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The Honorable Luke Clippinger
Chair, House Judiciary Committee
101 Taylor House 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 Chair Clippinger:

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.

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.

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 guilty of exploiting the caregiver relationship. Indeed, OAG recognizes that the present form of SB 466 varies somewhat from what was originally proposed. One of those amendments, the restriction on consecutive sentences upon convictions for both theft and exploitation, runs counter to the intent of the bill as introduced. The recognition and protection of the care provider/patient relationship demands more. Carving out an exception at sentencing that allows a stiffer penalty for the same crime when deception was used ignores the fact that the most vulnerable victims of this crime do not require deception to be used at all because of their total dependance on their care providers. Nonetheless, OAG supports SB 466 and its protections for vulnerable adults.

Sincerely,



W. Zak Shirley