult is alleged to  
19 have taken place; or

20 (iii) where the person suspected of abusing or neglecting a  
21 vulnerable adult resides.

22 (6) “Household member” means an individual who lives with or is a  
23 regular presence in a home of a vulnerable adult at the time of the alleged abuse or  
24 neglect.

25 (7) (i) “Neglect” means the intentional failure to provide necessary  
26 assistance and resources for the physical needs of a vulnerable adult, including:

27 1. food;

28 2. clothing;

29 3. toileting;

30 4. essential medical treatment;

1                   5.    shelter; or

2                   6.    supervision.

3                   (ii)   “Neglect” does not include the provision of nonmedical  
4 remedial care and treatment for the healing of injury or disease that is:

5                   1.    given with the consent of the vulnerable adult; and

6                   2.    recognized by State law in place of medical treatment.

7                   (8)   “Serious physical injury” means physical injury that:

8                   (i)   creates a substantial risk of death; or

9                   (ii)  causes permanent or protracted serious:

10                   1.    disfigurement;

11                   2.    loss of the function of any bodily member or organ; or

12                   3.    impairment of the function of any bodily member or  
13 organ.

14                   (9)   (i)   “Sexual abuse” means an act that involves sexual  
15 molestation or exploitation of a vulnerable adult.

16                   (ii)  “Sexual abuse” includes:

17                   1.    incest;

18                   2.    rape;

19                   3.    sexual offense in any degree;

20                   4.    sodomy; and

21                   5.    unnatural or perverted sexual practices.

22                   (10) “Vulnerable adult” means an adult who lacks the physical or  
23 mental capacity to provide for the adult’s daily needs.

24                   (b)   (1)   A caregiver, a parent, or other person who has permanent or  
25 temporary care or responsibility for the supervision of a vulnerable adult may not  
26 cause abuse or neglect of the vulnerable adult that:

27                   (i)   results in the death of the vulnerable adult;

1 (ii) causes serious physical injury to the vulnerable adult; or

2 (iii) involves sexual abuse of the vulnerable adult.

3 (2) A household member or family member may not cause abuse or  
4 neglect of a vulnerable adult that:

5 (i) results in the death of the vulnerable adult;

6 (ii) causes serious physical injury to the vulnerable adult; or

7 (iii) involves sexual abuse of the vulnerable adult.

8 (c) A person who violates this section is guilty of the felony of abuse or  
9 neglect of a vulnerable adult in the first degree and on conviction is subject to  
10 imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

11 (d) A sentence imposed under this section shall be in addition to any other  
12 sentence imposed for a conviction arising from the same facts and circumstances  
13 unless the evidence required to prove each crime is substantially identical.

14 3-605.

15 (a) This section does not apply to abuse that involves sexual abuse of a  
16 vulnerable adult.

17 (b) (1) A caregiver, a parent, or other person who has permanent or  
18 temporary care or responsibility for the supervision of a vulnerable adult may not  
19 cause abuse or neglect of the vulnerable adult.

20 (2) A household member or family member may not cause abuse or  
21 neglect of a vulnerable adult.

22 (c) A person who violates this section is guilty of the misdemeanor of abuse  
23 or neglect of a vulnerable adult in the second degree and on conviction is subject to  
24 imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

25 (d) A sentence imposed under this section shall be in addition to any other  
26 sentence imposed for a conviction arising from the same facts and circumstances  
27 unless the evidence required to prove each crime is substantially identical.

28 8-801.

29 (a) (1) In this section the following words have the meanings indicated.

30 (2) "Deception" has the meaning stated in § 7-101 of this article.

1 (3) “Deprive” has the meaning stated in § 7–101 of this article.

2 (4) “Obtain” has the meaning stated in § 7–101 of this article.

3 (5) “Property” has the meaning stated in § 7–101 of this article.

4 (6) (i) “Undue influence” means domination and influence  
5 amounting to force and coercion exercised by another person to such an extent that a  
6 vulnerable adult or an individual at least 68 years old was prevented from exercising  
7 free judgment and choice.

8 (ii) “Undue influence” does not include the normal influence  
9 that one member of a family has over another member of the family.

10 (7) “Value” has the meaning stated in § 7–103 of this article.

11 (8) “Vulnerable adult” has the meaning stated in § 3–604 of this  
12 article.

13 (b) (1) A person may not knowingly and willfully obtain by deception,  
14 intimidation, or undue influence the property of an individual that the person knows  
15 or reasonably should know is a vulnerable adult with intent to deprive the vulnerable  
16 adult of the vulnerable adult’s property.

