

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 23 (Delegate Glenn)
 Judiciary

Criminal Procedure - Vulnerable Adult Abuse Registry

This bill requires the Department of Health and Mental Hygiene (DHMH) to establish and maintain a registry containing the names of individuals who have been (1) convicted of a vulnerable adult abuse crime or (2) found by a State agency to have abused, neglected, or misappropriated or exploited the property of a vulnerable adult.

Fiscal Summary

State Effect: General fund expenditures increase by \$292,500 in FY 2016 to reflect the cost of establishing the required registry, including hardware, software, contractual services associated with developing and maintaining the registry, and permanent staffing. Future year expenditures reflect elimination of one-time-only costs, annualization, and inflation. Affected State agencies can likely use existing resources to submit the required notification to DHMH and participate in any administrative hearings that result from the bill. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	292,500	182,200	190,200	198,700	207,500
Net Effect	(\$292,500)	(\$182,200)	(\$190,200)	(\$198,700)	(\$207,500)

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Required Consultation and Prohibition Against Hiring

A State agency that provides institutional or in-home services to vulnerable adults (1) must consult the registry prior to hiring an employee or using a volunteer and (2) may not hire or otherwise use the services of an individual who is listed on the registry.

Public Access to Registry

The names and other information contained in the registry must be available for public inspection, as specified in the bill. DHMH may discharge its responsibilities under the bill either directly or through interagency agreement if authorized access to the records by means of a single centralized agency is assured.

Reporting Requirement

A State agency that finds that an individual has committed more than one offense against a vulnerable adult within a five-year period must – after providing the individual with an opportunity for an administrative due process hearing – notify DHMH, as specified by the bill, of the individual’s name for inclusion in the registry. The notification to DHMH must include (1) a copy of an administrative or judicial order or any other evidence indicating that the agency has afforded the individual an opportunity for an administrative due process hearing in accordance with the bill; (2) the individual’s last known mailing address; (3) the definition of abuse, neglect, or misappropriation or exploitation of property that was used by the agency in finding abuse; and (4) other information that DHMH may determine is necessary to adequately identify the individual for purposes of administrative hearings or when inquiry to the registry is made. The bill does not require a State agency to establish new procedures or to modify existing procedures the agency may use to provide due process.

The State’s Attorney must, on conviction of an individual for a vulnerable adult abuse crime, report the individual’s name to DHMH.

Entry and Notification

On receiving a notification from either a State agency or the State’s Attorney, DHMH must (1) enter the individual’s name in the registry and (2) maintain and, upon request, make available the name of the reporting agency or court and the applicable definition of abuse, neglect, or misappropriation or exploitation of property supplied by the reporting agency

or court. On entry of such information, DHMH must notify the individual (at the individual's last known address) of the individual's inclusion in the registry.

Removal from Registry

An individual may challenge the accuracy of the report that the finding or conviction occurred or of a fact issue related to the correct identity of the individual. If the individual makes such a challenge within 30 days of notification of the individual's inclusion in the registry, DHMH must afford the individual an opportunity for a hearing on the matter. An individual's name must be removed immediately from the registry if (1) after a hearing, DHMH determines that the findings or conviction never occurred or (2) at the final step taken in an appellate process, a reported conviction, emergency order, or administrative hearing result is reversed.

Alternatively, a State agency that has placed an individual's name in the registry may recommend to DHMH, as specified by the bill, the removal of the individual's name if (1) the agency finds that the placement of the individual's name in the registry was in error or (2) an advisory group convened by the agency, as specified by the bill, determines that removal of the individual's name from the registry is clearly warranted and recommends to the agency a waiver and removal of the individual's name from the registry.

The decision and the written recommendations of the State agency and advisory group must be open for public inspection. If the decision is to remove the individual's name from the registry, DHMH must do so. However, an individual who is dissatisfied with the State agency's decision may appeal in a contested case hearing.

