

HOUSE BILL 1458

E1, N2

9lr3272

By: **Delegates Carter, Dumais, Dwyer, Ramirez, Simmons, Smigiel, and
Vallario Vallario, and Rosenberg**

Introduced and read first time: February 27, 2009

Assigned to: Rules and Executive Nominations

Re-referred to: Judiciary, March 16, 2009

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 26, 2009

CHAPTER _____

1 AN ACT concerning

2 **Estates – Disqualification – Conviction for Unlawfully Obtaining Property of**
3 **Vulnerable Adult**

4 FOR the purpose of altering the extent to which a person convicted of a certain
5 prohibition against unlawfully obtaining property from a vulnerable adult shall
6 be disqualified from inheriting, taking, enjoying, receiving, or otherwise
7 benefitting from the estate, insurance proceeds, or property of the vulnerable
8 adult; providing that a certain defendant has a certain burden of proof; making
9 a clarifying change; providing for the application of this Act; and generally
10 relating to a certain disqualification concerning the estate, insurance proceeds,
11 or property of a vulnerable adult under certain circumstances.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Law
14 Section 8–801
15 Annotated Code of Maryland
16 (2002 Volume and 2008 Supplement)

17 BY ~~repealing and reenacting, with amendments,~~ adding to
18 Article – Estates and Trusts
19 Section ~~3–111~~ 9–113
20 Annotated Code of Maryland
21 (2001 Replacement Volume and 2008 Supplement)

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

3 **Article – Criminal Law**

4 8–801.

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

6 (2) “Deception” has the meaning stated in § 7–101 of this article.

7 (3) “Deprive” has the meaning stated in § 7–101 of this article.

8 (4) “Obtain” has the meaning stated in § 7–101 of this article.

9 (5) “Property” has the meaning stated in § 7–101 of this article.

10 (6) “Value” has the meaning stated in § 7–103 of this article.

11 (7) (i) “Undue influence” means domination and influence
12 amounting to force and coercion exercised by another person to such an extent that a
13 vulnerable adult was prevented from exercising free judgment and choice.

14 (ii) “Undue influence” does not include the normal influence
15 that one member of a family has over another member of the family.

16 (8) “Vulnerable adult” has the meaning stated in § 3–604 of this
17 article.

18 (b) A person may not knowingly and willfully obtain by deception,
19 intimidation, or undue influence the property of an individual that the person knows
20 or reasonably should know is a vulnerable adult with intent to deprive the vulnerable
21 adult of the vulnerable adult’s property.

22 (c) (1) A person convicted of a violation of this section when the value of
23 the property is \$500 or more is guilty of a felony and:

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

26 (ii) shall restore the property taken or its value to the owner, or,
27 if the owner is deceased, restore the property or its value to the owner’s estate.

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

30 (i) is subject to imprisonment not exceeding 18 months or a fine
31 not exceeding \$500 or both; and

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

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

6 (e) **(1)** [A conviction under this section shall disqualify the defendant] **IF**
7 **A DEFENDANT FAILS TO RESTORE FULLY THE PROPERTY TAKEN OR ITS VALUE**
8 **AS ORDERED UNDER SUBSECTION (C) OF THIS SECTION, THE DEFENDANT IS**
9 **DISQUALIFIED, TO THE EXTENT OF THE DEFENDANT'S FAILURE TO RESTORE**
10 **THE PROPERTY OR ITS VALUE,** from inheriting, taking, enjoying, receiving, or
11 otherwise benefitting from the estate, insurance proceeds, or property of the
12 vulnerable adult, whether by operation of law or pursuant to a legal document
13 executed or 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 property
15 taken or of its value to the vulnerable adult].

16 **(2) THE DEFENDANT HAS THE BURDEN OF PROOF WITH RESPECT**
17 **TO ESTABLISHING UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT THE**
18 **DEFENDANT HAS FULLY RESTORED THE PROPERTY TAKEN OR ITS VALUE.**

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

23 Article - Estates and Trusts

24 ~~3-111.~~

25 ~~(A) A surviving parent is not entitled under § 3-104 of this subtitle to a~~
26 ~~distribution of the net estate of a child of the parent if:~~

27 ~~(1) (i) The parent is convicted under §§ 3-303 through 3-308, §~~
28 ~~3-323, § 3-601, or § 3-602 of the Criminal Law Article; or~~

29 ~~(ii) The parent committed any act prohibited under §§ 3-303~~
30 ~~through 3-308, § 3-323, § 3-601, or § 3-602 of the Criminal Law Article;~~

31 ~~(2) The other parent of the child is the victim of the crime or act~~
32 ~~described under item (1) of this section; and~~

33 ~~(3) The other parent of the child is a child of the parent.~~

34 **9-113.**

1 ~~(B)~~ A PERSON CONVICTED OF UNLAWFULLY OBTAINING PROPERTY
 2 FROM A VULNERABLE ADULT IN VIOLATION OF § 8-801(B) OF THE CRIMINAL
 3 LAW ARTICLE SHALL BE DISQUALIFIED FROM INHERITING, TAKING, ENJOYING,
 4 RECEIVING, OR OTHERWISE BENEFITTING FROM THE ESTATE, INSURANCE
 5 PROCEEDS, OR PROPERTY OF THE VULNERABLE ADULT, TO THE EXTENT
 6 PROVIDED IN § 8-801(E) OF THE CRIMINAL LAW ARTICLE.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
 8 construed to apply only prospectively and may not be applied or interpreted to have
 9 any effect on or application to any civil action or proceeding to determine a benefit
 10 from the estate, insurance proceeds, or property of a vulnerable adult that is pending
 11 before the effective date of this Act.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 13 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.