

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1191
Judiciary

(Delegate Pasteur, *et al.*)

Judicial Proceedings

Task Force on Preventing and Countering Elder Abuse

This bill establishes the Task Force on Preventing and Countering Elder Abuse, staffed by the Maryland Department of Aging. The task force must (1) study existing laws, policies, and practices relating to elder abuse and other crimes commonly committed against older adults and (2) make recommendations regarding changes to State law, policy, and practice that would aid in preventing elder abuse. By December 31, 2023, the task force must submit a preliminary report of its findings and recommendations to the Governor and the General Assembly; a final report is due by December 31, 2024. **The bill takes effect July 1, 2023, and terminates June 30, 2025.**

Fiscal Summary

State Effect: General fund expenditures increase by \$26,500 in FY 2024 for contractual staff. Future years reflect inflation and the termination of the contractual employee during FY 2025. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	26,500	11,400	0	0	0
Net Effect	(\$26,500)	(\$11,400)	\$0	\$0	\$0

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

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

Small Business Effect: None.

Analysis

Bill Summary: In making recommendations, the task force must consider the role of the State; the amount of resources to be expended; ways to provide transparency to the public; funding mechanisms; oversight measures; and ways to prosecute elder abuse.

The Governor must designate the chair of the task force. Task force members are not eligible for compensation but are eligible for expense reimbursements under the standard State travel regulations.

Current Law:

Abuse or Neglect of a Vulnerable Adult

A “vulnerable adult” is an adult who lacks the physical or mental capacity to provide for the adult’s daily needs. 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

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 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; and
- 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.

State Expenditures: General fund expenditures increase by \$26,506 in fiscal 2024, which assumes a 60-day start-up delay from the bill's July 1, 2023 effective date (in order to give sufficient time for the task force to be appointed while also accounting for the interim report due date of December 1, 2023). This estimate reflects the cost of hiring one part-time contractual employee to staff the task force and perform the research necessary to inform the task force's work. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	0.5
Salary and Fringe Benefits	\$19,452
Operating Expenses	<u>7,054</u>
Total FY 2024 State Expenditures	\$26,506

Future year expenditures reflect an annual salary increase and employee turnover as well as an annual increase in ongoing operating expenses. The estimate assumes the contractual employee is terminated at the end of calendar 2024, after the final report of the task force is submitted.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing budgeted resources.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 797 (Senators Hettleman and Jennings) - Judicial Proceedings.

Information Source(s): Maryland Department of Aging; Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2023
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