Immunity

Unless he or she acts in bad faith or with malicious purpose, an individual who submits an allegation to DHMH for inclusion in the registry, or who testifies in a proceeding arising from the allegation, is immune from civil or criminal liability (except for liability for perjury) for making the report and for testifying. A person that declines to employ or otherwise use the services of an individual listed in the registry, or that terminates the individual, is immune from suit by or on behalf of that individual.

Current Law/Background:

Abuse and Neglect of Vulnerable Adults

A caregiver, parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable

adult that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member.

A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000. A sentence imposed for this violation must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Under the second degree prohibition, a caregiver, parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult. Similarly, a household member or family member may not cause abuse or neglect of a vulnerable adult. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a \$5,000 fine. A sentence imposed for this violation must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical. The second degree prohibition does not apply to sexual abuse of a vulnerable adult.

Exploitation of Property

Under the State's prohibition against financial 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 a vulnerable adult with intent to deprive the vulnerable adult of the individual's property. In addition, 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 with intent to deprive the individual of the individual's property.

When the value of the property is at least \$1,000 but less than \$10,000, a violator is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000. In addition, the violator 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.

When the value of the property is at least \$10,000 but less than \$100,000, the maximum penalties increase to imprisonment for 15 years and/or a fine of \$15,000. The violator must similarly restore the property taken or its value.

When the value of the property is \$100,000 or more, the maximum penalties escalate to imprisonment for 25 years and/or a fine of \$25,000. Again, the violator must also restore the property taken or its value.

However, when the value of the property is less than \$1,000, a violator is guilty of a *misdemeanor* and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500. Even so, the violator must similarly restore the property taken or its value.

A sentence imposed for financial exploitation may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation. A defendant who fails to fully restore the property taken or its value as ordered is disqualified (to the extent of that failure) from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense. This disqualification applies regardless of whether such a benefit would otherwise accrue by operation of law or pursuant to a legal document that was executed or entered into by the victim before the defendant had been convicted of the financial exploitation.

This financial exploitation prohibition 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.

Chapter 421 of 2014 also addresses the protection of "elder adults" from financial abuse and exploitation. Chapter 421 requires a licensee that engages in the business of money transmission to provide training materials to agents on how to recognize financial abuse and financial exploitation of elder adults and how to respond appropriately if the agent suspects that he or she is being asked to engage in the business of money transmission for a fraudulent transaction in which an elder adult is the victim of financial abuse or financial exploitation. A licensee has to provide the training material to newly appointed agents within one month after appointment and retain records concerning training for at least three years.

Investigation of Abuse or Neglect of a Vulnerable Adult

The Developmental Disabilities Administration (DDA) is responsible for reporting alleged abuse of a person with a developmental disability to an appropriate law enforcement agency. Subsequently, the law enforcement agency must investigate each report of abuse and attempt to ensure protection of the alleged victim. During the course of the investigation, the law enforcement agency must include a determination about the nature, extent, and cause of abuse; the identity of the alleged abuser or abusers; and any other relevant information. Further, DDA must maintain a central registry of abuse reports and their disposition.

The Behavioral Health Administration (BHA) must report complaints of alleged abuse received by a person, or any employee of a facility of the department, to the appropriate law enforcement agency. The law enforcement agency must conduct an investigation.

More broadly, BHA must also ensure that State facilities develop and implement policies and procedures on making and responding to allegations of abuse and educating patients on identifying and reporting abuse.

Hospitals and related institutions that are licensed and regulated by DHMH must report both alleged abuse and exploitation complaints for individuals in their facilities. Exploitation complaints are channeled through the Secretary of Aging (if a patient is age 65 or older) or the local department of social services for the county where the facility is located. The Secretary of Aging or the local departments of social services must report alleged exploitation to an appropriate law enforcement agency, which must investigate the complaint. Abuse complaints must be reported to an appropriate law enforcement agency, the Secretary of Health and Mental Hygiene, or the Maryland Department of Aging. The law enforcement agency, with the help of the Secretary, must then investigate the report and submit a written report of its findings.

