

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1282 (Delegate Mautz, *et al.*)
 Judiciary

Criminal Procedure - Vulnerable Adult Abuse Registry

This bill requires the Maryland Department of Health (MDH) to establish and maintain a registry containing the names of individuals who have been (1) convicted of a vulnerable adult abuse crime or (2) found by a State agency to have abused, neglected, or misappropriated or exploited the property of a vulnerable adult.

Fiscal Summary

State Effect: General fund expenditures increase by a minimum of \$400,100 in FY 2021. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	400,100	149,200	152,700	157,900	163,400
Net Effect	(\$400,100)	(\$149,200)	(\$152,700)	(\$157,900)	(\$163,400)

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 operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Required Consultation and Prohibition against Hiring

A State agency that provides institutional or in-home services to vulnerable adults (1) must consult the registry prior to hiring an employee or using a volunteer and (2) may not hire or otherwise use the services of an individual who is listed on the registry.

Public Access to Registry

The names and other information contained in the registry must be available for public inspection, as specified in the bill. MDH may discharge its responsibilities under the bill either directly or through interagency agreement if authorized access to the records by means of a single centralized agency is assured.

Reporting Requirement

A State agency that finds that an individual has committed more than one offense against a vulnerable adult within a five-year period must – after providing the individual with an opportunity for an administrative due process hearing – notify MDH, as specified by the bill, of the individual's name for inclusion in the registry. The notification to MDH must include (1) a copy of an administrative or judicial order or any other evidence indicating that the agency has afforded the individual an opportunity for an administrative due process hearing in accordance with specified requirements; (2) the individual's last known mailing address; (3) the definition of abuse, neglect, or misappropriation or exploitation of property that was used by the agency in finding abuse; and (4) other information that MDH may determine is necessary to adequately identify the individual for purposes of administrative hearings or when inquiry to the registry is made. The bill does not require a State agency to establish new procedures or to modify existing procedures the agency may use to provide due process.

The State's Attorney must, on conviction of an individual for a vulnerable adult abuse crime, report the individual's name to MDH.

Entry and Notification

On receiving a notification from either a State agency or the State's Attorney, MDH must (1) enter the individual's name in the registry and (2) maintain and, upon request, make available, the name of the reporting agency or court and the applicable definition of abuse, neglect, or misappropriation or exploitation of property supplied by the reporting agency

or court. On entry of such information, MDH must notify the individual (at the individual's last known address) of the individual's inclusion in the registry.

Removal from Registry

An individual may challenge the accuracy of the report that the finding or conviction occurred or of a fact issue related to the correct identity of the individual. If the individual makes such a challenge within 30 days of notification of the individual's inclusion in the registry, MDH must afford the individual an opportunity for a hearing on the matter. An individual's name must be removed immediately from the registry if (1) after a hearing, MDH determines that the findings or conviction never occurred or (2) at the final step taken in an appellate process, a reported conviction, emergency order, or administrative hearing result is reversed.

Alternatively, a State agency that has placed an individual's name in the registry may recommend to MDH, as specified by the bill, the removal of the individual's name if (1) the agency finds that the placement of the individual's name in the registry was in error or (2) an advisory group convened by the agency, as specified by the bill, determines that removal of the individual's name from the registry is clearly warranted and recommends to the agency a waiver and removal of the individual's name.

The decision and the written recommendations of the State agency and advisory group must be open for public inspection. If the decision is to remove the individual's name from the registry, MDH must do so. However, an individual who is dissatisfied with the State agency's decision may appeal in a contested case hearing.

Immunity

Unless an individual acts in bad faith or with malicious purpose, an individual who submits an allegation to MDH for inclusion in the registry, or who testifies in a proceeding arising from the allegation, is immune from civil or criminal liability (except for liability for perjury) for making the report and for testifying. A person that declines to employ or otherwise use the services of an individual listed in the registry, or that terminates the individual, is immune from suit by or on behalf of that individual.

Current Law/Background:

Crime of 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.

Exploitation of a Vulnerable Adult

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.

Investigation of Abuse or Neglect of a Vulnerable Adult

Statutory provisions specify procedures for the reporting and investigation of reports of the abuse or neglect of a vulnerable adult, the specifics of which depend on the adult who is alleged to have been abused or neglected. For example, a person who believes that an individual with a developmental disability has been abused must report the alleged abuse to the executive officer or administrative head of the licensee; the report may be oral or written. The executive officer or administrative head must report the alleged abuse to an appropriate law enforcement agency, which must investigate, as specified. During the course of the investigation, the law enforcement agency must include a determination about the nature, extent, and cause of abuse; the identity of the alleged abuser or abusers; and any other relevant information. Further, the Developmental Disabilities Administration must maintain a central registry of abuse reports and their disposition.

A person or an employee of a "facility" (a public or private clinic, hospital, or other institution that provides or purports to provide treatment or other services for individuals with mental disorders) or of MDH who receives a complaint of abuse must promptly report the alleged abuse to an appropriate law enforcement agency or the administrative head of the facility, who must promptly report the alleged abuse to an appropriate law enforcement agency. A report may be oral or written. Within 10 working days after the investigation is

complete, the law enforcement agency must submit a written report of its findings to specified entities.

Statutory provisions also set forth procedures to report and investigate complaints regarding the abuse of funds of individuals within specified facilities, including related institutions. The complaint must be made to the local department of social services or, if the patient is older than age 65, to the Department of Aging. The recipient of the complaint must take specified actions, including investigating the complaint and giving the alleged abuser specific notice of the alleged abuse and an opportunity to reply to the charges stated in the complaint.

