

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 33
Judiciary

(Delegate Guyton, *et al.*)

Judicial Proceedings

Criminal Law - Abuse or Neglect of a Vulnerable Adult - Causing Severe
Emotional Distress

This bill expands the crime of abuse or neglect of a vulnerable adult in the second degree by prohibiting a caregiver, a parent, a household member, a family member, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult from intentionally and maliciously inflicting severe emotional distress on the vulnerable adult.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's expanded application of an existing penalty provision.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's expanded application of an existing penalty provision. Potential increase in expenditures for Montgomery County, as discussed below.

Small Business Effect: None.

Analysis

Current Law: Under the prohibition on abuse or neglect of a vulnerable adult in the second degree, a caregiver, a parent, a household member, a family member, 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.

“Abuse” means the sustaining of physical pain or injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the vulnerable adult’s health or welfare is harmed or threatened. “Abuse” does not include an accepted medical or behavioral procedure ordered by a health care provider authorized to practice under the Health Occupations Article or emergency medical personnel acting within the scope of the health care provider’s practice. The second-degree prohibition does not apply to sexual abuse of a vulnerable adult; those acts are prohibited under the crime of first-degree abuse or neglect of a vulnerable adult. “Neglect” means the intentional failure to provide necessary assistance and resources for the physical needs of a vulnerable adult. “Neglect” does not include the provision of nonmedical remedial care and treatment for the healing of injury or disease that is given with the consent of the vulnerable adult and recognized by State law in place of medical treatment.

A violator of second-degree abuse or neglect of a vulnerable adult 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 second-degree abuse or neglect of a vulnerable adult 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.

Background: The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that a review of the Maryland Sentencing Guidelines Database indicates that MSCCSP received information for 11 individuals sentenced for abuse or neglect of a vulnerable adult in the second degree in the State’s circuit courts during fiscal 2019.

State Revenues: General fund revenues increase minimally as a result of the bill’s expanded application of an existing monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill’s expanded application of an existing incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,700 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the

discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's expanded application of an existing monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Baltimore City and Harford County advise that the bill does not result in a fiscal impact. However, Montgomery County advises that the bill may increase the number of Adult Protective Services investigations, facilitating the need for an additional full-time social worker and an additional full-time county attorney at an estimated cost of \$310,154 in fiscal 2021, increasing to \$335,721 by fiscal 2025.

Additional Information

Prior Introductions: HB 561 of 2019, a somewhat similar bill, received a hearing in the House Judiciary Committee but was later withdrawn.

Designated Cross File: SB 153 (Senator West) - Judicial Proceedings.

Information Source(s): Baltimore City; Harford and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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