The Office of Adult Services, which is part of the Department of Human Resources' (DHR) Social Services Administration, implements the Adult Protective Services program. Through this program, the office is responsible for investigating, preventing, and/or remedying concerns of abuse, neglect, self-neglect, and exploitation of adults in the community who are unable to protect their own interests and are at risk of immediate harm. The program is implemented through local departments of social services (and Montgomery County's Health and Human Services) in 24 jurisdictions. There is an abuse hotline that people can call to report suspected abuse. Currently, the office does not submit information regarding confirmed cases of abuse to any type of central or online registry.

A health care practitioner, police officer, or human service worker who is in professional contact with an alleged vulnerable adult (who appears to have been subjected to abuse, neglect, self-neglect, or exploitation) must notify the local department of social services.

The Office of Health Care Quality (OHCQ) within DHMH generally regulates and licenses health care facilities in the State. Currently, OHCQ reports a staffing deficit of 68 surveyors. OHCQ must investigate complaints within a regulated facility to determine compliance with State and federal regulations to ensure that minimum standards of care are met. OHCQ surveyors look at a facility's process for investigating an alleged incident.

Each of Maryland's health occupations boards employs or contracts with investigative staff to review complaints and has disciplinary authority – including the authority to deny, suspend, and revoke licenses – over the health care practitioners in its respective jurisdiction. In addition, a number of health occupations boards provide online, publically accessible registries that contain information regarding whether a health care practitioner has a valid license and/or has been the subject of disciplinary action.

As shown in **Exhibit 1**, although the number of cases investigated by DHR increased from fiscal 2012 to 2014, the number of substantiated and indicated allegations has remained fairly constant, when confirmed cases of self-neglect are taken into consideration. However, the number of confirmed cases of financial exploitation has increased by 50% since fiscal 2012. “Substantiated allegation” means that there is sufficient evidence to support an allegation of physical abuse, sexual abuse, financial exploitation, neglect by others, or self-neglect. “Indicated allegation” means it is more likely than not that maltreatment occurred, but that all the details may not have been found about how the maltreatment occurred or who was responsible.

Exhibit 1
Abuse or Neglect and Financial Exploitation of a Vulnerable Adult
Investigations by the Department of Human Resources and Convictions
Fiscal 2012-2014

<u>Investigations</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>
Total Cases Investigated	6,801	7,102	7,369
Indicated or Substantiated Allegations	1,365	1,206	1,235
<i>Confirmed Self-neglect</i>	818	703	660
<i>Confirmed Neglect by Others</i>	288	237	236
<i>Confirmed Physical Abuse</i>	83	74	83
<i>Confirmed Sexual Abuse</i>	14	11	11
<i>Confirmed Financial Exploitation</i>	162	181	245
<u>Convictions</u>			
For Abuse or Neglect	14	10	11
<i>First Degree</i>	7	2	4
<i>Second Degree</i>	7	8	7
For Financial Exploitation	11	7	12

Source: Department of Human Resources, Maryland State Commission on Criminal Sentencing Policy

DHR has advised that repeat offenders are rare. However, the Maryland State Commission on Criminal Sentencing Policy reports that, in fiscal 2014, one individual was sentenced on three counts of financial exploitation of a vulnerable adult, while another individual was sentenced for two counts.

Abuser Registry Workgroup and Report

As amended, Senate Bill 316 of 2012 would have required DHMH to convene a workgroup to examine issues relating to the creation of a health care facility abuser registry and to report its findings and recommendations to specified committees of the General Assembly by December 1, 2012. Although that bill did not pass, OHCQ voluntarily convened an Abuser Registry Workgroup comprising representatives of OHCQ, the Office of the Attorney General, law enforcement agencies, health care providers, and the advocate community. The workgroup outlined its findings and conclusions in a report dated January 14, 2013.

The report cited, among its concerns, (1) the absence of a clear national model for an abuser registry; (2) lack of consensus as to who should be able to access such a registry; (3) unresolved due-process issues; (4) potential conflicts with the role and authority of licensing boards; and (5) cost.

