

---

**To:** Members of Senate Judicial Proceedings Committee

**From:** Vulnerable Adult Exploitation Joint Task Force

**Date:** February 2, 2021

**Subject:** **SB 327:** Civil Actions – Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)

**Position:** **Support**

---

The Vulnerable Adult Exploitation Task Force SUPPORTS SB 327: Civil Actions – Financial Exploitation of Vulnerable Adults (The Maryland SAFE Act)

### **VULNERABLE ADULT EXPLOITATION TASK FORCE**

In 2019, the Section Councils of the Estate & Trust Law Section and the Elder Law and Disability Rights Section of the Maryland State Bar Association organized the Vulnerable Adult Financial Exploitation Task Force in order to provide an interdisciplinary approach to tackling the vexing concerns around financial exploitation of vulnerable adults. As part of its purpose, the Task Force seeks to provide input and insight supportive of criminal and civil legislation to redress the abuse of vulnerable adults. A full listing of the Task Force's members and their MSBA Section affiliations is provided at the end of this testimony.

### **VULNERABLE ADULT FINANCIAL EXPLOITATION – THE CRIME OF THE 21<sup>ST</sup> CENTURY**

We believe that financial exploitation of vulnerable adults is endemic in our society today. As attorneys and family counselors, we too often hear allegations of deception, intimidation, and undue influence to defraud vulnerable adults of their property. Our experiences were reflected in the 2009 report that is commonly referred to as the MetLife Study.<sup>1</sup> This was an extensive study conducted about elder physical and emotional abuse and financial exploitation. With its authors characterizing financial elder abuse as ***the crime of the 21st Century***, the MetLife Study states that up to 1,000,000 older Americans may be targeted, and that related costs like health care, social services, investigations, legal fees, prosecution, lost income and assets can reach tens of millions of dollars annually.

The current pandemic caused by the COVID 19 virus has highlighted the financial fragility of vulnerable adults. Our legal system must be able to provide access to justice in a variety of ways so that the financial security of vulnerable adults can be protected. We believe that The Maryland SAFE Act will help us achieve this goal.

### **SB327 PROVIDES ACCESS TO JUSTICE TO REDRESS CASES OF VULNERABLE ADULT FINANCIAL EXPLOITATION**

---

<sup>1</sup> MetLife and VPI Mature Market Institute, the National Committee for the Prevention of Elder Abuse (NCPEA) and Virginia Polytechnic Institute and State University entitled *Broken Trust: Elders, Family and Finances*.

Under current Maryland law, remedies for financial exploitation are mostly limited to criminal actions, which have been largely ineffective<sup>2</sup> for the following reasons:

- (1) There is a strong reluctance of victims to involve the police in family matters;
- (2) There is a very high burden of proof necessary to obtain a conviction (beyond reasonable doubt) and
- (3) There are only limited resources available to handle these case by state-funded agencies charged with doing so, such as the Offices of the States Attorney, the Attorney General's Office and Adult Protective Services. .

The Task Force, after reviewing what other states were doing to address this crisis, determined that a different approach would be needed – a civil cause of action. The Task Force reviewed the statutes of many states, but focused on the laws of Delaware, California and Florida, as well as guidelines that were provided by the American Bar Association<sup>3</sup>, and after more than six months of diligent work, developed the Maryland SAFE Act.

The Maryland SAFE Act creates a new civil cause of action for financial exploitation that provides remedies similar to those provided in wage payment and collection statutes, including allowing the victim to be awarded treble damages, attorney's fees, and equitable relief, in addition to recovering the value of the loss. Maryland law currently provides no such civil remedy; rather, a victim of financial abuse must rely on the criminal statutes, with its heavy burden of proof, or on actions taken by government agencies on their behalf to get back only the property that was stolen, if that is even possible. As a civil cause of action with enhanced remedies, the Maryland SAFE Act will provide a path for victims to recover their property with an easier burden of proof.

The SAFE Act contains broad definitions of "financial exploitation" and "vulnerable adults" and expands the list of parties who may bring suit to recover assets lost by the vulnerable adult. With the law more clearly defined and applied, and with a reasonable burden of proof, litigation against a perpetrator of financial abuse should be easier to pursue with better results. The broad scope of this Act will also serve as a deterrent to would-be perpetrators of financial abuse.

### **THE VULNERABLE ADULT EXPLOITATION TASK FORCE** **SUPPORTS SB347**

We urge you to SUPPORT this bill and to vote favorably to have it submitted to the full Senate for approval.

---

<sup>2</sup> Maryland's Legislative Services stated in its Fiscal & Policy Analysis for HB320 in 2020 that during 2019, Maryland's Judiciary reported 47 violations of Section 8-801 of the Criminal Law Article in the District Court regarding financial exploitation, which resulted in two guilty dispositions, and 55 violations in the Circuit Court, which resulted in 8 guilty dispositions

<sup>3</sup> *The Model Civil Provisions of Elder Financial Exploitation* (April 2017) by ABA Commission on Law and Aging and the National Center for Victims of Crime.

### **FOR MORE INFORMATION**

Please contact Michael W. Davis, Chair, Vulnerable Adult Exploitation Task Force, if you have any questions.

Michael W. Davis  
Davis, Agnor, Rapaport & Skalny, LLC  
10211 Wincopin Circle, Suite 600  
Columbia, MD 21044  
(w) 410-995-5800, ext. 1262  
(c) 443-472-2965  
[mdavis@darslaw.com](mailto:mdavis@darslaw.com)  
[www.darslaw.com](http://www.darslaw.com)

### **MEMBERS OF THE VULNERABLE ADULT EXPLOITATION TASK FORCE**

#### ESTATE & TRUST SECTION COUNCIL

#### ELDER LAW AND DISABILITY RIGHTS SECTION COUNCIL

#### OTHER

---

Mary Beth Beattie  
Todd Bornstein  
Danielle Cruttenden  
Michael W. Davis  
Jeffrey Glaser

Morris Klein  
May-Lis Manley  
Elena Sallitto  
Ryan Wilson

Angela Grau,  
Litigation Section Council  
Doyle Niemann,  
Criminal Law Section  
Council  
Adam M. Spence