



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