The workgroup suggested several alternatives to establishing a registry, including (1) providing broader access to criminal background checks for licensing boards; (2) offering better education regarding the pursuit of criminal charges; (3) strengthening current background check processes for direct care workers; and (4) expanding the reference check process by requiring prospective employees to list their last five places of employment.

State Expenditures: DHMH advises that OHCQ will host the registry required by the bill. OHCQ advises that it may have to investigate as many as 2,200 allegations annually associated with the registry. Accordingly, OHCQ estimates that it needs a new abuser registry unit to be staffed by eight additional full-time employees, at a cost of approximately \$488,400 in fiscal 2016, and more than \$600,000 annually thereafter. However, the Department of Legislative Services (DLS) estimates costs associated with the abuser registry to be lower than those estimated by OHCQ, as discussed below.

DLS notes that the bill specifies that a finding may be made by not only DHMH, but by any State agency – which may be interpreted to include the various health occupations boards within the department – as well as law enforcement. As discussed above, all of these entities already investigate various allegations of abuse and coordinate with one another as appropriate. While the bill establishes *reporting* requirements, it does not establish additional or new *investigatory* requirements for State agencies.

Accordingly, DLS advises that general fund expenditures increase by \$292,508 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of establishing and maintaining the registry, including hardware, computer programming costs, software, one-time contractual services associated with the

development of the registry, and ongoing contractual services associated with registry maintenance. The estimate also reflects the hiring of one full-time assistant Attorney General to evaluate data for inclusion in the registry, review challenges and recommendations, and participate in administrative hearings as well as one full-time administrator to confirm and enter relevant information into the registry, notify individuals upon their inclusion in the registry, respond to requests for information, and provide general administrative support.

The DLS estimate represents the minimum level of staff needed to implement the bill. Although inclusion in the registry is limited to repeat offenders and those who have been convicted of the relevant offenses, it is unclear how many individuals would meet the criteria for placement on the registry (particularly depending on what definitions of abuse are used). If DHMH receives a high volume of referrals under the bill, staffing costs may increase accordingly. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Although there is no similar multi-agency registry for tracking abuse of vulnerable adults, the Department of Public Safety and Correctional Services (DPSCS) operates and maintains the State’s sex offender registry and has offered to share existing registry software with other State agencies in the past without imposing an associated licensing fee. Therefore, it is assumed that OHCQ can utilize DPSCS’s software to develop this registry. The estimate includes \$150,000 in computer programming expenses needed to modify the existing sex offender software program. If this software is not available for use, costs associated with establishing the vulnerable adult registry may be significantly higher.

Positions	2
Salaries and Fringe Benefits	\$124,060
One-time Contractual Services	150,000
Ongoing Contractual Services	9,000
Other One-time Start-up Expenses	8,570
Other Ongoing Costs	<u>878</u>
Total FY 2016 State Expenditures	\$292,508

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The number of notifications that DHMH is likely to receive under the bill cannot be reliably estimated at this time. However, DLS advises that the affected State agencies can likely use existing resources to submit the required notifications to DHMH and participate in any administrative hearings that result from the bill. It is assumed that State agencies can use existing procedures to provide due process.

The Office of Administrative Hearings (OAH) advises that it foresees being able to handle the increase in cases expected to occur following the implementation of the bill, but further advises that any additional cases in excess of approximately 140 annually are not absorbable and necessitate the hiring of an additional administrative law judge. Although the number of administrative hearings stemming from the bill cannot be reliably estimated at this time, DLS advises that any additional costs to OAH are likely to be absorbable.

Any impact to the trial courts is likely to be small enough to be handled with existing resources.

Additional Information

Prior Introductions: Both HB 379 of 2014 and HB 326 of 2013 received an unfavorable report from the House Judiciary Committee. SB 333 of 2013 (a cross file) received a hearing in the Senate Judicial Proceedings Committee and was subsequently withdrawn.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Department of Budget and Management; Department of Human Resources; Department of Housing and Community Development; Department of Disabilities; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of Administrative Hearings; State's Attorneys' Association; Department of Legislative Services

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