

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 333 (Senator Gladden)
 Judicial Proceedings

Criminal Procedure - Vulnerable Adult Abuse Registry

This bill requires the Department of Health and Mental Hygiene (DHMH) to establish and maintain a registry containing the names of individuals who have been (1) convicted of a vulnerable adult abuse crime or (2) found by a State agency to have abused, neglected, or misappropriated or exploited the property of a vulnerable adult.

Fiscal Summary

State Effect: General fund expenditures increase by \$241,700 in FY 2014 to reflect the cost of establishing the required registry, including hardware, software, contractual services associated with developing and maintaining the registry, and permanent staffing. Future year expenditures reflect elimination of one-time-only costs, annualization, and inflation. Affected State agencies can likely use existing resources to submit the required notification to DHMH and participate in any administrative hearings that result from the bill. Revenues are not affected.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	241,700	164,000	171,100	178,500	186,200
Net Effect	(\$241,700)	(\$164,000)	(\$171,100)	(\$178,500)	(\$186,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The names and other information contained in the registry must be available for public inspection, as specified in the bill. DHMH may discharge its responsibilities under the bill either directly or through agency agreement if authorized access to the records by means of a single centralized agency is assured.

A State agency that finds that an individual has committed more than one offense against a vulnerable adult within a five-year period must – after providing the individual with an opportunity for an administrative due process hearing – notify DHMH, as specified by the bill, of the individual’s name for inclusion in the registry. The notification to DHMH must include (1) a copy of an administrative or judicial order or any other evidence indicating that the agency has afforded the individual an opportunity for an administrative due process hearing in accordance with the bill; (2) the individual’s last known mailing address; (3) the definition of abuse, neglect, or misappropriation or exploitation of property that was used by the agency in finding abuse; and (4) other information that DHMH may determine is necessary to adequately identify the individual for purposes of administrative hearings or when inquiry to the registry is made. The bill does not require a State agency to establish new procedures or to modify existing procedures the agency may use to provide due process.

The State’s Attorney must, on conviction of an individual for a vulnerable adult abuse crime, report the individual’s name to DHMH.

On receiving a notification from either a State agency or the State’s Attorney, DHMH must (1) enter the individual’s name in the registry and (2) maintain and, upon request, make available the name of the reporting agency or court and the applicable definition of abuse, neglect, or misappropriation or exploitation of property supplied by the reporting agency or court. On entry of such information, DHMH must notify the individual (at the individual’s last known address) of the individual’s inclusion in the registry.

An individual may challenge the accuracy of the report that the finding or conviction occurred or of a fact issue related to the correct identity of the individual. If the individual makes such a challenge within 30 days of notification of the individual’s inclusion in the registry, DHMH must afford the individual an opportunity for a hearing on the matter. An individual’s name must be removed immediately from the registry if (1) after a hearing, DHMH determines that the findings or conviction never occurred or (2) at the final step taken in an appellate process, a reported conviction, emergency order, or administrative hearing result is reversed.

A State agency that has placed an individual’s name in the registry may recommend to DHMH, as specified by the bill, the removal of the individual’s name if (1) the agency

finds that the placement of the individual's name in the registry was in error or (2) an advisory group convened by the agency, as specified by the bill, determines that removal of the individual's name from the registry is clearly warranted and recommends to the agency a waiver and removal of the individual's name from the registry. The decision and the written recommendations of the State agency and advisory group must be open for public inspection.

An individual who is dissatisfied with the State agency's decision may appeal in a contested case hearing.

A State agency that provides institutional or in-home services to vulnerable adults (1) must consult the registry prior to hiring an employee or using a volunteer and (2) may not hire or otherwise use the services of an individual who is listed on the registry.

An individual who submits an allegation to DHMH for inclusion in the registry, or who testifies in a proceeding arising from the allegation, is immune from civil or criminal liability (except for liability for perjury) for making the report and for testifying. A person that declines to employ or otherwise use the services of an individual listed in the registry, or that terminates the individual, is immune from suit by or on behalf of that individual.

Current Law/Background:

Abuse and Neglect of Vulnerable Adults

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 that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member.

A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000. A sentence imposed for this violation 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.

Under the second degree prohibition, 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. Similarly, a household member or family member may not cause abuse or neglect of a vulnerable adult. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a \$5,000 fine. A sentence imposed for this violation 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. The second degree prohibition does not apply to sexual abuse of a vulnerable adult.

In fiscal 2012, according to the Department of Human Resources (DHR), there were 1,889 confirmed cases of neglect of vulnerable adults (not including self-neglect), 546 confirmed cases of physical abuse, and 89 confirmed cases of sexual abuse or exploitation. (These totals include cases that resulted in convictions as well as those that did not.) DHR advises that repeat offenders are rare.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) reports that, in fiscal 2012, there were seven convictions in the circuit courts for first degree vulnerable-adult abuse or neglect and seven convictions for the second degree offense.

Exploitation of Property

Under the State's prohibition against financial exploitation of a vulnerable adult, 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 individual's property. In addition, 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 at least age 68 with intent to deprive the individual of the individual'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 imprisonment for 15 years and/or a fine of \$10,000, and the violator 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, a violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500, and the violator must similarly restore the property taken or its value.

A sentence imposed for financial exploitation may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation. If a defendant fails to restore fully the property taken or its value as ordered, the defendant is disqualified, to the extent of the defendant's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the defendant had been convicted of the financial exploitation.

This financial exploitation prohibition may not be construed to impose criminal liability on a person who, at the request of the victim of the offense, the victim's family, or the court-appointed guardian of the victim, has made a good faith effort to assist the victim in the management of or transfer of the victim's property.

