

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 161

(Delegate Shetty)

Judiciary

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, 2022 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: The bill redefines “undue influence” by (1) repealing the requirement that the domination and influence exercised over the individual amount to force and coercion and (2) adding references to excessive persuasion and inequity. Thus, under the bill, “undue influence” means domination, influence, *or excessive persuasion* exercised by another person to such an extent that a vulnerable adult or an individual at least 68 years old was prevented from exercising free judgment and choice *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. "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.

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 1 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 5 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.

A violation is also considered an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA) and is subject to MCPA's civil and criminal penalty provisions.

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.

Additional Information

Prior Introductions: HB 347 of 2021, a similar bill, passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 320 of 2020, a similar bill, passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 702, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: None.

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

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