

HOUSE BILL 379

E4, D4
HB 326/13 – JUD

4lr1030

By: **Delegate Glenn**

Introduced and read first time: January 23, 2014

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Criminal Procedure – Vulnerable Adult Abuse Registry

FOR the purpose of establishing a vulnerable adult abuse registry; requiring the Department of Health and Mental Hygiene to establish and maintain a registry containing the names of certain individuals; requiring that names and information contained in the registry be available for public inspection; authorizing the Department to discharge certain responsibilities in a certain manner; requiring a State agency that makes a certain finding to notify the Department in a certain manner; requiring the State's Attorney to report a conviction of an individual for a certain crime to the Department; requiring the Department to enter the names of certain individuals and information in the registry in certain circumstances; requiring the Department to notify an individual of inclusion in the registry in a certain manner; authorizing the individual to challenge the accuracy of a certain report in a certain manner; requiring the removal of a certain individual's name from the registry under certain circumstances; authorizing a State agency to recommend the removal of an individual's name from the registry in certain circumstances; authorizing a certain appeal; requiring a certain State agency to consult the registry prior to hiring an employee or using a volunteer; prohibiting a certain agency from hiring or otherwise using the services of an individual who is listed in the registry; providing immunity for certain persons; defining certain terms; and generally relating to abuse of vulnerable adults.

BY adding to

Article – Criminal Procedure

Section 11–1101 through 11–1105 to be under the new subtitle “Subtitle 11.
Vulnerable Adult Abuse Registry”

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Criminal Procedure

SUBTITLE 11. VULNERABLE ADULT ABUSE REGISTRY.

11-1101.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CONVICTION” MEANS THE INDIVIDUAL:

(1) HAS BEEN FOUND GUILTY OF A CRIME BY A JURY OR JUDICIAL OFFICER;

(2) HAS ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE;

(3) HAS BEEN GRANTED PROBATION BEFORE JUDGMENT AFTER A FINDING OF GUILT FOR A CRIME IF THE COURT, AS A CONDITION OF PROBATION, ORDERS COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE; OR

(4) HAS BEEN FOUND CRIMINALLY RESPONSIBLE FOR A CRIME.

(C) “EXPLOITATION” MEANS THE IMPROPER USE BY A CARETAKER OF FUNDS THAT HAVE BEEN PAID BY A GOVERNMENTAL AGENCY TO AN ADULT OR TO THE CARETAKER OF AN ADULT FOR THE USE OR CARE OF THE ADULT.

(D) “MISAPPROPRIATION” MEANS A TAKING, POSSESSION, OR USE OF THE PROPERTY OF A VULNERABLE ADULT, THE ELEMENTS OF WHICH CONSTITUTE A CRIMINAL OFFENSE INVOLVING THE PROPERTY OR CONSTITUTE A VIOLATION OF A FIDUCIARY DUTY OF A CARETAKER OF A VULNERABLE ADULT.

(E) “OFFENSE AGAINST A VULNERABLE ADULT” MEANS AN ACT THAT CONSTITUTES ABUSE, NEGLIGENCE, OR MISAPPROPRIATION OR EXPLOITATION OF THE PROPERTY OF A VULNERABLE ADULT, EVEN IF THE ACT DOES NOT CONSTITUTE A CRIMINAL ACT OR A CRIME, THE ELEMENTS OF WHICH CONSTITUTE ABUSE, NEGLIGENCE, OR MISAPPROPRIATION OR EXPLOITATION OF THE PROPERTY OF A VULNERABLE ADULT.

(F) “PROPERTY” HAS THE MEANING STATED IN § 7-101 OF THE CRIMINAL LAW ARTICLE.

(G) “REGISTRY” MEANS THE VULNERABLE ADULT ABUSE REGISTRY ESTABLISHED AND MAINTAINED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

(H) “VULNERABLE ADULT” HAS THE MEANING STATED IN § 3-604 OF THE CRIMINAL LAW ARTICLE.

(I) “VULNERABLE ADULT ABUSE CRIME” MEANS:

(1) A CONVICTION UNDER § 3-604, § 3-605, § 3-606, OR § 8-801 OF THE CRIMINAL LAW ARTICLE; OR

(2) A CRIME COMMITTED IN A FEDERAL, STATE, OR FOREIGN JURISDICTION THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ONE OF THE CRIMES LISTED IN ITEM (1) OF THIS SUBSECTION.

11-1102.

(A) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ESTABLISH AND MAINTAIN A REGISTRY CONTAINING THE NAMES OF INDIVIDUALS WHO HAVE BEEN FOUND BY A STATE AGENCY TO HAVE ABUSED, NEGLECTED, OR MISAPPROPRIATED OR EXPLOITED THE PROPERTY OF A VULNERABLE ADULT OR WHO HAVE BEEN CONVICTED OF A VULNERABLE ADULT ABUSE CRIME.

