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January 31, 2025

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

The Honorable Brian J. Feldman  
Chair, Senate Education, Energy, and the Environment Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

*Re: Senate Bill 466 - Vulnerable and Senior Adults - Theft of Property by Caregiver,  
Family Member, or Household Member - Prohibition*

Dear Chairs Smith and Feldman:

The Office of the Attorney General (OAG) supports **Senate Bill 466 - Vulnerable and Senior Adults - Theft of Property by Caregiver, Family Member, or Household Member – Prohibition** with amendments.

Maryland’s growing population of elderly and vulnerable adults increasingly relies on care providers to assist in the performance of the activities of daily living—from bathing and dressing to preparing meals. For many elderly and vulnerable adults, their relationship with their care providers is not a matter of choice - it is a matter of necessity. Maryland has long recognized that the relationship between a vulnerable adult and a care provider is a relationship of trust and dependence that deserves additional protection. For example, “Abuse or Neglect of a Vulnerable Adult” is a separate crime from simple assault and both crimes may be charged and sentenced separately. Likewise, “Financial Crimes Against Vulnerable Adults” is a separate crime from other types of theft crimes.

At present, however, the “Financial Crimes Against Vulnerable Adults” statute (§ 8-801 of the Criminal Law Article) focuses on an individual’s use of deception or undue influence to deprive a vulnerable adult of their money or property. This approach ignores the lived experience of many vulnerable adults and the exploitation of trust and dependence that occurs anytime a care provider financially victimizes a vulnerable adult. The intent of **Senate Bill 466** is to refocus the law away from the “how” of the crime and onto the “who” of the victim and the reality of that victim’s life.

The Supreme Court of Maryland has interpreted the current iteration of § 8-801 of the Criminal Law Article to require proof that the defendant obtained the property of the victim by “deception, intimidation, or undue influence.” This requirement ignores the realities of the power dynamics of the relationships between vulnerable adults and their care providers. Indeed, in the seminal case on this issue, *Tarray v. State*, 410 Md. 594 (2009), the former Court of Appeals of Maryland rejected the idea that exploitation of a vulnerable adult’s finances could constitute “aggravated” theft under the current language of § 8-801. Although the paraplegic victim in that case testified that he was “between a rock and a hard place” because he was dependent on his care provider to live, *Tarray*, 410 Md. at 609, the Court determined that § 8-801, as it currently reads, requires additional proof of deception, intimidation, or undue influence of the vulnerable adult.

Likewise, in a case the OAG recently prosecuted, a nursing assistant took advantage of her access to a 79-year-old nursing home resident and stole the elderly resident’s debit card as she slept. The nursing assistant could be charged only with theft because there was no trickery involved. A theft charge alone does not adequately address the blatant exploitation of the caregiving relationship underlying this criminal activity. The vulnerable resident required the care available in a nursing home and had no choice but to trust and rely on the nursing home’s staff.

In cases like these involving dependent vulnerable adults victimized by those on whom they depend for care and survival, a theft charge alone does not sufficiently address the criminal activity. As amended with OAG’s proposed amendments, **Senate Bill 466** changes § 8-801 of the Criminal Law Article to allow prosecutors to charge a caregiver who exploits this care relationship with an exploitation offense *in addition to* simple theft. Upon conviction, the court would then sentence the Defendant for both crimes, recognizing that not only is it wrong to steal, but it is also wrong to exploit the vulnerability of an elderly or disabled person in one’s care.

Finally, a conviction for exploitation offenses under § 8-801 results in a mandatory exclusion of the care provider from any federal or State-funded healthcare program by the United States Department of Health and Human Services. All care providers who take advantage of their vulnerable wards, whether through trickery or otherwise, ought to be subject to this exclusion. **Senate Bill 466**, with proposed amendments, fortifies those protections by ensuring that anyone who exploits their care relationship to prey on the vulnerable will be excluded from the health care system and thus keeps the health care system safe for our State’s most vulnerable residents.

