

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 810
Judiciary

(Delegate Lee, *et al.*)

Crimes - Exploitation of Vulnerable Adults - Breach of Fiduciary Duty

This bill alters the definition of “undue influence” under the exploitation of vulnerable adults statute to include the breaching of a fiduciary duty to a vulnerable adult or an individual at least age 68 by a guardian or agent under a power of attorney that results in an unauthorized appropriation, sale, or transfer of property that does not benefit the vulnerable adult or individual. A prosecution for exploitation of a vulnerable adult may be instituted at any time.

In addition to the penalties provided under existing statute, if a person convicted of a violation of this section used the fact that the person was the holder of a professional license to assist the person in the commission of the violation, the court may order the issuing authority to revoke the person’s license.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s expanded application of existing penalties and removal of the statute of limitations for this offense.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s expanded application of existing penalties and removal of the statute of limitations for this offense.

Small Business Effect: Potential minimal.

Analysis

Current Law: In general, a felony may be prosecuted at any time and the criminal prosecution of a misdemeanor must be instituted within one year after the commission of the offense. However, there are several exceptions under statute.

Under the offense of 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 at least age 68 or is a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult's property. Penalties for the offense vary based on the value of the property, as listed below. A sentence imposed for the offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation.

Property Value

Less than \$1,000

\$1,000 to less than \$10,000

\$10,000 to less than \$100,000

\$100,000 or more

Penalty

Misdemeanor – 18 months and/or \$500

Felony – 10 years and/or \$10,000

Felony – 15 years and/or \$15,000

Felony – 25 years and/or \$25,000

In addition to the penalties listed above, violators 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. 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 has been convicted. The defendant has the burden of proof with respect to establishing that the defendant has fully restored the property taken or its value.

The statutory prohibition on exploitation of a vulnerable adult 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.

Background: According to the Judiciary, there were 36 exploitation of a vulnerable adult violations filed in the District Court during 2013.

The Maryland State Commission on Criminal Sentencing Policy reports that there were seven convictions for exploitation of a vulnerable adult in the circuit courts during
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fiscal 2013. In fiscal 2012, there were seven convictions for the first degree offense and seven convictions for the second degree offense.

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

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of incarceration penalties and removal of a statute of limitation due to more people being committed to State correctional 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.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 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 State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The Department of Labor, Licensing and Regulation (DLLR) advises that it currently issues more than 13,000 professional licenses that may be subject to the bill's provisions. DLLR may experience a fiscal impact if license denials are appealed to a hearing officer internally or to the Office of Administrative Hearings (OAH). DLLR is billed by OAH for the costs of an administrative hearing and the agency incurs court reporter costs if an internal hearing officer conducts the hearing. DLLR advises that the department is able to absorb these costs as long as fewer than 10 cases arise as result of the bill each year.

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

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of incarceration penalties and removal of a statute of limitation. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Aging; Department of Legislative Services

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