



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB320 - Criminal Law - Exploitation of Vulnerable Adult or Elderly Individual - Undue Influence

Chairman Clippinger, Vice-Chair Atterbeary and Members of the Judiciary Committee, thank you for the opportunity to testify today in support of HB320.

Undue influence is a doctrine that dates back to a Common law case in 1617, and although our understanding of undue influence has evolved, our laws across the country and here in Maryland have not kept up. These cases are incredibly difficult to prove, in part because they often occur behind closed doors without witnesses, there is a lack of clear definition for what ‘undue influence’ is under the law, and it is often complicated by the assumption that mental capacity and undue influence are linked, which is not always necessary. For example, one could be of sound mind and still fall prey to undue influence due to other factors, such as the relationship between the influencer and victim.

This bill will strengthen our criminal code as it pertains to the definition of ‘undue influence’ of a vulnerable adult, specifically as it relates to the transfer of property. The idea for HB320 came by way of my constituent, Claudia, whose late uncle was defrauded by their financial advisor, who was able to convince her uncle to place the advisor into the uncle’s will prior to his passing. She will share her story today, and has submitted additional testimony for the record. It is important to note that while there was a civil suit that settled, a criminal case was not pursued, in part because the standard in Maryland is so difficult to prove that cases like these are rarely successful.

HB320 adopts language that was first enacted in California in 2014 after a multi-year study on how to protect seniors from financial exploitation via undue influence. HB320 provides a clear definition for undue influence and bases it on detailed recommendations by psychologists, sociologists, criminologists, victimologists, legal experts and courts that have focused on the following:

1. Victim characteristics that contribute to vulnerability;
2. The power dynamic between the influencer and the victim;
3. Improper actions or tactics taken by the influencer; and
4. Unfair, improper, ‘unnatural’ or unethical transactions or outcomes

Each of these components are addressed in HB320. The bill defines ‘undue influence’ as “excessive persuasion that causes a vulnerable adult or an individual at least 68 years old to act or refrain from acting by overcoming that person’s free will and that results in inequity.” It then defines in section (G) what the court shall consider when determining whether undue influence was used to obtain property. It defines characteristics that would cause the victim to be vulnerable, whether the defendant knew or should have known of the alleged victim’s

vulnerability, the defendant's apparent authority, various tactics that could be used to engage in undue influence, and the inequity that results from the action.

It is imperative that we examine and improve this section of our code, as the number of potentially impacted individuals are growing at a rapid rate. Between 2000- 2010, Marylanders over the age of 68 grew approximately 6,862 per year, while between 2010-2018 that number skyrocketed to 21,815 per year.

I respectfully request a favorable report. Thank you.

Elements of Undue Influence Described In Professional Literature

Category I	Category II	Category III	Category IV
Victim characteristics contributing to vulnerability	Influencers' characteristics, sources of power, and opportunities	Actions or tactics, including emotional, psychological, and legal manipulation	Unfair, improper, "unnatural," or unethical transactions or outcomes
<p>Incapacity resulting from:</p> <ul style="list-style-type: none"> • Dementia • Mental illness • Physical/functional decline • Accident, injury <p>Alert, oriented, physically capable but has vulnerabilities that have been induced or are personality based.</p> <p>Deficits in judgment or insight</p> <p>Altered state of mind (may be induced):</p> <ul style="list-style-type: none"> • Under effect of medications • Sleep deprivation • Under the influence of alcohol • Pseudo dementia 	<p>Persons in positions of trust and confidence. May be:</p> <ul style="list-style-type: none"> • Formal (e.g., fiduciary) • Informal (e.g., family member) <p>Professional authority resulting from job, profession, experience, training:</p> <ul style="list-style-type: none"> • Care provider • Health care professional • Therapist • Clergy or spiritual advisor <p>Superior strength</p> <p>Personality traits:</p> <ul style="list-style-type: none"> • Charismatic • Persuasive 	<p>Controls weaker party's social interactions:</p> <ul style="list-style-type: none"> • Imposes isolation • Insulates relationship from outside supervision and advisors • Suppresses loyalties • Induces sense of obligation and indebtedness • Plays on loyalties (family, cultural ties, etc.) • "Poisons" relationships with others • Creates "siege mentality" (all others intend harm) <p>Controls weaker party's behavior:</p> <ul style="list-style-type: none"> • Imposes rules, rewards, punishments • Suppresses old behaviors 	<p>Victim loses assets or property</p> <p>Victim loses control of assets or property</p> <p>Victim loses housing or care</p> <p>Victim's care is inadequate or not commensurate with elder's assets</p> <p>Transactions (including changes to wills, trusts, purchases, etc.) that:</p> <ul style="list-style-type: none"> • Unfairly benefit influencers (purchases property below market value) • Involve gifts that are not commensurate with length and quality of relationship • Are abrupt

