

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 475 (Senator Kramer)
 Judicial Proceedings

Office of the Attorney General – Senior and Vulnerable Adult Asset Recovery Unit

This bill establishes the Senior and Vulnerable Adult Asset Recovery Unit in the Office of the Attorney General (OAG). Beginning in fiscal 2021, the Governor must annually appropriate at least \$450,000 to carry out the bill’s requirements. At the direction of the Attorney General, the unit must use the required funding to (1) hire new staff for the unit and (2) investigate and assist prosecution by the unit.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$450,000 beginning in FY 2021. Although not required, this analysis assumes funding totaling about \$316,300 to establish the new unit is provided in FY 2020. Minimal increase in general fund revenues from the collection of costs awarded to OAG by the courts in successful cases brought by the unit. **The bill establishes a mandated appropriation beginning in FY 2021.**

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenues	-	-	-	-	-
GF Expenditure	316,300	450,000	450,000	450,000	450,000
Net Effect	(\$316,300)	(\$450,000)	(\$450,000)	(\$450,000)	(\$450,000)

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

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes a dedicated unit to bring a civil action for damages, as specified, against a person who violates the State’s prohibition against exploitation of a vulnerable adult on behalf of the victim of the offense or, if the victim is deceased, the victim’s estate. The unit may recover damages for property loss or damage. If the unit prevails in an action, the costs of the action may be recovered for the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action.

Current Law: Chapter 114 of 2016 generally authorizes the Division of Consumer Protection in OAG to bring a civil action for damages against a person who violates the State’s prohibition against exploitation of a vulnerable adult on behalf of a victim of the offense or, if the victim is deceased, the victim’s estate. Chapter 794 of 2018 extends this authority to the Securities Commissioner of the Division of Securities of OAG. The division and commissioner may recover damages for property loss or damage. If the division or commissioner prevails in an action, the costs of the action may be recovered for the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action.

Standing and Exploitation of a Vulnerable Adult

“Standing” typically refers to an individual’s capacity to participate in a lawsuit. In order to demonstrate standing, an individual usually has to demonstrate that he or she experienced an adverse effect from the law or action in question, which will continue unless the court grants relief.

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 individual of the individual’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>Maximum Penalty</u>
Less than \$1,500	Misdemeanor – 1 year and/or \$500
\$1,500 to less than \$25,000	Felony – 5 years and/or \$10,000
\$25,000 to less than \$100,000	Felony – 10 years and/or \$15,000
\$100,000 or more	Felony – 20 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 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: Although discretionary, this analysis reflects the unit becoming functional with the October 1, 2019 effective date of the bill (assuming the necessary funding is provided). In subsequent years, the mandated appropriation is used to fund the unit.

General fund expenditures increase by \$316,318 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring four additional employees (one staff attorney, one investigative auditor, one management associate, and one assistant Attorney General) to establish the dedicated unit. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

New Positions	4.0
Salaries and Fringe Benefits	\$294,883
Operating Expenses	<u>21,435</u>
Total FY 2020 State Expenditures	\$316,318

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses and the mandated appropriation. Any residual mandated funding in subsequent years (about \$55,000 in fiscal 2021, \$27,000 in fiscal 2023, and \$13,400 in fiscal 2024) is assumed to be used for activities related to the enforcement of financial crimes against vulnerable adults.

OAG advises that the Consumer Protection Division has one full-time attorney who works on activities that, under the bill, will be handled by the new dedicated unit. As a result, this

analysis assumes that employee is no longer *entirely* funded by the Consumer Protection Recoveries Special Fund. Instead, funding for the position is expected to be provided through *both* general and special funds beginning in fiscal 2021.

Although special fund expenditures may decrease minimally under the bill to the extent that some portion of the mandated appropriation is used to pay for expenditures related to that employee, this analysis assumes those monies may be expended for other consumer protection purposes. Under this scenario, the minimum mandated amount (\$450,000) likely suffices for all four new positions through fiscal 2025; thereafter, additional funding is likely necessary. However, if the existing position is *fully* funded with the mandated funding, then additional monies (beyond the minimum \$450,000) are needed as soon as fiscal 2021.

Additional Information

Prior Introductions: None.

Cross File: HB 485 (Delegate Stein) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2019
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