

HB161 - Exploitation of Vulnerable Adult in Senate

Uploaded by: Doyle Niemann

Position: FAV

To: Members of The Senate Judicial Proceedings Committee

From: Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section

Date: March 21, 2022

Subject: **HB161 – Criminal Law – Exploitation of Vulnerable Adult or Elderly Individual – Undue Influence**

Position: **Support**

The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Supports HB161 – Criminal Law – Exploitation of Vulnerable Adult or Elderly Individual – Undue Influence** as passed by the House.

This bill defines and clarifies the definition of undue influence in the context of exploitation of a vulnerable adult.

Current law makes it a crime to use deception, intimidation and undue influence to secure the property of a vulnerable adult. This bill identifies specific factors that should be considered in evaluating whether undue influence was involved. This includes whether the end result was inequitable.

The exploitation of vulnerable adults is a serious and growing problem. The current law suffers from a lack of definition, which this bill addresses. This would be beneficial to all parties and avoid undue surprise or conflict.

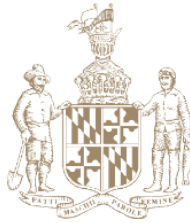
For the reasons stated, we **Support HB161 – Criminal Law – Exploitation of Vulnerable Adult or Elderly Individual – Undue Influence**.

If you have questions about the position of the Criminal Law and Practice Section's Legislative Committee, please feel free to address them to me at 240-606-1298 or at doyleniemann@verizon.net.

HB161_FAV_DeIShetty.pdf

Uploaded by: Emily Shetty

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HB161

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

Testimony in SUPPORT

Chair Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee, thank you for the opportunity to testify in support of House Bill 161. HB161 is very similar to bills that have been before your committee during the prior two sessions, HB347 in 2021 and HB320 in 2020. This year, HB161 passed both the Judiciary Committee and the House of Delegates unanimously.

As you may recall, 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 and the law lacks a clear definition for what 'undue influence' is. The issue is often complicated by the assumption that mental capacity and undue influence are linked, which is not always the case. 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 HB161 came by way of my constituent, Claudia, whose late uncle was defrauded by their financial advisor. His financial advisor convinced her uncle to place the advisor into the uncle's will prior to his passing. It is important to note that while a civil suit was 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.

HB161 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. HB161 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 HB161. The bill defines ‘undue influence’ as “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.” It then defines in section (H) what the court shall consider when determining whether undue influence was used to obtain property. The bill also 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.

The difference between the bill before you and the previously introduced versions (HB347 in 2021 and HB320 in 2020) is that, at the request of the Montgomery County State’s Attorney’s Office, we removed the language “amounting to force and coercion” from the bill. This is because, in today’s modern world, criminals do not have to resort to force and coercion to commit these crimes. For example, internet phishing scams often involve skilled requests targeted at an elderly or vulnerable person’s fears. The removal of this language will help cases to move forward in situations where the individual willingly gives up assets as a result of this sort of undue influence.

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. Data from the 2020 census shows that persons 65 and over in Maryland now make up 15.9% of the state’s population, an increase of 3.7% since the last census.¹ The increase in the size of this population coupled with the impacts of the pandemic puts an increasing number of people at risk of falling victim to financial crimes.

I respectfully request a favorable report on HB161. Thank you.

¹ United States Census Bureau, Quickfacts, Maryland: <https://www.census.gov/quickfacts/MD>; Age 18 and Over Population for Maryland’s Jurisdictions: 2010 and 2000: https://planning.maryland.gov/MSDC/Documents/Census/Cen2010/PL94-171/CNTY-18plus/2010_18up_Summary.pdf

WDC Testimony_HB0161-2022_FINAL_SENATE.pdf

Uploaded by: JoAnne Koravos

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

House Bill HB0161
Criminal Law – Exploitation of Vulnerable Adult or Elderly Individual – Undue Influence
Judiciary Committee – January 27, 2022 @ 1:00 p.m.
Opposite Chamber Senate Judicial Proceedings – March 22, 2022
SUPPORT

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2022 legislative session. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials. WDC urges the passage of HB0161. This bill will make important changes to relevant sections of current criminal law to strengthen and expand protections for vulnerable adults, specifically aging and elderly women, from tactics or actions such as excessive persuasion, which would result in inequity. Thus, protecting the aging and elderly, and their property, from exploitation by family members or other persons or entities.