Category I	Category II	Category III	Category IV
<p>Victim characteristics contributing to vulnerability</p> <p>Emotional distress resulting from situational events and losses:</p> <ul style="list-style-type: none"> • Depressed • Lonely • Anxious • Fearful • Grieving <p><u>Personality types/disorders</u></p> <p>Dependent personality:</p> <ul style="list-style-type: none"> • Unable to make decisions without advice and reassurance • Avoids personal responsibility • Fears abandonment • Feels helpless when relationships end, causing person to move into other relationships immediately • Overly sensitive to criticism • Pessimistic and lacks confidence in ability to care 	<p>Influencers' characteristics, sources of power, and opportunities</p> <p>Privilege or disproportionate status based on:</p> <ul style="list-style-type: none"> • Gender • Age • Race • Class • Citizenship <p>Caregiver's power derived from access, authority, opportunity, and physical strength</p> <p>"Reliant relationships." A weaker person relies on others for judgments or advice.</p> <p>"Dominant-subservient relationships." A weaker person (e.g., someone with a mental impairment) is subservient to a dominant person.</p>	<p>Actions or tactics, including emotional, psychological, and legal manipulation</p> <ul style="list-style-type: none"> • Deprives person of sleep and sensory stimulation • Determines what person wears, what person eats, how person spends time, person's finances • Controls person's basic needs • Confines weaker party <p>Controls information and communication:</p> <ul style="list-style-type: none"> • Uses deception • Withholds information about outside world • Manipulates or reinterprets information <p>Controls weaker party's thoughts:</p> <ul style="list-style-type: none"> • Instills new attitudes • Allows no criticism or input • Discourages critical thinking (defines world as good-evil, black-white) 	<p>Unfair, improper, "unnatural," or unethical transactions or outcomes</p> <ul style="list-style-type: none"> • Diverge from victim's expressed wishes or past patterns • Are "unnatural" (provisions are different from what might be expected) • Relationship of parties has developed recently and is of short duration <p>Behavior of professional or caregiver falls outside of professional responsibility or breaches fiduciary duty, or is in other ways, illegal, immoral, or inappropriate:</p> <ul style="list-style-type: none"> • Fiduciary or caregiver as beneficiary • Caregiver, therapist, etc. as sexual partner <p>Subjugation</p>

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<p>for self</p> <ul style="list-style-type: none"> • Fears losing support or approval if they disagree with others • Finds it difficult to be alone • Willing to tolerate mistreatment and abuse from others • Places the needs of their caregivers above their own • Naïve and lives in fantasy <p>Acquiescent personality</p> <p>Passive personality</p>		<p>Creates and/or reinforces feelings of helplessness or powerlessness:</p> <ul style="list-style-type: none"> • Puppeteering: Inducing trust or submissiveness to point that victims mindlessly follow whatever demands or requests the exploiters make. • Reinforcing dependency by withholding care or assistive devices, preventing access by service providers, etc. • Raises questions about competence (e.g., as in the movie <i>Gaslight</i>) • Promotes idea that controller is all-knowing or all-powerful <p>Threats/enticements:</p> <ul style="list-style-type: none"> • Uses romantic or sexual enticement to gain compliance 	<p>Victim's lifestyle and environment do not reflect stated or past preferences</p>

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		<ul style="list-style-type: none"> • Uses physical intimidation or threats, including threats to kill, abandon, or institutionalize victim <p>Emotional control and manipulation:</p> <ul style="list-style-type: none"> • Elicits sympathy for influencer • Induces shame and guilt • Dehumanizes person by keeping him or her in filth • Instills notion that problems are all victim's fault • Produces emotional highs and lows, excitement • Shows intermittent kindness <p>Beneficiaries control execution of transactions:</p> <ul style="list-style-type: none"> • Aggressively initiates transactions (active procurement of finances and financial instruments) 	

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		<ul style="list-style-type: none"> • Initiates actions when elder lacks requisite capacity • Initiates actions when elder is near death, on heavy medication, recently widowed, hospitalized • Emphasizes haste • Discourages third party advisors or independent advice • Carries out transactions in secrecy • Carries out transactions outside of normal settings (e.g., in a nursing home) • Makes repeated solicitations <p>Induces feelings of gratitude and loyalty suggestive of the "Stockholm syndrome"</p> <p>Manipulates information to suggest that the influencer is being unfairly perceived, treated, or judged</p>	

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		<p>Reduces self-efficacy or induces "learned helplessness" (e.g., arbitrarily rewarding and punishing subjects)</p> <p>Enlists others to help gain compliance through peer or group pressure</p> <p>Exercises multiple forms of persuasion</p>	