(B) THE NAMES AND INFORMATION CONTAINED IN THE REGISTRY SHALL BE AVAILABLE FOR PUBLIC INSPECTION AS PROVIDED BY THIS SUBTITLE.

(C) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE MAY DISCHARGE ITS RESPONSIBILITIES UNDER THIS SUBTITLE DIRECTLY, OR THROUGH INTERAGENCY AGREEMENT, IF AUTHORIZED ACCESS TO THE RECORDS BY MEANS OF A SINGLE CENTRALIZED AGENCY IS ASSURED.

11-1103.

(A) (1) (I) A STATE AGENCY THAT MAKES A FINDING THAT AN INDIVIDUAL HAS COMMITTED MORE THAN ONE OFFENSE AGAINST A VULNERABLE ADULT WITHIN A 5-YEAR PERIOD, AFTER PROVIDING THE INDIVIDUAL AN OPPORTUNITY FOR AN ADMINISTRATIVE DUE PROCESS HEARING IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE, SHALL PROVIDE NOTIFICATION TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OF INFORMATION

REGARDING THE INDIVIDUAL IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.

(II) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL INCLUDE THE NAME OF AN INDIVIDUAL IN THE REGISTRY UNDER THIS SUBTITLE WHEN THE DEPARTMENT RECEIVES NOTIFICATION FROM A STATE AGENCY IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(2) (I) THE NOTIFICATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

1. A COPY OF AN EMERGENCY, INITIAL, OR FINAL ADMINISTRATIVE ORDER, A JUDICIAL ORDER, OR ANY OTHER EVIDENCE INDICATING THAT THE AGENCY HAS AFFORDED THE INDIVIDUAL AN OPPORTUNITY FOR AN ADMINISTRATIVE DUE PROCESS HEARING IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE;

2. THE INDIVIDUAL'S LAST KNOWN MAILING ADDRESS;

3. THE DEFINITION OF ABUSE, NEGLECT, OR MISAPPROPRIATION OR EXPLOITATION OF PROPERTY THAT WAS USED BY THE AGENCY IN MAKING THE FINDINGS OF ABUSE; AND

4. OTHER INFORMATION THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE MAY DETERMINE IS NECESSARY TO ADEQUATELY IDENTIFY THE INDIVIDUAL FOR PURPOSES OF ADMINISTRATIVE HEARINGS PROVIDED BY THIS SUBTITLE OR TO ADEQUATELY IDENTIFY THE INDIVIDUAL WHEN INQUIRY TO THE REGISTRY IS MADE.

(II) THIS SUBTITLE DOES NOT REQUIRE A STATE AGENCY TO ESTABLISH NEW PROCEDURES OR TO MODIFY EXISTING PROCEDURES THE AGENCY MAY USE FOR THE PROVISION OF DUE PROCESS TO THE INDIVIDUAL.

(B) ON CONVICTION OF AN INDIVIDUAL FOR A VULNERABLE ADULT ABUSE CRIME, THE STATE'S ATTORNEY SHALL REPORT THE INDIVIDUAL'S NAME TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

(C) ON RECEIVING A NOTIFICATION DESCRIBED IN SUBSECTION (A) OR (B) OF THIS SECTION, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL:

(1) ENTER THE INDIVIDUAL'S NAME IN THE REGISTRY; AND

(2) MAINTAIN AND MAKE AVAILABLE ON REQUEST THE NAME OF THE REPORTING AGENCY OR COURT AND THE APPLICABLE DEFINITION OF ABUSE, NEGLECT, OR MISAPPROPRIATION OR EXPLOITATION OF PROPERTY SUPPLIED BY THE REPORTING AGENCY OR COURT.

(D) (1) ON ENTRY OF THE INFORMATION UNDER SUBSECTION (C) OF THIS SECTION, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL NOTIFY THE INDIVIDUAL, AT THE INDIVIDUAL'S LAST KNOWN MAILING ADDRESS, OF THE INDIVIDUAL'S INCLUSION IN THE REGISTRY.

(2) (I) THE INDIVIDUAL MAY CHALLENGE THE ACCURACY OF THE REPORT THAT THE FINDING OR CONVICTION OCCURRED OR OF A FACT ISSUE RELATED TO THE CORRECT IDENTITY OF THE INDIVIDUAL.

