

**Department of Legislative Services**  
 Maryland General Assembly  
 2020 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 407

(Senator Kramer, *et al.*)

Judicial Proceedings and Budget and Taxation

Judiciary and Appropriations

**Office of the Attorney General - Senior and Vulnerable Adult Asset Recovery Unit**

This bill establishes the Senior and Vulnerable Adult Asset Recovery Unit in the Office of the Attorney General (OAG). Beginning in fiscal 2022, the Governor must annually include an appropriation of at least \$250,000 in the State budget to carry out the bill’s requirements. At the direction of the Attorney General, the unit must use the required funding to (1) hire new staff for the unit and (2) investigate and assist the unit in bringing civil actions.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$250,000 annually beginning in FY 2022. Minimal increase in special fund revenues from the collection of costs awarded to OAG by the courts in successful cases brought by the unit. **This bill establishes a mandated appropriation beginning in FY 2022.**

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	\$0	-	-	-	-
GF Expenditure	\$0	\$250,000	\$250,000	\$250,000	\$250,000
Net Effect	\$0	(\$250,000)	(\$250,000)	(\$250,000)	(\$250,000)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill does not materially affect local government finances or operations.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill authorizes a dedicated unit to bring a civil action for damages, as specified, against a person who violates the State’s prohibition against exploitation of a vulnerable adult on behalf of the victim of the offense or, if the victim is deceased, the victim’s estate. The unit may recover damages for property loss or damage. If the unit prevails in an action, the costs of the action may be recovered for the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action.

**Current Law:** Chapter 114 of 2016 generally authorizes the Division of Consumer Protection in OAG to bring a civil action for damages against a person who violates the State’s prohibition against exploitation of a vulnerable adult on behalf of a victim of the offense or, if the victim is deceased, the victim’s estate. Chapter 794 of 2018 extends this authority to the Securities Commissioner of the Division of Securities in OAG. The division and commissioner may recover damages for property loss or damage. If the division or commissioner prevails in an action, the costs of the action may be recovered for the use of OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action.

### *Standing and Exploitation of a Vulnerable Adult*

“Standing” typically refers to an individual’s capacity to participate in a lawsuit. In order to demonstrate standing, an individual usually has to demonstrate that he or she experienced an adverse effect from the law or action in question, which will continue unless the court grants relief.

Under the offense of exploitation of a vulnerable adult, 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 age 68 or is a vulnerable adult with intent to deprive the individual of the individual’s property. Penalties for the offense vary based on the value of the property, as listed below. A sentence imposed for the offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation.

<u>Property Value</u>	<u>Maximum Penalty</u>
Less than \$1,500	Misdemeanor – 1 year and/or \$500
\$1,500 to less than \$25,000	Felony – 5 years and/or \$10,000
\$25,000 to less than \$100,000	Felony – 10 years and/or \$15,000
\$100,000 or more	Felony – 20 years and/or \$25,000

In addition to the penalties listed above, violators must restore the property taken or its value to the owner or, if the owner is deceased, restore the property or its value to the

owner's estate. If a defendant fails to restore fully the property taken or its value as ordered, the defendant is disqualified, to the extent of the defendant's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the defendant has been convicted. The defendant has the burden of proof with respect to establishing that the defendant has fully restored the property taken or its value.

The statutory prohibition on exploitation of a vulnerable adult may not be construed to impose criminal liability on a person who, at the request of the victim of the offense, the victim's family, or the court-appointed guardian of the victim, has made a good faith effort to assist the victim in the management of or transfer of the victim's property.

**Background:** According to the Judiciary, there were 47 violations in the District Court (which resulted in 2 guilty dispositions) and 55 violations in the circuit courts (which resulted in 8 guilty dispositions) for exploitation of a vulnerable adult under § 8-801 of the Criminal Law Article during fiscal 2019.

**State Fiscal Effect:** General fund expenditures increase by \$250,000 annually beginning in fiscal 2022 for OAG to hire new staff pursuant to the bill's requirements. OAG advises that it would hire three staff with this funding; by fiscal 2024, the mandated amount may no longer cover all costs associated with these new staff. Nevertheless, the Department of Legislative Services assumes that awards for the costs of successful actions under the bill may be used to make up the difference. This analysis assumes that such awards would be treated as special funds and designated for the unit's enforcement activities. Any funding provided in fiscal 2021 for the new unit is optional and has not been assumed in this fiscal and policy note.

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### **Additional Information**

**Prior Introductions:** SB 475 of 2019, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 485, received an unfavorable report from the House Economic Matters Committee.

**Designated Cross File:** None.

**Information Source(s):** Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2020  
rh/ljm Third Reader - March 17, 2020  
Revised - Amendment(s) - March 17, 2020

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