

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 435

(Senator Frosh, *et al.*)

Judicial Proceedings

**Civil Actions - Damages for Crimes Against Vulnerable or Elderly Adults -
Standing**

This bill authorizes the Attorney General to bring a civil action for damages against a person who violates the State's prohibitions on first or second degree abuse or neglect of a vulnerable adult or exploitation of a vulnerable adult on behalf of a victim of the offense or a beneficiary of the victim. The Attorney General may recover damages for personal injury, death, or property loss or damage. If the Attorney General prevails in an action brought under the bill's provisions, the Attorney General may recover the costs of the action for the use of the State.

This authorization is in addition to any other action authorized under law. A conviction for the criminal offense is not a prerequisite for maintenance of an action under the bill.

The bill applies prospectively to causes of action arising on or after the bill's July 1, 2014 effective date.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from the collection of costs awarded to the Office of the Attorney General (OAG) by the courts in cases brought under the bill. Minimal increase in general fund expenditures in FY 2015 for expenses for experts and other litigation-related costs. Future year expenditures may increase significantly to the extent that the civil standing conferred on OAG by the bill generates a sufficient caseload to warrant additional personnel.

Local Effect: Any increase in circuit court caseloads resulting from the bill can be handled with existing local resources.

Small Business Effect: None.

Analysis

Current Law: “Standing” typically refers to an individual’s capacity to participate in a lawsuit. In order to demonstrate standing, an individual usually has to demonstrate that he/she experienced an adverse effect from the law or action in question, which will continue unless the court grants relief.

A caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member.

A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000. A sentence imposed under this section must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Under the second degree offense, a caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult. A household member or family member may not cause abuse or neglect of a vulnerable adult. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a \$5,000 fine. A sentence imposed under this section must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical. The second degree offense does not apply to sexual abuse of a vulnerable adult.

Under the offense of exploitation of a vulnerable adult, 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 at least 68 years old or is a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult’s property. Penalties for the offense vary based on the value of the property, as listed below. A sentence imposed for the offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation.

Property Value

Penalty

Less than \$1,000

Misdemeanor – 18 months and/or \$500

\$1,000 to less than \$10,000

Felony – 10 years and/or \$10,000

\$10,000 to less than \$100,000

Felony – 15 years and/or \$15,000

\$100,000 or more

Felony – 25 years and/or \$25,000

In addition to the penalties listed above, violators must 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 defendant fails to restore fully the property taken or its value as ordered, the defendant is disqualified, to the extent of the defendant’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 has been convicted. The defendant has the burden of proof with respect to establishing that the defendant has fully restored the property taken or its value.

The statutory prohibition on exploitation of a vulnerable adult may not be construed to impose criminal liability on a person who, at the request of the victim of the offense, the victim’s family, or the court appointed guardian of the victim, has made a good faith effort to assist the victim in the management of or transfer of the victim’s property.

Background: According to the Judiciary, there were 12 first degree vulnerable adult abuse violations, 63 second degree vulnerable adult abuse violations, and 36 exploitation of a vulnerable adult violations filed in the District Court during 2013.

The Maryland State Commission on Criminal Sentencing Policy reports that, in fiscal 2013, there were two convictions for first degree abuse or neglect of a vulnerable adult, and eight convictions for second degree abuse or neglect of a vulnerable adult, and seven convictions for exploitation of a vulnerable adult in the circuit courts. In fiscal 2012, there were seven convictions for the first degree offense and seven convictions for the second degree offense. In fiscal 2011, there were three convictions in the circuit courts for first degree abuse or neglect of a vulnerable adult and three convictions for second degree abuse or neglect of a vulnerable adult.

State Revenues: General fund revenues increase minimally to the extent that damages are collected from civil defendants sued by OAG as a result of the bill. To the extent that individuals subject to civil actions under the bill do not have the financial resources or ability to pay awarded costs, the bill is not likely to materially impact general fund revenues.

State Expenditures: OAG advises that implementation of the bill requires the creation of a new unit within OAG consisting of 27 positions, including 12 attorneys and 10 investigators, at an estimated cost of \$2.5 million in fiscal 2015 and \$3.1 million in fiscal 2016. OAG advises that the creation of such a unit does not begin on the bill's effective date, since the bill applies prospectively, and may occur over three years. OAG bases its estimate on census data pertaining to the number of Maryland residents age 67 or older and statistics from the National Institute of Justice regarding the percentages of senior citizens who reported some type of mistreatment or financial exploitation during the previous year. OAG also advises that demand for OAG will grow as more people become aware that the office can represent their civil claims in court. According to OAG, the potential cases that could be brought under the bill number in the thousands.

The Department of Legislative Services (DLS) disagrees with this assessment and advises that absent additional litigation-related expenses (retaining experts, travel, etc.), OAG can handle the bill's requirements with existing resources until, after actual experience under the bill, caseloads increase to the point where additional personnel are warranted. *For illustrative purposes only*, the costs associated with employing an additional investigator are approximately \$86,000 for an investigator and \$118,000 for an assistant Attorney General in fiscal 2015, which includes salaries, fringe benefits, and one-time start-up costs.

DLS bases this assessment on the following information and assumptions.

- The bill *authorizes* OAG to bring civil suits against specified individuals, it does not *require* OAG to bring these cases and allows the office the discretion to choose which cases to pursue.
- While the bill does not require a criminal conviction, the bill confers standing to OAG against a person who "violates" specified criminal statutes. This appears to imply that OAG's civil standing to pursue damages on behalf of a private citizen victim or the victim's beneficiary is triggered by the commencement of the criminal justice process (arrest, charge, etc.), not requests by private citizens for civil litigation representation to recover damages resulting from alleged injury absent some involvement of the State at the criminal justice level. Given the relatively low number of criminal cases involving the offenses listed in the bill (see Background section above) and OAG's discretion as to which cases to pursue, it appears unlikely that the bill generates enough cases to warrant the creation of a new unit of this magnitude. However, to the extent that violations significantly increase and OAG decides to pursue a substantial additional number of civil actions, future year general fund expenditures may increase significantly and may require additional personnel, particularly attorneys and investigators.

Additional Information

Prior Introductions: None.

Cross File: HB 724 (Delegate Kramer, *et al.*) – Judiciary.

Information Source(s): Office of the Attorney General, Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2014
mam/kdm

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