

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1371
Judiciary

(Delegate Arora, *et al.*)

**Criminal Procedure - Financial Crimes Against Vulnerable and Elder Adults -
Petition to Freeze Assets**

This bill authorizes a State's Attorney to file a petition to freeze assets of a defendant charged with exploitation of a vulnerable or elder adult if (1) the petition is filed within 60 days of the defendant being charged with the offense; (2) the alleged value of the lost or stolen property in the criminal charge is \$10,000 or more; (3) the amount of money or property subject to the petition does not exceed the value of the alleged value of the lost or stolen property in the criminal charge; and (4) the State's Attorney sends a notice of intent to file the petition to each lienholder on the property subject to the petition and each financial institution in possession of property subject to the petition.

The bill also (1) specifies the content of a petition; (2) requires a petition to be served in accordance with the Maryland Rules and mailed to specified lienholders and financial institutions; (3) establishes the conditions under which a court may grant a petition; and (4) specifies the duration of an order to freeze assets.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: A court may grant a petition and freeze assets if the State’s Attorney proves by a preponderance of the evidence that (1) the defendant has a legal, equitable, or possessory interest in the money or property listed in the petition and (2) the money or property listed in the petition is not jointly held, unless the State’s Attorney also proves, by a preponderance of the evidence, that the defendant transferred the property to avoid being subject to an order to freeze assets, or the money or property listed in the petition was used in connection with the exploitation of a vulnerable or elder adult.

An order to freeze assets remains in effect until the earlier of (1) a dismissal, an entry of *nolle prosequi*, or an entry of a not guilty verdict for the criminal charge giving rise to the order to freeze assets; (2) the marking of the charge “stet” on the docket, the pronouncement of a sentence, or the imposition of probation before judgment for the criminal charge giving rise to the order to freeze assets, provided that the defendant has fulfilled any court-ordered restitution; or (3) one year after the final disposition of the criminal charge giving rise to the order to freeze assets. On motion, a court may modify an order to freeze assets to allow the defendant to make restitution, to allow the victim to collect restitution, or for good cause.

The bill’s provisions do not prohibit (1) a lienholder from exercising rights under applicable law, including the right to sell property that has been subject to an order to freeze assets under this section, if a default occurs in the obligation giving rise to the lien or (2) a financial institution from exercising rights under applicable law, including the right to set-off mutual debts under common law.

Current Law: A “vulnerable adult” is an adult who lacks the physical or mental capacity to provide for the adult’s daily needs. 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 financial exploitation of an elderly or 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 violations filed in the District Court during 2013 for financial exploitation of an elderly or vulnerable adult. All of the violations involved property valued at less than \$10,000. The District Court has concurrent jurisdiction with the circuit courts for felony exploitation of a vulnerable adult.

The Maryland State Commission on Criminal Sentencing Policy reports that there were seven convictions for financial exploitation of an elderly or vulnerable adult in the circuit courts during fiscal 2013.

Additional Information

Prior Introductions: HB 866 of 2013, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; State's Attorneys' Association; Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

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mc/kdm

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