



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB347 - Criminal Law - Exploitation of Vulnerable Adult or Elderly Individual - Undue Influence

Chairman Smith, Vice-Chair Waldstreicher, and esteemed members of the Judicial Proceedings Committee, thank you for the opportunity to testify in support of HB347. This bill passed the House Judiciary Committee unanimously with 20 votes, and passed the House on a consent calendar vote of 131 yeas and 4 nays.

As you may recall, undue influence is a doctrine that dates back to a Common law case in 1617, and although our understanding of undue influence has evolved, our laws across the country and here in Maryland have not kept up. These cases are incredibly difficult to prove, in part because they often occur behind closed doors without witnesses. There is a lack of clear definition for what ‘undue influence’ is under the law, and it is often complicated by the assumption that mental capacity and undue influence are linked, which is not always necessarily the case. For example, one could be of sound mind yet still fall prey to undue influence due to other factors, such as the relationship between the influencer and victim.

This bill will strengthen our criminal code as it pertains to the definition of ‘undue influence’ of a vulnerable adult, specifically as it relates to the transfer of property. The idea for HB347 came by way of my constituent, Claudia. Her late uncle was defrauded by their financial advisor, who was able to convince Claudia’s uncle to sign the advisor into the uncle’s will prior to his passing. It is important to note that while a civil suit was settled, a criminal case was not pursued. This is, in part, because the standard in Maryland is so difficult to prove that cases like these are rarely successful.

HB347 adopts language that was first enacted in California in 2014 after a multi-year study on how to protect seniors from financial exploitation via undue influence. HB347 provides a clear definition for undue influence and bases it on detailed recommendations by psychologists, sociologists, criminologists, victimologists, legal experts and courts that have focused on the following:

1. Victim characteristics that contribute to vulnerability;
2. The power dynamic between the influencer and the victim;

3. Improper actions or tactics taken by the influencer; and
4. Unfair, improper, 'unnatural' or unethical transactions or outcomes

Each of these components are addressed in HB347. The bill defines 'undue influence' as "excessive persuasion that causes a vulnerable adult or an individual at least 68 years old to act or refrain from acting by overcoming that person's free will and that results in inequity." It then defines in section (G) what the court shall consider when determining whether undue influence was used to obtain property. It defines characteristics that would cause the victim to be vulnerable, whether the defendant knew or should have known of the alleged victim's vulnerability, the defendant's apparent authority, various tactics that could be used to engage in undue influence, and the inequity that results from the action.

It is imperative that we examine and improve this section of our code, as the number of potentially impacted individuals are growing at a rapid rate. Between 2000- 2010, Marylanders over the age of 68 grew approximately 6,862 per year, while between 2010-2018 that number skyrocketed to 21,815 per year. These numbers are only increasing as a result of the pandemic with more and more seniors falling victim to financial crimes.

This bill is identical to a bill (HB320) that passed the House of Delegates unanimously last year, and was cross-filed with the Vice Chair's bill SB702. While HB320 was referred to this Committee, it did not have enough time for your consideration prior to our early adjournment.

I respectfully request a favorable report. Thank you.