(II) IF THE INDIVIDUAL MAKES A CHALLENGE WITHIN 30 DAYS OF NOTIFICATION OF INCLUSION OF THE INDIVIDUAL'S NAME IN THE REGISTRY, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL AFFORD THE INDIVIDUAL AN OPPORTUNITY FOR A HEARING ON THE MATTER THAT COMPLIES WITH THE REQUIREMENTS OF DUE PROCESS AND TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(E) AN INDIVIDUAL'S NAME IMMEDIATELY SHALL BE REMOVED FROM THE REGISTRY IF:

(1) AFTER A HEARING, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE DETERMINES THAT THE FINDINGS OR CONVICTION NEVER OCCURRED; OR

(2) AT THE FINAL STEP TAKEN IN AN APPELLATE PROCESS, A REPORTED CONVICTION, AN EMERGENCY ORDER, OR AN ADMINISTRATIVE HEARING RESULT IS REVERSED.

(F) (1) A STATE AGENCY THAT HAS PLACED AN INDIVIDUAL'S NAME IN THE REGISTRY IN ACCORDANCE WITH THIS SUBTITLE MAY RECOMMEND TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE THE REMOVAL OF THE INDIVIDUAL'S NAME IF:

(I) THE AGENCY FINDS THAT THE PLACEMENT OF THE INDIVIDUAL'S NAME IN THE REGISTRY WAS IN ERROR; OR

(II) AN ADVISORY GROUP CONVENED BY THE AGENCY DETERMINES, BASED ON EVIDENCE PRESENTED TO THE GROUP, THAT REMOVAL OF THE INDIVIDUAL'S NAME FROM THE REGISTRY CLEARLY IS WARRANTED AND RECOMMENDS IN WRITING TO THE AGENCY A WAIVER AND REMOVAL OF THE INDIVIDUAL'S NAME FROM THE REGISTRY.

(2) AN ADVISORY GROUP UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE COMPOSED OF INDIVIDUALS:

(I) WITH EXPERIENCE IN THE SUBJECT MATTER AREAS OF THE AGENCY'S WORK; OR

(II) WHO ARE QUALIFIED BY EXPERIENCE OR EDUCATION, AS DETERMINED BY THE AGENCY, TO PROVIDE RECOMMENDATIONS TO THE AGENCY REGARDING AN INDIVIDUAL'S LIKELIHOOD OF COMMITTING FURTHER ACTS OR OMISSIONS THAT LED TO THE INDIVIDUAL'S NAME BEING PLACED IN THE REGISTRY.

(3) THE FINAL DECISION REGARDING THE RECOMMENDATION FOR REMOVAL OF AN INDIVIDUAL'S NAME FROM THE REGISTRY SHALL BE MADE BY THE STATE AGENCY. THE RECOMMENDATION SHALL BE IN WRITING, SHALL GIVE THE AGENCY'S REASONS FOR THE DECISION, AND SHALL BE SENT TO THE INDIVIDUAL SEEKING THE WAIVER.

(4) IF THE DECISION IS TO REMOVE THE INDIVIDUAL'S NAME FROM THE REGISTRY, THE RECOMMENDATION SHALL BE SENT TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND THE INDIVIDUAL'S NAME SHALL BE REMOVED BY THE DEPARTMENT.

(5) (I) AN INDIVIDUAL SEEKING A WAIVER WHO IS DISSATISFIED WITH THE DETERMINATION MADE BY THE STATE AGENCY MAY APPEAL.

(II) THE APPEAL SHALL BE CONDUCTED AS A CONTESTED CASE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(6) THE DECISION AND THE WRITTEN RECOMMENDATIONS OF THE ADVISORY GROUP AND THE STATE AGENCY SHALL BE OPEN FOR PUBLIC INSPECTION.

(A) A STATE AGENCY THAT PROVIDES INSTITUTIONAL OR IN-HOME SERVICES TO VULNERABLE ADULTS SHALL CONSULT THE REGISTRY PRIOR TO HIRING AN EMPLOYEE OR USING A VOLUNTEER.

(B) A STATE AGENCY DESCRIBED IN SUBSECTION (A) OF THIS SECTION MAY NOT HIRE OR OTHERWISE USE THE SERVICES OF AN INDIVIDUAL WHO IS LISTED ON THE REGISTRY.

11-1105.

(A) UNLESS THE INDIVIDUAL ACTED IN BAD FAITH OR WITH MALICIOUS PURPOSE, AN INDIVIDUAL WHO SUBMITS AN ALLEGATION OF ABUSE, NEGLECT, OR MISAPPROPRIATION OR EXPLOITATION OF PROPERTY TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE FOR INCLUSION IN THE REGISTRY OR WHO TESTIFIES IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING ARISING FROM THE ALLEGATION IS IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR MAKING THE REPORT AND FOR TESTIFYING, EXCEPT FOR LIABILITY FOR PERJURY.

(B) A PERSON THAT DECLINES TO EMPLOY OR OTHERWISE USE THE SERVICES OF AN INDIVIDUAL LISTED IN THE REGISTRY OR THAT TERMINATES THE INDIVIDUAL IS IMMUNE FROM SUIT BY OR ON BEHALF OF THAT INDIVIDUAL.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.