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**Senate Bill 466** recognizes that caregivers, family members, and household members have a higher duty to a vulnerable adult for whom they care. A caregiver to a vulnerable adult should not need to engage in deception, intimidation, or undue influence when depriving the vulnerable adult of their property to be considered abusing the caregiver relationship that exists between the caregiver and the vulnerable adult. For the foregoing reasons, the Office of the Attorney General urges a favorable report on **Senate Bill 466** with amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

Enclosure

**Proposed Amendments**

OAG proposes the following amendments that would achieve the goals discussed above. The nature of financial crimes against vulnerable adults, even those without deception, is exploitive. It preys on obligatory trust and the powerlessness of the victim. Such a crime is rightfully included within the Fraud and Related Crimes title. As written, **Senate Bill 466** creates a new crime under the Theft title rather than altering the existing § 8-801 of the Criminal Law Article. This is problematic. First, a new crime under the theft statute will “merge” for sentencing, obviating the bill’s purpose of separately punishing a perpetrator’s theft and their violation of a trust relationship with a vulnerable adult. As a result, prosecuting authorities will be left in the same position as they are at present, only able to charge theft in cases such as those described above. With amendments, prosecutors may charge both theft and Financial Crimes Against Vulnerable Adults and obtain separate sentences for both.

Moreover, while the federal exclusion authorities recognize theft in the context of healthcare as an excludable offense, a simple theft conviction does not adequately communicate that. A crime that requires the elements of (1) a care provider relationship; and (2) an exploitation of a patient’s trust is a much cleaner route to exclusion because it mirrors the requirements for exclusion. Relatedly, future employers who run background checks will be better warned of the nature of a candidate’s crimes when there is an exploitation-related conviction rather than a simple theft conviction.

Finally, by leaving the language of § 8-801 intact and simply adding language that removes the requirement of active deceit in the healthcare context, no other powers provided in other statutes relative to § 8-801 will be affected.

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**[STRIKE BILL IN ITS ENTIRETY AND REPLACE WITH]**

**Criminal Law - Financial Exploitation of a Vulnerable Adult**

By repealing and reenacting, with amendments,  
Article – Criminal Law  
Section 8-801  
Annotated Code of Maryland  
(2021 Replacement Volume and 2025 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

8–801.

(a) (1) In this section the following words have the meanings indicated.

**(2) “CAREGIVER” HAS THE MEANING STATED IN § 3-604 OF THIS ARTICLE.**

[(2)] (3) “Deception” has the meaning stated in § 7–101 of this article.

[(3)] (4) “Deprive” has the meaning stated in § 7–101 of this article.

(5) “Family member” has the meaning stated in **§ 3-604 OF THIS ARTICLE.**

**(6) “HOUSEHOLD MEMBER” HAS THE MEANING STATED IN § 3-604 OF THIS ARTICLE.**

[(4)] (7) “Obtain” has the meaning stated in § 7–101 of this article.

[(5)] (8) “Property” has the meaning stated in § 7–101 of this article.

[(6)] (9) (i) “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 68 years old was prevented from exercising free judgment and choice.

(ii) “Undue influence” does not include the normal influence that one member of a family has over another member of the family.

[(7)] (8) “Value” has the meaning stated in § 7–103 of this article.

[(8)] (9) “Vulnerable adult” has the meaning stated in § 3–604 of this article.

(b) (1) 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.

(2) 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 68 years old, with intent to deprive the individual of the individual’s property.

**(3) A PERSON WHO IS A CAREGIVER TO OR A FAMILY MEMBER OR HOUSEHOLD MEMBER OF AN INDIVIDUAL MAY NOT KNOWINGLY AND WILLFULLY OBTAIN THE PROPERTY OF THE INDIVIDUAL WITH INTENT TO DEPRIVE THE INDIVIDUAL OF THE INDIVIDUAL’S PROPERTY IF:**

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**(I) THE INDIVIDUAL IS A VULNERABLE ADULT OR AN INDIVIDUAL WHO IS AT LEAST 68 YEARS OF AGE; AND**

**(II) THE PERSON KNOWS OR REASONABLY SHOULD KNOW THAT THE INDIVIDUAL IS A VULNERABLE ADULT OR IS AT LEAST 68 YEARS OLD**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.