If a report does not involve the abuse of a patient in a mental health facility, a facility for individuals with an intellectual disability, a nursing home, or a hospital, investigation procedures are governed by the Family Law Article. Pursuant to the Family Law Article, any health care practitioner, police officer, or human service worker who contacts, examines, attends, or treats an alleged vulnerable adult, and who has reason to believe that the alleged vulnerable adult has been subjected to abuse, neglect, self-neglect, or exploitation, must notify the local department of social services. If the health care practitioner, police officer, or human service worker is a staff member of a hospital or public health agency, he or she must immediately notify and give all the information required by law to the head of the institution or its designee. The report must be made by telephone, in writing, or by direct communication as soon as possible. Individuals other than those required to report due to their professional responsibilities may also file a report with a local department. The local department must begin a thorough investigation, as specified, and may request assistance from other entities, including the State's Attorney or law enforcement.

As shown in **Exhibit 1**, the number of cases investigated for neglect, sexual and physical abuse, and financial exploitation of vulnerable adults by the Department of Human Services increased slightly from fiscal 2018 to 2019.

Exhibit 1
Abuse or Neglect and Financial Exploitation of a Vulnerable Adult
Investigations by the Department of Human Services and Convictions
Fiscal 2018-2019

<u>Investigations</u>	<u>FY 2018</u>	<u>FY 2019</u>
Total Cases Investigated	2,772	2,806
Indicated Neglect by Others	227	261
Indicated Physical Abuse	56	70
Indicated Sexual Abuse	16	6
Indicated Financial Exploitation	306	306
<u>Convictions</u>		
For Abuse or Neglect		
First Degree	5	0
Second Degree	6	11
For Financial Exploitation	25	15

Source: Department of Human Services, Maryland State Commission on Criminal Sentencing Policy

The Office of Health Care Quality (OHCQ) within MDH generally regulates and licenses health care facilities in the State. OHCQ must investigate complaints within a regulated facility to determine compliance with State and federal regulations to ensure that minimum standards of care are met. OHCQ surveyors look at a facility’s process for investigating an alleged incident.

Each of Maryland’s health occupations boards employs or contracts with investigative staff to review complaints and has disciplinary authority – including the authority to deny, suspend, and revoke licenses – over the health care practitioners in its respective jurisdiction. In addition, a number of health occupations boards provide online, publically accessible registries that contain information regarding whether a health care practitioner has a valid license and/or has been the subject of disciplinary action.

State Expenditures: MDH advises that OHCQ most likely will host the registry required by the bill. MDH estimates that it needs a new abuser registry unit to be staffed by six additional full-time employees, at a cost of approximately \$654,705 in fiscal 2021, increasing to \$493,526 by fiscal 2025. However, the Department of Legislative Services (DLS) estimates costs associated with the abuser registry to be lower than those estimated by MDH, as discussed below.

DLS notes that the bill specifies that a finding may be made by not only MDH, but by any State agency – which may be interpreted to include the various health occupations boards within the department – as well as law enforcement. As discussed above, all of these entities already investigate various allegations of abuse and coordinate with one another as appropriate. While the bill establishes *reporting* requirements, it does not establish additional or new *investigatory* requirements for State agencies.

Accordingly, DLS advises that general fund expenditures increase by a minimum of \$400,070 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of establishing and maintaining the registry, including hardware, computer programming costs, software, and one-time contractual services associated with the development of the registry. The estimate also reflects the cost of hiring (1) one full-time assistant Attorney General to evaluate data for inclusion in the registry, review challenges and recommendations, and participate in administrative hearings and (2) one full-time administrator to confirm and enter relevant information into the registry, notify individuals upon their inclusion in the registry, respond to requests for information, and provide general administrative support. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$115,047
One-time Contractual Services	275,000
Other Operating Expenses	<u>10,023</u>
Minimum FY 2021 State Expenditures	\$400,070

The DLS estimate represents the minimum level of staff needed to implement the bill. Although inclusion in the registry is limited to repeat offenders and those who have been convicted of the relevant offenses, it is unclear how many individuals will meet the criteria for placement on the registry (particularly depending on what definitions of abuse are used). If MDH receives a high volume of referrals under the bill, staffing costs may increase accordingly.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The number of notifications that MDH is likely to receive under the bill cannot be reliably estimated at this time. However, DLS advises that the affected State agencies can likely use existing resources to submit the required notifications to MDH and participate in any administrative hearings that result from the bill. It is assumed that State agencies can use existing procedures to provide due process.

The Office of Administrative Hearings (OAH) advises that if a registry is created, any additional cases in excess of approximately 140 annually are not absorbable and necessitate the hiring of an additional administrative law judge. Although the number of administrative hearings stemming from the bill cannot be reliably estimated at this time, DLS advises that any additional costs to OAH are likely to be absorbable.

Any impact to the trial courts is likely to be small enough to be handled with existing resources.

Additional Information

Prior Introductions: HB 23 of 2015, a substantially similar bill, received a hearing in the House Judiciary Committee but was subsequently withdrawn. HB 379 of 2014 received an unfavorable report from the House Judiciary Committee. HB 326 of 2013 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 333, received a hearing in the Senate Judicial Proceedings Committee but was subsequently withdrawn.

Designated Cross File: None.

Information Source(s): Maryland Department of Aging; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Human Services; Department of Public Safety and Correctional Services; Department of State Police; Office of Administrative Hearings; Department of Legislative Services

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