

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 495  
Judiciary

(Delegate Stein, *et al.*)

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**Civil Action - Offense Against Vulnerable or Elderly Adult**

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This bill authorizes a victim of the prohibition on exploitation of a vulnerable or elderly adult under § 8-801 of the Criminal Law Article to bring a civil action for damages against a person who committed the offense. This action is in addition to any other action authorized by law, and a conviction for the exploitation offense is not a prerequisite for maintenance of the action. A victim may recover up to three times the actual damages, reasonable attorney's fees, and court costs.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2016 effective date.

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**Fiscal Summary**

**State Effect:** The bill's requirements can be met with existing budgeted resources.

**Local Effect:** The bill's requirements can be met with budgeted resources.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Under the offense of exploitation of a vulnerable or elderly 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 or elderly adult with intent to deprive the vulnerable or elderly adult of the vulnerable or elderly 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.

<u>Property Value</u>	<u>Penalty</u>
Less than \$1,000	Misdemeanor – 18 months and/or \$500
\$1,000 to less than \$10,000	Felony – 10 years and/or \$10,000
\$10,000 to less than \$100,000	Felony – 15 years and/or \$15,000
\$100,000 or more	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 or elderly 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.

In general, a party to a lawsuit is responsible for his/her legal fees, regardless of the outcome of the case. However, there are more than 80 exceptions to this general rule in State law, including wage and hour cases, worker's compensation cases, and consumer protection cases. The conditions under which an individual is eligible for an award of attorney's fees and the extent of these awards is inconsistent among the cases eligible for attorney's fees awards under State law.

**Background:** According to the Judiciary, during fiscal 2015, there were 113 violations in the District Court and 170 violations in the circuit courts under § 8-801 of the Criminal Law Article. A violation is a charge/count filed with the court. It is not a conviction, and one defendant may represent multiple violations.

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2016  
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