According to the National Council on Aging (NCOA), vulnerable adult (elderly) abuse is a national issue that is left to local governments and police to protect their most vulnerable residents. Abuse includes physical abuse, emotional abuse, sexual abuse, financial exploitation, neglect, and abandonment. The State Attorney's Office defines crimes against older adults as a crime against anyone age 65 or older. If the crime involves financial exploitation, the victim must be age 68 or older or be a vulnerable adult (over age 18 and lacking physical or mental capacity to provide for their daily needs).

According to the Maryland Department of Aging (MDA) and the U.S. Census Bureau, the senior population is growing, both in absolute terms and as a percent of the total population of the state. In Montgomery County alone the number of seniors (age 65+) is projected to more than double between 2010 and 2040. In fact, for the first time in history, people aged 65 and older will outnumber children under age 5. Although fraud and abuse crimes and exploitation activities target all older citizens, it particularly impacts aging women. According to the MDA, as the population ages, women increasingly outnumber men. As women age and are living longer, particularly if they live alone or with limited support, there is an increased possibility of financial mistakes, often relating to widowhood, such as estates, insurance proceeds, inheritance, and other property. Therefore, they become easy prey for fraud, abuse, and undue influence by family members or other persons. We must protect our aging seniors!

We ask for your support for HB0161 and strongly urge a favorable Committee report.

Respectfully,

Leslie Milano
President

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Uploaded by: Lauren Kallins

Position: FAV



MARYLAND DEVELOPMENTAL DISABILITIES COALITION

Dedicated to the rights and quality of life for people with developmental disabilities in Maryland

Senate Judicial Proceedings Committee HB 161: Criminal Law – Exploitation of Vulnerable Adult – or Elderly Individual—Undue Influence

Position: Support

March 22, 2022



8601 Robert Fulton Dr
Suite 140
Columbia, MD 21046

The Maryland Developmental Disabilities Coalition is comprised of five statewide organizations that are committed to improving the opportunities and outcomes for Marylanders with intellectual and developmental disabilities (IDD).



1500 Union Avenue
Suite 2000
Baltimore, MD 21211

Health and safety is central to the core mission of enabling people with intellectual and developmental disabilities (IDD) to live meaningful, inclusive lives in their communities. This mandate includes protecting the financial safety of the people that the Coalition represents and supports.



8835 Columbia 100 Pky
Suite P
Columbia, MD 21044

COMAR regulations require that DDA licensed providers ensure that there is “adequate protection for the finances and property of each individual” for whom they provide supports (COMAR 10.22.02.10). In addition to COMAR’s mandates, IDD providers are also subject to extensive investigatory and reporting requirements of incidents that threaten the health, safety and welfare—including the financial welfare- of people receiving community supports. Theft of a person’s funds or property is considered a reportable offense under the incident management system to which DDA licensed providers are subject. However, these regulations apply only to providers and staff and many providers recount situations of people with IDD whom they support who have inherited a home or other resources, and who are suddenly approached by family members or acquaintances, largely or wholly absent from the person’s life until the inheritance, who attempt to transfer the property into their own names.



**Maryland Developmental
Disabilities Council**

217 E Redwood Street
Suite 1300
Baltimore, MD 21202

The Attorney General’s office notes that “abuse and neglect of elderly and vulnerable adults is escalating in our communities” and that “for every case of abuse that is reported to authorities, experts estimate that as many as five cases go unreported.”

<https://www.marylandattorneygeneral.gov/MFCU%20Documents/VulnerableAdult.pdf>



7000 Tudsbury Road
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21244

We believe this bill will provide the courts with an additional tool for protecting people with IDD from such exploitative conduct.

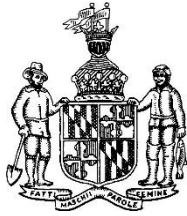
Respectfully submitted.

For additional information, contact Lauren Kallins, LKallins@macsonline.org

HB 161 Financial Exploitation Undue Infl letter to

Uploaded by: Robert Hill

Position: FAV



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DEPUTY STATE'S ATTORNEYS
PETER A. FEENEY
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March 21, 2022

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

RE: Support for HB 161

Dear Chairman Smith:

I have great concerns about the crime of financial exploitation against vulnerable adults (Criminal Law Article, section 8-801). I am writing in support of HB 161, which is now under consideration before your committee. The bill addresses a longstanding problem with statute's definition of "undue influence." At present, the statute requires the State to prove that undue influence was exercised by the perpetrator amounting to the level of "force or coercion."

