

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 559

(Delegate Mandel, *et al.*)

Judiciary

Judicial Proceedings

Crimes - Vulnerable Adult - Exploitation Prohibited

This bill makes it unlawful for a person to knowingly and willfully obtain by deception, intimidation, or undue influence the property of a vulnerable adult with the intent of depriving the adult of the property. A violator is subject to criminal penalties that vary depending on the value of the property taken. A person convicted under the bill is disqualified from inheriting or otherwise benefiting from the property of the vulnerable adult.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: A "vulnerable adult" is an adult who lacks the physical or mental capacity to provide for the adult's daily needs. This bill provides that a person may not knowingly and willfully obtain by deception, intimidation, or undue influence, the property of an adult whom the person knows or reasonably should know is vulnerable, with the intent to deprive the vulnerable adult of the vulnerable adult's property. "Undue influence" means domination and influence amounting to force and coercion exercised by

another person to such an extent that a vulnerable adult was prevented from exercising free judgment and choice. It does not include the normal influence of family members.

If the value of the property taken from the vulnerable adult is \$500 or more, a person who violates the provisions is guilty of a felony and is subject to imprisonment for up to 15 years, a maximum fine of \$10,000, or both. If the value of the property taken is less than \$500, the violator is guilty of a misdemeanor and may receive imprisonment for up to 18 months, a maximum fine of \$500, or both. Those convicted under the misdemeanor or felony provisions are required to restore the property taken or its value to the owner. If the owner is deceased, restoration must be made to the owner's estate.

A conviction disqualifies the defendant from inheriting, taking, or otherwise enjoying the estate, insurance proceeds, or other property of the vulnerable adult, whether distributed by law or a legal document executed before the defendant was convicted and made full restoration to the vulnerable adult.

The bill may not be construed to impose criminal liability on a person who has made a good faith effort to assist a vulnerable adult in the management or transfer of the vulnerable adult's property, at the request of the vulnerable adult, the family, or the vulnerable adult's court appointed guardian.

The bill establishes exclusive original jurisdiction in the District Court for the misdemeanor crime against a vulnerable adult, and establishes concurrent jurisdiction with the circuit court over the felony crime against a vulnerable adult. It also provides that a sentence imposed for exploitation of a vulnerable adult may be separate from and consecutive or concurrent to a sentence for any other crime arising from the acts that established the exploitation violation.

Current Law: Using deception, intimidation, or other undue influence to obtain the property of a vulnerable adult is not a specific crime. However, an executor, administrator, guardian, committee, trustee, receiver, or fiduciary is prohibited from fraudulently and willfully appropriating any money or thing of value which comes into the person's hands because of the person's capacity as an executor, administrator, guardian, committee, trustee, receiver, or fiduciary to any purpose which is not a lawful execution of the person's trust. A person committing this act is guilty of embezzlement and on conviction is subject to imprisonment for a term of at least one year and not more than five years.

Current law prohibits theft by deception, which is defined as obtaining control over property by willfully or knowingly using deception if the intent is to deprive an owner of his or her property; or if the person willfully or knowingly uses, conceals, or abandons

the property in a manner that probably will or does deprive the owner of the property. Theft by deception of property with a value of \$500 or more is a felony, punishable by imprisonment for up to 15 years or a maximum fine of \$1,000 or both. Theft by deception of property with a value of less than \$500 is a misdemeanor, punishable by imprisonment for up to 18 months, or a maximum fine of \$500, or both. A person convicted of theft by deception must restore the property taken or pay restitution. Deception includes knowingly creating or confirming a false impression or preventing another from acquiring information pertinent to the disposition of property.

“Robbery” is a common law offense that could be based on intimidation. It is generally described as the felonious taking and carrying away of the personal property of another, from his person or in his presence, by violence, or by putting him in fear. Robbery is a felony punishable by imprisonment not exceeding 15 years.

Background: According to the Department of Human Resources (DHR), about 4,000 cases of exploitation against vulnerable adults occur annually. About 10% of the cases are financial exploitation. DHR believes that there is significant underreporting of financial exploitation.

State Revenues: General fund revenues could increase minimally as a result of the bill’s monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill’s incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2003 are estimated to range from \$10 to \$61 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003.

Additional Information

Prior Introductions: HB 1124 of the 2001 session specifically prohibited a person with a fiduciary relationship from exploiting a vulnerable adult. The bill received an unfavorable report from the Judiciary Committee. A similar bill, HB 916 was introduced in the 2000 session. It received an unfavorable report from the Judiciary Committee.

Cross File: SB 646 (Senator Teitelbaum, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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