

HOUSE BILL 559

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2002 Regular Session
2r1069
CF 2r2627

By: **Delegates Mandel, Dembrow, Barkley, Bobo, Boutin, Bronrott, Burns, Cadden, Cane, Carlson, Eckardt, Gladden, Goldwater, Grosfeld, Harrison, Heller, Hubers, Hurson, Hutchins, Kirk, Marriott, Menes, Mohorovic, Montague, Paige, Pendergrass, Petzold, Rosso, Sophocleus, and Valderrama**

Introduced and read first time: February 1, 2002
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Vulnerable Adult - Exploitation Prohibited**

3 FOR the purpose of making it unlawful for any person to knowingly and willfully
4 obtain or use, or endeavor to obtain or use, by deception, intimidation, or undue
5 influence, certain property of a vulnerable adult with the intent to temporarily
6 or permanently deprive the vulnerable adult of certain benefits of the property;
7 providing criminal penalties which depend on the value of the property taken;
8 providing that the defendant shall restore the property taken or its value to the
9 vulnerable adult or the vulnerable adult's estate; providing certain sentencing
10 provisions; providing that a person convicted under this section is disqualified
11 from inheriting, taking, or otherwise benefitting from certain property of the
12 vulnerable adult, whether by operation of law or pursuant to a legal document
13 entered into by the vulnerable adult before the defendant shall have been
14 convicted under this section and shall have made full restoration of the certain
15 property taken or of its value to the vulnerable adult; defining certain terms;
16 establishing that the District Court has jurisdiction concurrent with a circuit
17 court in cases involving financial exploitation of a vulnerable adult; making
18 stylistic changes; and generally relating to the financial exploitation of a
19 vulnerable adult.

20 BY renumbering

21 Article - Criminal Law
22 Section 8-801 through 8-803 and the subtitle "Subtitle 8. Miscellaneous Fraud",
23 respectively
24 to be Section 8-901 through 8-903 and the subtitle "Subtitle 9. Miscellaneous
25 Fraud", respectively
26 Annotated Code of Maryland
27 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of
28 2002)

29 BY repealing and reenacting, with amendments,

1 Article - Courts and Judicial Proceedings
 2 Section 4-301(b)(15) and (16) and 4-302(a) and (d)(1)
 3 Annotated Code of Maryland
 4 (1998 Replacement Volume and 2001 Supplement)

5 BY adding to
 6 Article - Courts and Judicial Proceedings
 7 Section 4-301(b)(17)
 8 Annotated Code of Maryland
 9 (1998 Replacement Volume and 2001 Supplement)

10 BY repealing and reenacting, without amendments,
 11 Article - Criminal Law
 12 Section 3-603(a)(9)
 13 Annotated Code of Maryland
 14 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of
 15 2002)

16 BY adding to
 17 Article - Criminal Law
 18 Section 8-801 to be under the new subtitle "Subtitle 8. Financial Crimes Against
 19 Vulnerable Adults"
 20 Annotated Code of Maryland
 21 (As enacted by Chapter ____ (H.B.11) of the Acts of the General Assembly of
 22 2002)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 24 MARYLAND, That Section(s) 8-801 through 8-803 and the subtitle "Subtitle 8.
 25 Miscellaneous Fraud", respectively, of Article - Criminal Law of the Annotated Code
 26 of Maryland (as enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly
 27 of 2002) be renumbered to be Section(s) 8-901 through 8-903 and the subtitle
 28 "Subtitle 9. Miscellaneous Fraud", respectively.

29 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 30 read as follows:

31 **Article - Courts and Judicial Proceedings**

32 4-301.

33 (b) Except as provided in § 4-302 of this subtitle, the District Court also has
 34 exclusive original jurisdiction in a criminal case in which a person at least 18 years
 35 old or a corporation is charged with:

36 (15) Violation of Article 27, § 59 of the Code, whether A felony or
 37 misdemeanor; [or]

1 (16) Violation of Article 27, § 194A of the Code, whether a felony or
2 misdemeanor; OR

3 (17) VIOLATION OF § 8-801 OF THE CRIMINAL LAW ARTICLE.
4 4-302.

5 (a) Except as provided in § 4-301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13),
6 (14), (15), [and (16)] (16), AND (17) of this subtitle, the District Court does not have
7 jurisdiction to try a criminal case charging the commission of a felony.

8 (d) (1) Except as provided in paragraph (2) of this subsection, the
9 jurisdiction of the District Court is concurrent with that of the circuit court in a
10 criminal case:

11 (i) In which the penalty may be confinement for three years or
12 more or a fine of \$2,500 or more; or

13 (ii) Which is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9),
14 (10), (11), (12), (13), (14), (15), [and (16)] (16), AND (17) of this subtitle.

15 **Article - Criminal Law**

16 3-603.

17 (a) (9) "Vulnerable adult" means an adult who lacks the physical or mental
18 capacity to provide for the adult's daily needs.