In fiscal 2012, according to DHR, there were 1,082 confirmed cases of financial exploitation of vulnerable adults. (This total includes cases that resulted in convictions as well as those that did not.) DHR advises that repeat offenders are rare.

MSCCSP reports that, in fiscal 2012, there were 11 convictions for financial exploitation of a vulnerable adult.

Regulation of Health Care Facilities in Maryland

The Office of Health Care Quality (OHCQ) within DHMH generally regulates and licenses health care facilities in the State. Currently, OHCQ has a staffing deficit of 107 surveyors.

Typically, if an employee working with vulnerable populations commits suspected abuse or neglect, the facility completes an incident report with its licensing agency and an investigation is conducted. If the investigation finds that the abuse or neglect took place, the employee is terminated. In many cases, the abuse or neglect may not be criminal; thus, no charges are filed. Following termination, the employee may seek employment at another facility that is unaware of the prior abuse or neglect committed by that individual. Each of Maryland's health occupations boards employs an investigative staff to review complaints and has disciplinary authority – including the authority to deny, suspend, and revoke licenses – over the health care practitioners in its respective jurisdiction. In addition, a number of health occupations boards provide online, publically accessible registries that contain information regarding whether a health care practitioner has a valid license and/or has been the subject of disciplinary action.

Abuser Registry Workgroup and Report

As amended, SB 316 of 2012 would have required DHMH to convene a workgroup to examine issues relating to the creation of a health care facility abuser registry and to report its findings and recommendations to specified committees of the General Assembly by December 1, 2012. Although this bill did not pass, OHCQ voluntarily convened an Abuser Registry Workgroup comprising representatives of OHCQ, the Office of the Attorney General, law enforcement agencies, health care providers, and the advocate community. The workgroup outlined its findings and conclusions in a report dated January 14, 2013.

The report cited, among its concerns, (1) the absence of a clear national model for an abuser registry; (2) lack of consensus as to who should be able to access such a registry; (3) unresolved due-process issues; (4) potential conflicts with the role and authority of licensing boards; and (5) cost.

The workgroup suggested several alternatives to establishing a registry, including (1) providing broader access to criminal background checks for licensing boards; (2) offering better education regarding the pursuit of criminal charges; (3) strengthening current background check processes for direct care workers; and (4) expanding the reference check process by requiring prospective employees to list their last five places of employment.

State Expenditures: OHCQ advises that the bill necessitates the creation of a new abuser registry unit to be staffed by 57 additional full-time employees (including 50 surveyors), at a cost of more than \$4.1 million annually. According to OHCQ, this estimate significantly exceeds previous estimates for similar bills because, after having convened the Abuser Registry Workgroup in the legislative interim, the office has attained a better understanding of the resources necessary to implement an abuser registry. However, the Department of Legislative Services (DLS) estimates costs associated with the abuser registry to be significantly lower than those estimated by OHCQ, as discussed below.

OHCQ advises that the bill necessitates, on an annual basis, the investigation of approximately 2,200 allegations related to health care facilities that are regulated by the office. DLS notes, however, that OHCQ is already charged with investigating such complaints and that this charge is unchanged by the bill. Thus, although DLS recognizes that OHCQ has been and continues to be understaffed, the need for additional surveyors does not result from this bill but rather from ongoing duties. DLS further notes that the bill specifies that a finding may be made by not only DHMH but by any State agency – which may be interpreted to include the various health occupations boards within the department as well as law enforcement. All of these entities already investigate various allegations of abuse and coordinate with one another as appropriate.

Accordingly, DLS advises that general fund expenditures increase by \$188,837 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. This estimate reflects the cost of establishing and maintaining the registry, including hardware, software, one-time contractual services associated with the development of the registry, and ongoing contractual services associated with registry maintenance. The estimate also reflects the hiring of one full-time assistant Attorney General to evaluate data for inclusion in the registry, review challenges and recommendations, and participate in administrative hearings as well as one full-time administrator to confirm and enter

relevant information into the registry, notify individuals upon their inclusion in the registry, respond to requests for information, and provide general administrative support. This represents the minimum level of staff needed to implement the bill. Although inclusion in the registry is limited to repeat offenders and those who have been convicted of the relevant offenses, it is unclear how many individuals would meet the criteria for placement on the registry (particularly depending on what definitions of abuse are used); if DHMH receives a high volume of referrals under the bill, staffing costs may increase accordingly. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position (full-time equivalent)	2
Salaries and Fringe Benefits	\$104,880
One-time Contractual Services	115,000
Ongoing Contractual Services	9,000
Other One-time Start-up Expenses	8,365
Other Ongoing Operating Expenses	<u>4,463</u>
Total FY 2014 State Expenditures	\$241,708

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The number of notifications that DHMH is likely to receive under the bill cannot be reliably estimated at this time. However, DLS advises that the affected State agencies can likely use existing resources to submit the required notification to DHMH and participate in any administrative hearings that result from the bill. It is assumed that State agencies can use existing procedures to provide due process.

The Office of Administrative Hearings (OAH) advises that any additional cases in excess of approximately 140 annually are not absorbable and necessitate the hiring of an additional administrative law judge. Although the number of administrative hearings stemming from the bill cannot be reliably estimated at this time, DLS advises that any additional costs to OAH are likely to be absorbable.

Any impact to the trial courts is likely to be small enough to be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 326 (Delegate Glenn) - Judiciary.

Information Source(s): Department of Housing and Community Development, Department of Disabilities, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Maryland Energy Administration, Office of Administrative Hearings, Maryland Department of Aging, Department of Human Resources, State's Attorneys' Association, Department of Legislative Services

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