In our experience, such cases rarely include "force or coercion." More typically, the crimes involve an unbalanced relationship where a senior depends on another and consents to virtually any request out of fear of losing that person's company or support. Indeed, other states across the country have also recognized that in the context of vulnerable adults, undue influence rarely rises to the level of "force or coercion."

HB 161 strengthens the definition of "undue influence." It removes the words, "force and coercion," and replaces them with specific elements for a fact finder to consider in determining whether undue influence was used to commit this crime. It could be suggested that the proposed changes will make holding offenders accountable even more difficult, because rather than meeting two elements of force and coercion, the prosecution now must put forth evidence in five different areas and many of those five areas have subtopics to address. However, considerations in the proposed bill are factors in the real world of caring for vulnerable adults. These are circumstances that are considered regularly in determining what level of care (if any) is needed for an older adult and who is best able to provide the needed care.

Making these proposed changes to the statute will help the community by enhancing the ability to hold offenders accountable for their actions when the method of the crime involves manipulation of an individual's ability to exercise free choice. We therefore urge a favorable report.

Sincerely,

Bryan Roslund

Bryan Roslund
Senior Assistant State's Attorney
Montgomery County, MD

HB 161 Criminal Law Exploitation of Vulnerable Adu

Uploaded by: Tammy Bresnahan

Position: FAV



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**HB 161 Criminal Law-Exploitation of Vulnerable Adult
or Elderly Individual – Undue Influence
FAVORABLE
Senate Judicial Proceedings Committee
March 22, 2022**

Good afternoon Chairman Smith and Members of the Senate Judicial Proceedings Committee. I am Tammy Bresnahan. I am the Director of Advocacy for AARP MD **supports HB 161 Criminal Law-Exploitation of Vulnerable Adult or Elderly Individual – Undue Influence**. We thank Delegate Shetty for introducing this legislation.

HB 161 further defines “undue influence” as it pertains to the prohibition on the exploitation of a vulnerable adult or an elderly individual and adds factors the court must consider when determining whether property was obtained by undue influence.

AARP has a history of fighting for protections against elder financial exploitation and has been on the forefront of advocacy in support of federal and state laws and regulations preventing this type of abuse.

Generally, older adults trusting and polite – not in a rush to hang up on a caller. And older adults usually have more savings, more credit, and might own their home. That’s what makes them attractive to thieves. The exploitations costs Americans more than 3 billion dollars every year. Criminals take advantage of older persons by doing things like forging their signature, coercing them into signing a will, turn over a deed, give them cash or give them large denomination gift cards. The affects can be financially ruinous, physically draining, and emotionally devastating for the victim and the victim’s family.

AARP believes that States should enact and enforce laws that make it a criminal offense, with enhanced penalties, to abuse, neglect, or exploit a vulnerable individual.

AARP MD respectfully requests a favorable report for HB 161. For questions, please contact Tammy Bresnahan at tbresnahan@aarp.org or by calling 410-302-8451.

A large, light gray watermark of the AARP logo is visible in the background of the bottom half of the page. The word "AARP" is in a large, bold, sans-serif font, and the tagline "Real Possibilities" is written in a smaller, sans-serif font below it.

HB161.ExploitSrs.22pdf.pdf

Uploaded by: Virginia Crespo

Position: FAV



Maryland Retired School Personnel Association

8379 Piney Orchard Parkway, Suite A • Odenton, Maryland 21113

Phone: 410.551.1517 • Email: mrspa@mrspa.org

www.mrspa.org

House Bill 161

In Support Of

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

House Judiciary Committee

Hearing: January 27, 2022 at 1:00 p.m.

The Legislative Committee of the Maryland Retired School Personnel Association (MRSPA) requests a favorable report on House Bill 161 Criminal Law - Exploitation of Vulnerable Adult or Elderly Individual - Undue Influence.

The legislation alters the definition of "undue Influence" for purposes of provisions of law prohibiting the exploitation of certain vulnerable adults or individuals at least 68 years old; requiring a court to determine whether a transfer of property was induced by undue influence and to consider certain factors.

Section 8-801 6(i)(a) specifically defines undue influence. Section G details the factors to be considered by the court in determining whether property was obtained by undue influence and the equity of the result. This additional text further helps to define the severity of the crime.

Our concern is to protect our aging members from exploitation. On behalf of the almost 13,000 members of the Maryland Retired School Personnel Association, we request a favorable vote on HB161.

Sincerely,

George D. Denny Jr
President

Virginia Crespo
Legislative Aide