

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 288

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

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

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 \$10,000 or more; (3) the amount of money 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 each financial institution in possession of money subject to the petition.

The bill also (1) specifies the contents of a petition and an order to freeze assets; (2) requires a petition to be served on the defendant in accordance with the Maryland Rules and mailed to each financial institution in possession of money subject to the petition; (3) requires an order to freeze assets to be served on each financial institution in possession of money subject to the order; (4) establishes the conditions under which a court may grant a petition; and (5) specifies the duration of an order to freeze assets.

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.

Analysis

Bill Summary: “Freeze assets” means to prohibit a person from transferring the person’s money by placing the money under seal or removing the money to a place designated by a court.

A court may grant a petition and issue an order to 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 listed in the petition and (2) the money 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 defendant’s money to avoid being subject to an order to freeze assets, or the money listed in the petition was used in connection with the exploitation of a vulnerable or elder adult.

A financial institution is not obligated to restrict access to money described in a petition until (1) an order to freeze assets has been served on the financial institution and (2) the financial institution has had a reasonable opportunity to freeze the assets.

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 financial institution from exercising rights under applicable law, including the right to set off mutual debts under common law.

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 at least age 68 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

Less than \$1,000
\$1,000 to less than \$10,000
\$10,000 to less than \$100,000
\$100,000 or more

Penalty

Misdemeanor – 18 months and/or \$500
Felony – 10 years and/or \$10,000
Felony – 15 years and/or \$15,000
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 financial exploitation of an elderly or 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 36 exploitation of a vulnerable adult violations filed in the District Court during 2013. Seven of these violations involved property valued between \$1,000 and \$10,000; 29 of these violations involved property with a value of less than \$1,000. The Judiciary advises that there were 66 exploitation of a vulnerable adult violations in the District Court during fiscal 2014.

The Maryland State Commission on Criminal Sentencing Policy reports that there were seven convictions for exploitation of a vulnerable adult in the circuit courts during fiscal 2013. Five individuals were sentenced for exploitation of a vulnerable adult involving an amount in excess of \$10,000 in the State's circuit courts during fiscal 2014. An additional six individuals received sentences for exploitation of a vulnerable adult; however, the amount involved was not indicated in the sentencing information received. These individuals received sentences pursuant to the statute in effect prior to October 1, 2013, when the threshold amount was \$500.

Additional Information

Prior Introductions: HB 1371 of 2014 received a hearing in the House Judiciary Committee. No further action was taken on the bill. HB 866 of 2013, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: HB 737 (Delegate B. Wilson, *et al.*) - Judiciary.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Aging; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2015
min/kdm Revised - Senate Third Reader - April 13, 2015

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510