

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1270 (Delegate Hettleman)
 Judiciary

Maryland Elder Abuse Victims Resources Committee

This bill establishes the Maryland Elder Abuse Victims Resources Committee and requires the Department of Human Services (DHS) to provide staff support and technical assistance. The Attorney General (or designee) must chair the committee. The bill specifies committee membership, meeting requirements, appointment and removal procedures, and the committee’s purpose and functions. The Secretary of Human Services, after consultation with the committee, may adopt regulations to carry out the bill’s provisions. Members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The Governor must fully fund the committee beginning in fiscal 2021. By January 1, 2020, and annually thereafter, the committee must report to the Governor and the General Assembly. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: No effect in FY 2019. General fund expenditures increase by at least \$95,300 in FY 2020 for DHS to establish the committee, hire additional staff, and maintain an office for the committee. The Office of the Attorney General and other State agencies can participate with existing resources. Revenues are not affected. Although the bill requires the Governor to provide specified funding, the bill does not establish a mandated appropriation, as discussed below.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	95,300	90,300	93,300	96,400	99,600
Net Effect	(\$95,300)	(\$90,300)	(\$93,300)	(\$96,400)	(\$99,600)

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

Local Effect: The bill is not anticipated to impact local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: “Elder abuse” means a single or repeated intentional or negligent act, or failure to act, that causes harm or a risk of harm to an individual who is age 50 or older by a family member, a caregiver, or any other individual with whom there is an expectation of trust. “Harm” means (1) physical injury; (2) serious emotional distress; or (3) economic damages.

Functions of the Committee

The purpose of the committee is to (1) determine ways to increase the availability of resources for older adults who do not lack capacity and are ineligible to be served by adult protective services; (2) establish a continuing report on the status of older adults in the State, including the costs of victimization and the calculation of the efficacy of resources used to prevent and mitigate elder abuse; and (3) establish effective statewide policies to prevent elder abuse.

The committee must advise DHS on developing and disseminating information on best practices for and information and recommendations on (1) identifying elder abuse; (2) providing trauma-informed services to elder abuse victims; (3) addressing elder abuse through multidisciplinary approaches; (4) educating the public and service providers about elder abuse; (5) preventing elder abuse; and (6) coordinating among State agencies, victim service providers, local law enforcement agencies, and local elder abuse teams.

The committee must also evaluate State and local funding resources and needs to determine whether funding allocations are sufficient and appropriate to implement the best practices developed by DHS.

Required Funding

Beginning in fiscal 2021, and every fiscal year thereafter, the Governor must include an appropriation in the State budget to carry out the bill’s provisions, including funds for employment of a full-time assistant Attorney General and committee staff and operation and maintenance of an office for the committee.

Coordinated Community Elder Abuse Response System

The bill specifies that, in order to promote the health and independence of, and provide justice for, older adults, the General Assembly finds that there needs to be a coordinated

community elder abuse response system. More specifically, a coordinated response system will (1) assess needs to identify the scope of problems and service gaps; (2) recommend uniform response resources; (3) identify underserved elder abuse victims who do not lack capacity but need protection and help; (4) assess, compile, and analyze data on the financial cost of victimized older adults; and (5) look to establish a single voice that protects and champions the rights of older adults in the State through an Elder Justice Coordinator.

Current Law:

Abuse or Neglect of a Vulnerable Adult

Sections 3-604 and 3-605 of the Criminal Law Article prohibit the abuse or neglect of a vulnerable adult. “Abuse” means the sustaining of physical pain or injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the vulnerable adult’s health or welfare is harmed or threatened. “Abuse” includes the sexual abuse of a vulnerable adult. “Abuse” does not include an accepted medical or behavioral procedure ordered by a health care provider authorized to practice under the Health Occupations Article or emergency medical personnel acting within the scope of the health care provider’s practice.

A caregiver, a 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 under this provision 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, a 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. 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 under this provision 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.

Financial Abuse

Section 8-801 of the Criminal Law Article prohibits a person from knowingly and willfully obtaining 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. Additionally, 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 68 years old, with intent to deprive the individual of the individual’s property.

Background: The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that a review of the Maryland Sentencing Guidelines Database indicates that MSCCSP received information for five individuals sentenced for abuse or neglect of a vulnerable adult in the first degree and six individuals sentenced for abuse or neglect of a vulnerable adult in the second degree in the State’s circuit courts during fiscal 2018.

According to the Judiciary, there were 81 violations in the District Court (which resulted in 3 guilty dispositions) and 55 violations in the circuit courts (which resulted in 10 guilty dispositions) for exploitation of a vulnerable adult under § 8-801 of the Criminal Law Article during fiscal 2018.

State Expenditures: DHS general fund expenditures increase by at least \$95,316 in fiscal 2020, which assumes a 30-day start-up delay. This estimate reflects the cost of hiring one full-time assistant Attorney General as required, who will also serve as the required staff for the committee and provide legal support. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, as well as funds to support operation and maintenance of an office for the committee in line with the bill’s requirements. Although not required, this analysis assumes that the Governor provides full funding for the committee beginning in fiscal 2020. To the extent the committee staffing provision of the bill is interpreted as requiring at least one more position, costs further increase.

Position	1.0
Salary and Fringe Benefits	\$87,301
One-time Start-up Costs	4,890
Ongoing Operating Expenses	625
Other Operating Expenses	<u>2,500</u>
Total FY 2020 State Expenditures	\$95,316

Future year expenditures reflect a full salary with annual increases and employee turnover, ongoing operating expenses, and continued maintenance of an office for the committee.

Although the bill specifies that, beginning in fiscal 2021, the Governor must include an appropriation in the State budget to carry out the bill's provisions, including funds for employment of a full-time assistant Attorney General and committee staff and operation and maintenance of an office for the committee, the bill's language does not meet the requirements necessary to establish a mandated appropriation. Generally, any legislation mandating funding of a program must include either an exact dollar figure, or a funding formula that makes it possible to compute the level of funding required.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Services; Maryland Department of Aging; Office of the Attorney General; Department of State Police; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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an/jc

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510