

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 381
Judicial Proceedings

(Senator Lenett, *et al.*)

Financial Exploitation Prevention Act of 2009

This bill expands the definition of “vulnerable adult” applicable to provisions prohibiting abuse or neglect or financial exploitation of a vulnerable adult to include a person who lacks the capacity to consent. The bill prohibits a person from knowingly and willfully obtaining by illusory consent the property of an individual that the person knows or reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult’s property.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to application of existing penalty provisions to the bill’s expanded scope for crimes involving vulnerable adults.

Local Effect: Minimal increase in revenues and expenditures due to application of existing penalty provisions to the bill’s expanded scope for crimes involving vulnerable adults.

Small Business Effect: None.

Analysis

Bill Summary: A person who lacks the capacity to consent is someone who lacks sufficient understanding or capacity to make or communicate reasonable decisions concerning one’s own economic affairs or property caused by a physical or mental impairment.

Illusory consent means the apparent, actual, or constructive consent of a person with a physical or mental impairment that causes the person to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the person's economic affairs or property. Illusory consent does not include the normal consent that a person would give to actions taken in the person's best interests by a member of the person's family.

Current Law: A vulnerable adult means an adult who lacks the physical or mental capacity to provide for daily needs. A caregiver, parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult. The same prohibition applies to a household member or family member.

A violator is guilty of the misdemeanor of abuse or neglect of a vulnerable adult in the second degree and subject to maximum penalties of five years imprisonment and/or a fine of \$5,000. If the abuse or neglect results in the death of, causes serious physical injury to, or involves sexual abuse of the vulnerable adult, the violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and is subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000. A sentence imposed for either the felony or misdemeanor offense of abuse or neglect must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

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 a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult's property. When the value of the property is \$500 or more, a violator is guilty of a felony and subject to maximum penalties of 15 years imprisonment and/or a fine of \$10,000, and 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.

When the value of the property is less than \$500, the offense is a misdemeanor and the violator is subject to maximum penalties of 18 months imprisonment and/or a fine of \$500, and 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.

A sentence imposed under these provisions may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing this violation. A conviction disqualifies the defendant from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the vulnerable adult, whether by operation of law or pursuant to a legal document executed

or entered into by the vulnerable adult before the defendant was convicted and made full restoration of the property taken or of its value to the vulnerable adult.

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

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

State Expenditures: General fund expenditures increase minimally as a result of the bill's provisions 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 under this bill's provisions is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. 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 2010 are estimated to range from \$23 to \$71 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 increase minimally as a result of the bill's provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's provisions. 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 \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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