

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 702

(Senator Waldstreicher)

Judicial Proceedings

Criminal Law - Exploitation of Vulnerable Adult or Elderly Individual - Undue
Influence

This bill (1) redefines “undue influence” as it pertains to the prohibition on the exploitation of a vulnerable adult or an elderly individual and (2) adds factors the court must consider when determining whether property was obtained by undue influence. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any civil action or proceeding to determine a benefit from the estate, insurance proceeds, or property of a victim that is pending before the bill’s October 1, 2020 effective date.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

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

Small Business Effect: None.

Analysis

Bill Summary: “Undue influence” means excessive persuasion that causes a vulnerable adult or an individual at least age 68 to act or refrain from acting by overcoming that person’s free will and that results in inequity.

In determining whether property was obtained by undue influence, the court must consider (1) the vulnerability of the victim, including several specified factors; (2) whether the defendant knew or should have known of the alleged victim’s vulnerability; (3) the

defendant's apparent authority, including whether the defendant occupied specified roles, such as a fiduciary or care provider; (4) the actions or tactics used by the defendant, including whether the defendant engaged in specified activities; and (5) the equity of the result.

Current Law: 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 a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult's property. 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, with intent to deprive the individual of the individual's property.

The penalties for exploitation of a vulnerable adult or elderly individual vary based on the value of the property obtained, as discussed below. A sentence may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation. In addition to the following penalties, a violator must restore the property taken or its value to the owner or the owner's estate:

- Value of the property is less than \$1,500: Misdemeanor, imprisonment for up to one year and/or a \$500 maximum fine.
- Value of the property is at least \$1,500 but less than \$25,000: Felony, imprisonment for up to five years and/or a \$10,000 maximum fine.
- Value of the property is at least \$25,000 but less than \$100,000: Felony, imprisonment for up to 10 years and/or a \$15,000 maximum fine.
- Value of the property is \$100,000 or more: Felony, imprisonment for up to 20 years and/or a \$25,000 maximum fine.

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 shall have 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.

These provisions 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.

“Undue influence” means domination and influence amounting to force and coercion exercised by another person to such an extent that a vulnerable adult or an individual at least age 68 was prevented from exercising free judgment and choice.

Background: The Maryland State Commission on Criminal Sentencing Policy advises that a review of the Maryland Sentencing Guidelines Database indicates that the commission received information for 15 individuals sentenced to 15 total count of crimes involving the exploitation of a vulnerable adult or an elderly individual under § 8-801 of the Criminal Law Article in the State's circuit courts during fiscal 2019.

The Judiciary advises that in fiscal 2019, there were 47 violations in the District Court (which resulted in two guilty dispositions) and 55 violations in the circuit courts (which resulted in 8 guilty dispositions) under § 8-801 of the Criminal Law Article.

The Department of Public Safety and Correctional Services advises that the Division of Correction had one intake under § 8-801 of the Criminal Law Article during fiscal 2019. During this time, the Division of Parole and Probation received 18 intakes for people found guilty of fraud involving a vulnerable adult and one found guilty of exploitation of a vulnerable adult.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 320 (Delegate Shetty, *et al.*) - Judiciary.

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

Fiscal Note History: First Reader - February 17, 2020
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