

# HOUSE BILL 320

E1, D3, N2

0lr1763  
CF SB 702

---

By: **Delegates Shetty, Carr, Atterbeary, Ebersole, Feldmark, Guyton, Hill, Kelly, Kerr, Korman, Lehman, Love, Moon, Palakovich Carr, Solomon, Stewart, Terrasa, Valderrama, and Wilkins**

Introduced and read first time: January 20, 2020

Assigned to: Judiciary

---

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 25, 2020

---

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Law – Exploitation of Vulnerable Adult or Elderly Individual – Undue**  
3 **Influence**

4 FOR the purpose of altering the definition of “undue influence” for purposes of provisions  
5 of law prohibiting the exploitation of certain vulnerable adults or elderly individuals;  
6 requiring a court, in determining whether a transfer of property was induced by  
7 undue influence, to consider certain factors; providing for the application of this Act;  
8 and generally relating to the exploitation of vulnerable adults or elderly individuals.

9 BY repealing and reenacting, without amendments,  
10 Article – Commercial Law  
11 Section 13–204(a)(15) and (b)  
12 Annotated Code of Maryland  
13 (2013 Replacement Volume and 2019 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article – Criminal Law  
16 Section 8–801(a)(1), (b), (c), (d), (e), and (f)  
17 Annotated Code of Maryland  
18 (2012 Replacement Volume and 2019 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Criminal Law

---

### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 8–801(a)(6)  
 2 Annotated Code of Maryland  
 3 (2012 Replacement Volume and 2019 Supplement)

4 BY adding to  
 5 Article – Criminal Law  
 6 Section 8–801(g)  
 7 Annotated Code of Maryland  
 8 (2012 Replacement Volume and 2019 Supplement)

9 BY repealing and reenacting, without amendments,  
 10 Article – Estates and Trusts  
 11 Section 11–111  
 12 Annotated Code of Maryland  
 13 (2017 Replacement Volume and 2019 Supplement)

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

16 **Article – Commercial Law**

17 13–204.

18 (a) In addition to any other of its powers and duties, the Division has the powers  
 19 and duties to:

20 (15) (i) Bring a civil action for damages against a person who violates  
 21 § 8–801 of the Criminal Law Article on behalf of a victim of the offense or, if the victim is  
 22 deceased, the victim’s estate;

23 (ii) Recover damages under this item for property loss or damage;  
 24 and

25 (iii) If the Division prevails in an action brought under this item,  
 26 recover the costs of the action for the use of the Office of the Attorney General.

27 (b) A conviction for an offense under § 8–801 of the Criminal Law Article is not a  
 28 prerequisite for maintenance of an action under subsection (a)(15) of this section.

29 **Article – Criminal Law**

30 8–801.

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

32 (6) (i) “Undue influence” means ~~domination and~~ influence, **OR**  
 33 **EXCESSIVE PERSUASION** amounting to force and coercion exercised by another person to

1 such an extent that a vulnerable adult or an individual at least 68 years old was prevented  
2 from exercising free judgment and choice.] ~~EXCESSIVE PERSUASION THAT CAUSES A~~  
3 ~~VULNERABLE ADULT OR AN INDIVIDUAL AT LEAST 68 YEARS OLD TO ACT OR~~  
4 ~~REFRAIN FROM ACTING BY OVERCOMING THAT PERSON'S FREE WILL AND THAT~~  
5 ~~RESULTS IN INEQUITY.~~

6 (ii) "Undue influence" does not include the normal influence that one  
7 member of a family has over another member of the family.

8 (b) (1) A person may not knowingly and willfully obtain by deception,  
9 intimidation, or undue influence the property of an individual that the person knows or  
10 reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult  
11 of the vulnerable adult's property.

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

16 (c) (1) (i) A person convicted of a violation of this section when the value of  
17 the property is at least \$1,500 but less than \$25,000 is guilty of a felony and:

18 1. is subject to imprisonment not exceeding 5 years or a fine  
19 not exceeding \$10,000 or both; and

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

22 (ii) A person convicted of a violation of this section when the value of  
23 the property is at least \$25,000 but less than \$100,000 is guilty of a felony and:

24 1. is subject to imprisonment not exceeding 10 years or a fine  
25 not exceeding \$15,000 or both; and

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

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

30 1. is subject to imprisonment not exceeding 20 years or a fine  
31 not exceeding \$25,000 or both; and

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

1           (2) A person convicted of a violation of this section when the value of the  
2 property is less than \$1,500 is guilty of a misdemeanor and:

