

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 581
 Judiciary

(Delegate Kramer, *et al.*)

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, 2015 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. General fund expenditures increase by \$150,500 in FY 2016 for OAG to handle additional cases. Future year expenditures may increase significantly further to the extent that the civil standing conferred on OAG by the bill generates a sufficient caseload to warrant additional personnel.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	-	-	-	-	-
GF Expenditure	\$150,500	\$193,000	\$202,000	\$211,300	\$221,100
Net Effect	(\$150,500)	(\$193,000)	(\$202,000)	(\$211,300)	(\$221,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

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: Exhibit 1 contains statistics on investigations by the Department of Human Resources (DHR), circuit court convictions, and District Court cases filed for first- and second-degree abuse or neglect of a vulnerable adult and financial exploitation of a vulnerable adult. Although the number of cases investigated by DHR increased from fiscal 2012 to 2014, the number of substantiated and indicated allegations has remained fairly constant, when confirmed cases of self-neglect are taken into consideration. However, the number of confirmed cases of financial exploitation has increased by 50% since fiscal 2012. “Substantiated allegation” means that there is sufficient evidence to support an allegation of physical abuse, sexual abuse, financial exploitation, neglect by others, or self-neglect. “Indicated allegation” means it is more likely than not that maltreatment occurred, but that all the details may not have been found about how the maltreatment occurred or who was responsible. Information is not available on the overlap between cases and investigations featured in the exhibit.

Exhibit 1
Abuse or Neglect and Financial Exploitation of a Vulnerable Adult
Investigations by DHR, Circuit Court Convictions, and District Court Cases Filed
Fiscal 2012-2014

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>
<u>Investigations</u>			
Total Cases Investigated	6,801	7,102	7,369
Indicated or Substantiated Allegations	1,365	1,206	1,235
<i>Confirmed Self-neglect</i>	818	703	660
<i>Confirmed Neglect by Others</i>	288	237	236
<i>Confirmed Physical Abuse</i>	83	74	83
<i>Confirmed Sexual Abuse</i>	14	11	11
<i>Confirmed Financial Exploitation</i>	162	181	245
<u>Convictions</u>			
For Abuse or Neglect	14	10	11
<i>First Degree</i>	7	2	4
<i>Second Degree</i>	7	8	7
For Financial Exploitation	11	7	12
<u>District Court – Violations Filed</u>			
For Abuse or Neglect		75	
<i>First Degree</i>	N/A	12	N/A
<i>Second Degree</i>	N/A	63	N/A
For Financial Exploitation	N/A	36	66

Source: Department of Human Resources, Maryland State Commission on Criminal Sentencing Policy, Maryland Judiciary

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: General fund expenditures increase by \$150,501 in fiscal 2016, which accounts for the bill’s October 1, 2015 effective date. This estimate reflects the cost of hiring two assistant Attorneys General to assist with cases filed under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses

Positions	2
Salaries and Fringe Benefits	\$141,053
Operating Expenses	<u>9,448</u>
Total FY 2016 State Expenditures	\$151,501

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

OAG advises that implementation of the bill requires three additional Assistant Attorneys General. However, OAG did not provide any explanation or justification for this estimate. The Department of Legislative Services (DLS) advises that in light of the potential case volume indicated from the DHR and judicial statistics listed above, OAG requires an additional two assistant Attorneys General to assist with initial implementation of the bill. Based on fiscal 2013 data, in Exhibit 1, it appears that 600 cases could potentially provide the standing for OAG to pursue civil damages under the bill. Assuming that OAG pursues civil action in 25% of these cases, an additional 150 cases annually would be pursued. As a result, two assistant Attorneys General are required to address this caseload.

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. OAG may decide not to pursue civil damages in a significant portion of these cases for a variety of reasons, including reluctance by the victim to pursue damages due to any family dynamics involved, the amount of damages involved (with respect to financial exploitation cases), and the likelihood of the defendant to pay any awarded damages. For example, according to the Judiciary, of the 36 exploitation of a vulnerable adult violations filed in the District Court during 2013, 7 involved property valued between \$1,000 and \$10,000; 29 of these violations involved property with a value of less than \$1,000.
- 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.) or possibly the agency investigation process, not requests by private citizens for civil litigation representation to recover damages resulting from alleged injury absent some involvement of the State at the agency or criminal justice level.
- The bill does not apply to cases of self-neglect of a vulnerable adult.

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: HB 724 of 2014 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 435, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

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

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md/kdm

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