17 (2) A person may not knowingly and willfully obtain by deception,  
18 intimidation, or undue influence the property of an individual that the person knows  
19 or reasonably should know is at least 68 years old, with intent to deprive the  
20 individual of the individual’s property.

21 (c) (1) (i) A person convicted of a violation of this section when the  
22 value of the property is at least \$1,000 but less than \$10,000 is guilty of a felony and:

23 1. is subject to imprisonment not exceeding 10 years or a  
24 fine not exceeding \$10,000 or both; and

25 2. shall restore the property taken or its value to the  
26 owner, or, if the owner is deceased, restore the property or its value to the owner’s  
27 estate.

28 (ii) A person convicted of a violation of this section when the  
29 value of the property is at least \$10,000 but less than \$100,000 is guilty of a felony  
30 and:

31 1. is subject to imprisonment not exceeding 15 years or a  
32 fine not exceeding \$15,000 or both; and

1                   2.     shall restore the property taken or its value to the  
2 owner, or, if the owner is deceased, restore the property or its value to the owner's  
3 estate.

4                   (iii)   A person convicted of a violation of this section when the  
5 value of the property is \$100,000 or more is guilty of a felony and:

6                   1.     is subject to imprisonment not exceeding 25 years or a  
7 fine not exceeding \$25,000 or both; and

8                   2.     shall restore the property taken or its value to the  
9 owner, or, if the owner is deceased, restore the property or its value to the owner's  
10 estate.

11                  (2)    A person convicted of a violation of this section when the value of  
12 the property is less than \$1,000 is guilty of a misdemeanor and:

13                  (i)    is subject to imprisonment not exceeding 18 months or a fine  
14 not exceeding \$500 or both; and

15                  (ii)   shall restore the property taken or its value to the owner, or,  
16 if the owner is deceased, restore the property or its value to the owner's estate.

17                  (d)    A sentence imposed under this section may be separate from and  
18 consecutive to or concurrent with a sentence for any crime based on the act or acts  
19 establishing the violation of this section.

20                  (e)    (1)   If a defendant fails to restore fully the property taken or its value  
21 as ordered under subsection (c) of this section, the defendant is disqualified, to the  
22 extent of the defendant's failure to restore the property or its value, from inheriting,  
23 taking, enjoying, receiving, or otherwise benefiting from the estate, insurance  
24 proceeds, or property of the victim of the offense, whether by operation of law or  
25 pursuant to a legal document executed or entered into by the victim before the  
26 defendant shall have been convicted under this section.

27                  (2)    The defendant has the burden of proof with respect to establishing  
28 under paragraph (1) of this subsection that the defendant has fully restored the  
29 property taken or its value.

30                  (f)    This section may not be construed to impose criminal liability on a person  
31 who, at the request of the victim of the offense, the victim's family, or the court  
32 appointed guardian of the victim, has made a good faith effort to assist the victim in  
33 the management of or transfer of the victim's property.

34                                   **Article – Courts and Judicial Proceedings**

1           **SUBTITLE 19. CIVIL DAMAGES FOR CRIMES AGAINST VULNERABLE OR**  
2   **ELDERLY ADULTS.**

3       **3-1901.**

4           **(A) (1) IN ADDITION TO ANY OTHER ACTION AUTHORIZED BY LAW,**  
5       **THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST A**  
6       **PERSON WHO VIOLATES § 3-604, § 3-605, OR § 8-801 OF THE CRIMINAL LAW**  
7       **ARTICLE ON BEHALF OF A VICTIM OF THE OFFENSE OR A BENEFICIARY OF THE**  
8       **VICTIM.**

9           **(2) A CONVICTION FOR AN OFFENSE UNDER § 3-604, § 3-605, OR**  
10       **§ 8-801 OF THE CRIMINAL LAW ARTICLE IS NOT A PREREQUISITE FOR**  
11       **MAINTENANCE OF AN ACTION UNDER THIS SECTION.**

12           **(B) THE ATTORNEY GENERAL MAY RECOVER DAMAGES UNDER THIS**  
13       **SECTION FOR PERSONAL INJURY, DEATH, OR PROPERTY LOSS OR DAMAGE.**

14           **(C) IF THE ATTORNEY GENERAL PREVAILS IN AN ACTION BROUGHT**  
15       **UNDER THIS SECTION, THE ATTORNEY GENERAL MAY RECOVER THE COSTS OF**  
16       **THE ACTION FOR THE USE OF THE STATE.**

17           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
18       construed to apply only prospectively and may not be applied or interpreted to have  
19       any effect on or application to any cause of action arising before the effective date of  
20       this Act.

21           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22       July 1, 2014.