

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 833

(Senators Benson and Augustine)

Judicial Proceedings

Adult Protective Services - Vulnerable Adults Registry - Investigations and
Records of Abuse and Neglect and Workgroup Study

This bill requires the Social Services Administration (SSA) to maintain a centralized confidential database (registry) related to reports, investigations, and assessments of suspected abuse or neglect of vulnerable adults. The bill also establishes a Workgroup to Study Best Practices for a Vulnerable Adult Registry in Maryland, which must report its findings by December 1, 2020. **The bill's provisions regarding the workgroup take effect July 1, 2020, and terminate June 30, 2021. If the Department of Legislative Services (DLS) receives a copy of the workgroup's report by December 1, 2020, the provisions regarding the registry take effect on the recommended effective date or October 1, 2021, whichever is later. If DLS does *not* receive the report by December 1, 2020, the provisions regarding the registry are null and void.**

Fiscal Summary

State Effect: Potential significant increase in expenditures beginning no earlier than October 1, 2021, if at all, as discussed below. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary:

Registry

Each local department of social services must enter and have access to information in the registry related to reports, investigations, and assessments of suspected abuse or neglect. The Department of Human Services (DHS) or a local department may identify an individual as responsible for abuse or neglect in the registry only if the individual (1) has been found guilty of any criminal charge arising out of the alleged abuse or neglect or (2) has been found responsible for indicated abuse or neglect and has unsuccessfully appealed the finding in accordance with statutory provisions or failed to exercise the individual's appeal rights within specified timeframes. The registry may not contain any information that is required to be expunged, as specified. An individual may not be identified as responsible in the registry solely because (1) a vulnerable adult has been released from a hospital or other facility; (2) the vulnerable adult has been diagnosed with a mental disorder or developmental disability; and (3) the individual has failed to take the vulnerable adult home due to a reasonable fear for the safety of the vulnerable adult or the vulnerable adult's family.

The Secretary of Human Services must adopt regulations necessary to protect the rights of individuals suspected of abuse or neglect and may adopt regulations to implement the bill's provisions. SSA within DHS must provide specified items by regulation, including procedures for protecting the confidentiality of reports and records and conditions under which information may be released.

Notification Requirements and Right to Appeal

Within 30 days after the completion of an investigation in which there has been a finding of indicated or unsubstantiated abuse or neglect, the local department must provide written notice to the individual alleged to have abused or neglected a vulnerable adult (1) of the finding; (2) of the opportunity to appeal the finding; and (3) if applicable, that the individual may be identified as responsible for abuse or neglect in the registry.

In the case of a finding of indicated abuse or neglect, an individual may request a contested case hearing to appeal the finding in accordance with the Administrative Procedure Act by responding to the notice of the local department in writing within 60 days. If a criminal proceeding is pending on charges arising out of the alleged abuse or neglect, the Office of Administrative Hearings (OAH) must stay the hearing until a final disposition is made. If, after final disposition of the criminal charge, the individual requesting the hearing is found guilty, OAH must dismiss the administrative appeal.

In the case of a finding of unsubstantiated abuse or neglect, an individual may request a conference with a supervisor in the local department by responding to the notice of the local department in writing within 60 days. In response to a timely request for a conference, a local department supervisor must schedule a conference, as specified, to allow the individual an opportunity to review the redacted record and request corrections or to supplement the record. The local department must send notice of the right to request a contested case hearing and a written summary of the conference and any modifications to be made to the individual. The individual may request a contested case hearing to appeal the outcome of the conference by responding to the summary in writing within 60 days.

Expungements

The local department must expunge a report of suspected abuse or neglect and all assessments and investigative findings (1) within five years after the date of referral if the investigation concludes that the report is unsubstantiated and no further reports of abuse or neglect are received during the five years and (2) within two years after the date of referral if the report is ruled out and no further reports of abuse or neglect are received during the two years. If a report is ruled out, the local department may, on good cause shown, immediately expunge the report and all assessments and investigative findings.

Disclosure of Reports or Records

Unless otherwise authorized, a person may not disclose a report or record concerning abuse or neglect of a vulnerable adult. A report must be disclosed (1) under a court order; (2) under an order of an administrative law judge, if specified conditions exist; or (3) to the Division of Parole and Probation if, as a result of a report or investigation, the local department has reason to believe that an individual who lives in or has a regular presence in a vulnerable adult's home is included in the sex offender registry based on the commission of an offense against a vulnerable adult.

A report or record may be disclosed on request to other individuals in specified circumstances, including (1) a parent or other person who has permanent or temporary care and custody of the vulnerable adult, if provisions are made for the protection of the identity of the reporter or other endangered person; (2) local or State officials responsible for the administration of vulnerable adult protective services, care, or regulations, as necessary to carry out their official functions; and (3) personnel of SSA, local departments, law enforcement, and members of a multidisciplinary case consultation team, as specified. An individual who violates prohibitions against the disclosure of records or reports is guilty of a misdemeanor and subject to a maximum penalty of 90 days imprisonment and/or a \$500 fine.