19 **SUBTITLE 8. FINANCIAL CRIMES AGAINST VULNERABLE ADULTS.**

20 8-801.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (2) "DECEPTION" MEANS THAT A PERSON DECEIVES A VULNERABLE
24 ADULT BY KNOWINGLY DOING ANY OF THE FOLLOWING:

25 (I) CREATING OR CONFIRMING A FALSE IMPRESSION;

26 (II) FAILING TO CORRECT A FALSE IMPRESSION THAT THE PERSON
27 IS RESPONSIBLE FOR CREATING OR CONFIRMING;

28 (III) MAKING A PROMISE THAT THE PERSON DOES NOT INTEND TO
29 PERFORM OR THAT THE PERSON KNOWS WILL NOT OR CANNOT BE PERFORMED. A
30 PERSON'S FAILURE TO PERFORM A PROMISE IS NOT BY ITSELF SUFFICIENT PROOF
31 THAT THE PERSON DID NOT INTEND TO PERFORM THE PROMISE;

32 (IV) MISREPRESENTING OR CONCEALING A MATERIAL FACT THAT
33 RELATES TO THE TERMS OF A CONTRACT OR AN AGREEMENT THAT THE PERSON

1 ENTERS INTO OR THAT RELATES TO THE EXISTING OR PREEXISTING CONDITION OF
2 ANY OF THE PROPERTY INVOLVED IN A CONTRACT OR AN AGREEMENT; OR

3 (V) USING A MATERIAL MISREPRESENTATION, FALSE PRETENSE,
4 OR FALSE PROMISE TO INDUCE, ENCOURAGE, OR SOLICIT SOMEONE TO ENTER INTO
5 A CONTRACT OR AN AGREEMENT.

6 (3) "UNDUE INFLUENCE" DOES NOT INCLUDE THE NORMAL INFLUENCE
7 THAT ONE MEMBER OF A FAMILY HAS OVER ANOTHER MEMBER OF THE FAMILY.

8 (4) "VULNERABLE ADULT" HAS THE MEANING STATED IN § 3-603 OF THIS
9 ARTICLE.

10 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT A PERSON
11 CONVICTED OF A VIOLATION OF THIS SECTION SHALL NOT PROFIT FROM THE
12 PERSON'S CRIME AGAINST THE VULNERABLE ADULT.

13 (C) A PERSON MAY NOT KNOWINGLY AND WILLFULLY OBTAIN OR USE, OR
14 ENDEAVOR TO OBTAIN OR USE, BY DECEPTION, INTIMIDATION, OR UNDUE
15 INFLUENCE, THE FUNDS, CREDIT, ASSETS, OR OTHER PROPERTY OF A VULNERABLE
16 ADULT, SOMEONE WHOM THE PERSON KNOWS OR REASONABLY SHOULD KNOW
17 LACKS THE PHYSICAL OR MENTAL CAPACITY TO PROVIDE FOR THEIR DAILY NEEDS,
18 WITH THE INTENT TEMPORARILY OR PERMANENTLY TO DEPRIVE THE VULNERABLE
19 ADULT OF THE USE, BENEFIT, OR POSSESSION OF THE VULNERABLE ADULT'S FUNDS,
20 CREDIT, ASSETS, OR OTHER PROPERTY.

21 (D) (1) A PERSON CONVICTED OF A VIOLATION OF THIS SECTION WHEN THE
22 VALUE OF THE PROPERTY IS \$300 OR MORE IS GUILTY OF A FELONY AND:

23 (I) IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A
24 FINE NOT EXCEEDING \$10,000 OR BOTH; AND

25 (II) SHALL RESTORE THE PROPERTY TAKEN OR ITS VALUE TO THE
26 OWNER, OR, IF THE OWNER IS DECEASED, RESTORE THE PROPERTY OR ITS VALUE TO
27 THE OWNER'S ESTATE.

28 (2) A PERSON CONVICTED OF A VIOLATION OF THIS SECTION WHEN THE
29 VALUE OF THE PROPERTY IS LESS THAN \$300 IS GUILTY OF A MISDEMEANOR AND:

30 (I) IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS
31 OR A FINE NOT EXCEEDING \$500 OR BOTH; AND

32 (II) SHALL RESTORE THE PROPERTY TAKEN OR ITS VALUE TO THE
33 OWNER, OR, IF THE OWNER IS DECEASED, RESTORE THE PROPERTY OR ITS VALUE TO
34 THE OWNER'S ESTATE.

35 (E) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM
36 AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED
37 ON THE ACT OR ACTS ESTABLISHING THE VIOLATION OF THIS SECTION.

1 (F) A CONVICTION UNDER THIS SECTION SHALL DISQUALIFY THE
2 DEFENDANT FROM INHERITING, TAKING, ENJOYING, RECEIVING, OR OTHERWISE
3 BENEFITTING FROM THE ESTATE, INSURANCE PROCEEDS, ASSETS, OR ANY OTHER
4 THING OF VALUE OF THE VULNERABLE ADULT, WHETHER BY OPERATION OF LAW OR
5 PURSUANT TO A LEGAL DOCUMENT EXECUTED OR ENTERED INTO BY THE
6 VULNERABLE ADULT BEFORE THE DEFENDANT SHALL HAVE BEEN CONVICTED
7 UNDER THIS SECTION AND SHALL HAVE MADE FULL RESTORATION OF THE
8 PROPERTY TAKEN OR OF ITS VALUE TO THE VULNERABLE ADULT.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
10 effect October 1, 2002.