3           (i) is subject to imprisonment not exceeding 1 year or a fine not  
4 exceeding \$500 or both; and

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

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

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

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

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

24          **(G) IN DETERMINING WHETHER PROPERTY WAS OBTAINED BY UNDUE**  
25 **INFLUENCE, THE COURT SHALL CONSIDER:**

26           **(1) THE VULNERABILITY OF THE VICTIM, INCLUDING:**

27           **(I) INCAPACITY;**

28           **(II) ILLNESS;**

29           **(III) DISABILITY;**

30           **(IV) INJURY;**

31           **(V) AGE;**

32           **(VI) EDUCATION;**

1 (VII) IMPAIRED COGNITIVE FUNCTION;

2 (VIII) EMOTIONAL DISTRESS;

3 (IX) ISOLATION; AND

4 (X) DEPENDENCY;

5 (2) WHETHER THE DEFENDANT KNEW OR SHOULD HAVE KNOWN OF  
6 THE ALLEGED VICTIM'S VULNERABILITY;

7 (3) THE DEFENDANT'S APPARENT AUTHORITY, INCLUDING STATUS  
8 AS:

9 (I) A FIDUCIARY;

10 (II) A FAMILY MEMBER;

11 (III) A CARE PROVIDER;

12 (IV) A HEALTH CARE PROFESSIONAL;

13 (V) A LEGAL PROFESSIONAL;

14 (VI) A SPIRITUAL ADVISER; OR

15 (VII) AN EXPERT;

16 (4) THE ACTIONS OR TACTICS USED BY THE DEFENDANT, INCLUDING:

17 (I) CONTROLLING NECESSARIES OF LIFE, MEDICATION, THE  
18 ALLEGED VICTIM'S INTERACTIONS WITH OTHERS, ACCESS TO INFORMATION, OR  
19 SLEEP;

20 (II) USING AFFECTION, INTIMIDATION, OR COERCION; AND

21 (III) INITIATING OF CHANGES IN PERSONAL OR PROPERTY  
22 RIGHTS, USING OF HASTE OR SECRECY IN EFFECTING THOSE CHANGES, EFFECTING  
23 CHANGES AT INAPPROPRIATE TIMES AND PLACES, AND CLAIMING EXPERTISE IN  
24 EFFECTING CHANGES; AND

25 (5) THE EQUITY OF THE RESULT, INCLUDING:

26 (I) THE ECONOMIC CONSEQUENCES TO THE ALLEGED VICTIM;

1                   **(II) ANY DIVERGENCE FROM THE VICTIM'S PRIOR INTENT OR**  
2 **COURSE OF CONDUCT OR DEALING;**

3                   **(III) THE RELATIONSHIP OF THE VALUE CONVEYED TO THE**  
4 **VALUE OF ANY SERVICES OR CONSIDERATION RECEIVED; AND**

5                   **(IV) THE APPROPRIATENESS OF THE CHANGE IN LIGHT OF THE**  
6 **LENGTH AND NATURE OF THE RELATIONSHIP.**

7   **Article – Estates and Trusts**

8 11–111.

9           (a) A person convicted of unlawfully obtaining property from a victim in violation  
10 of § 8–801(b) of the Criminal Law Article shall be disqualified from inheriting, taking,  
11 enjoying, receiving, or otherwise benefitting from the estate, insurance proceeds, or  
12 property of the victim, to the extent provided in § 8–801(e) of the Criminal Law Article.

13           (b) A person disqualified from inheriting, taking, enjoying, receiving, or otherwise  
14 benefitting from the estate, insurance proceeds, or property of the victim in accordance with  
15 subsection (a) of this section shall be treated as if the person predeceased the victim.

16           (c) In the event a distribution is erroneously made to a person disqualified from  
17 inheriting, taking, enjoying, receiving, or otherwise benefitting from the estate, insurance  
18 proceeds, or property of the victim in violation of subsection (a) of this section, the  
19 disqualified person shall make full restitution to the heir, legatee, or beneficiary who should  
20 have received the distribution in accordance with subsection (b) of this section.

21           (d) A fiduciary or other person who distributes property in good faith and without  
22 actual knowledge of a conviction under § 8–801 of the Criminal Law Article is not  
23 personally liable for the distribution.

24           **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to**  
25 **apply only prospectively and may not be applied or interpreted to have any effect on or**  
26 **application to any civil action or proceeding to determine a benefit from the estate,**  
27 **insurance proceeds, or property of a victim that is pending before the effective date of this**  
28 **Act.**

29           **SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
30 **October 1, 2020.**