Unless an individual has been identified as responsible for abuse or neglect in the registry, information may not be provided in response to any request for background information for employment or voluntary service. Any official or employee who releases information in violation of these provisions is subject to specified penalties.

The bill also requires a local director of a local department of social services or the Secretary of Human Services to disclose, on request, information concerning abuse or neglect of a vulnerable adult if (1) the information is limited to actions or omissions of the local department, DHS, or an agent of DHS; (2) the vulnerable adult named in a report of abuse or neglect has suffered a fatality or near fatality; and (3) the local director or the Secretary has consulted the State's Attorney's office and has been advised that disclosure of the information would not jeopardize or prejudice a related investigation or prosecution. The bill sets forth related procedures and requirements based on these circumstances.

Workgroup to Study Best Practices for a Vulnerable Adult Registry

The workgroup must:

- study best practices for implementation of a statewide vulnerable adult registry, including technological, legal, financial, and practical considerations;
- identify the appropriate State agency to operate a registry;
- study and identify, to the extent possible, how specified grant funds were allocated and used, if ever awarded;
- study and make recommendations regarding any changes or improvements to State law; and
- identify an appropriate effective date for the provisions of the bill that establish a registry.

The Secretary of Human Services, or the Secretary's designee, must designate the chair of the workgroup and DHS must provide staff. A member of the workgroup may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law:

Reporting and Investigating Abuse or Neglect of a Vulnerable Adult – Family Law Article

A vulnerable adult is an adult who lacks the physical or mental capacity to provide for the adult's daily needs. "Abuse" means the sustaining of any physical injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act by any person. "Neglect" is the willful deprivation of a vulnerable adult of adequate food, clothing,

essential medical treatment or rehabilitative therapy, shelter, or supervision. “Neglect” does not include the providing of nonmedical remedial care and treatment for the healing of injury or disease, with the consent of the vulnerable adult, recognized by State law instead of medical treatment.

Statutory provisions specify procedures for the reporting and investigation of reports of the abuse or neglect of a vulnerable adult, the specifics of which depend on the adult who is alleged to have been abused or neglected. For example, a person who believes that an individual with a developmental disability has been abused must report the alleged abuse to the executive officer or administrative head of the licensee; the report may be oral or written. The executive officer or administrative head must report the alleged abuse to an appropriate law enforcement agency, which must investigate, as specified.

If a report does not involve the abuse of a patient in a mental health facility, a facility for individuals with an intellectual disability, a nursing home, or a hospital, investigation procedures are governed by the Family Law Article. Pursuant to the Family Law Article, any health care practitioner, police officer, or human service worker who contacts, examines, attends, or treats an alleged vulnerable adult, and who has reason to believe that the alleged vulnerable adult has been subjected to abuse, neglect, self-neglect, or exploitation, must notify the local department of social services. If the health care practitioner, police officer, or human service worker is a staff member of a hospital or public health agency, he or she must immediately notify and give all the information required by law to the head of the institution or its designee. The report must be made by telephone, in writing, or by direct communication as soon as possible. Individuals other than those required to report due to their professional responsibilities may also file a report with a local department. The local department must begin a thorough investigation, as specified, and may request assistance from other entities, including the State’s Attorney or law enforcement.

Crime of Abuse or Neglect of a Vulnerable Adult

Sections 3-604 and 3-605 of the Criminal Law Article prohibit the abuse or neglect of a 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” includes the sexual abuse of a vulnerable adult. “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.

A caregiver, a 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 10 years imprisonment and/or a fine of \$10,000. A sentence imposed under this provision 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, a 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. 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 under this provision 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.

State Fiscal Effect: DHS did not respond to a request for an estimate regarding the fiscal impact of this bill.

To the extent that a registry is created, it is anticipated that general fund expenditures increase, potentially significantly, for programming costs associated with the development of a registry. Because the bill's requirements regarding a registry take effect no earlier than October 1, 2021, if at all, any registry development costs are not incurred until fiscal 2022 at the earliest. General fund expenditures *may* increase further to the extent that the additional workload generated by the maintenance of a registry, such as notification requirements, requests for conferences with a supervisor, and expungement procedures necessitate additional staff. *For illustrative purposes only*, if additional staff is required, general fund expenditures increase by approximately \$70,000 annually for each additional caseworker needed.

However, as noted above, if the workgroup fails to submit the required report by December 1, 2020, the bill's provisions regarding the registry are null and void and there will be no requirement for DHS to operate a vulnerable adult registry. DHS can staff the required workgroup using existing resources. Any expense reimbursements for workgroup members are assumed to be minimal and absorbable within existing budgeted resources.

OAH advises that if a registry is created, 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.

Additional Information

Prior Introductions: Similar bills have been considered in prior years. HB 23 of 2015 received a hearing in the House Judiciary Committee but was subsequently withdrawn. HB 379 of 2014 received an unfavorable report from the House Judiciary Committee. HB 326 of 2013 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 333, received a hearing in the Senate Judicial Proceedings Committee but was subsequently withdrawn.

Designated Cross File: HB 1527 (Delegate J. Lewis) - Judiciary.

Information Source(s): Maryland Department of Aging; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Department of Legislative Services

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an/lgc

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510