

HB 347.Seniors.2021.pdf

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Maryland Retired School Personnel Association

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House Bill 347
In Support Of
Criminal Law - Exploitation of Vulnerable Adult or Elderly Individual
-
Undue Influence
House Judiciary Committee
Hearing: January 14 at 1:00 p.m.

The Legislative Committee of the Maryland Retired School Personnel Association (MRSPA) requests a favorable report on House Bill 347 Criminal Law - Exploitation of Vulnerable Adult or Elderly Individual - Undue Influence.

The legislation alters the definition of "undue Influence" for purposes of provisions of law prohibiting the exploitation of certain vulnerable adults or individuals at least 68 years old; requiring a court to determine whether a transfer of property was induced by undue influence and to consider certain factors.

The newly added Section 8-801 6(i)(a) specifically defines undue influence. Section G, also newly added, details the factors to be considered by the court in determining whether property was obtained by undue influence and the equity of the result. This additional text further helps to define the severity of the crime.

On behalf of the almost 14,000 members of the Maryland Retired School Personnel Association, we request a favorable vote on HB 347.

Sincerely,

George D. Denny Jr
President

Virginia Crespo
Legislative Aide

HB347 Center for Hope FAV JPR.pdf

Uploaded by: Lombardi, Joyce

Position: FAV

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CENTER FOR HOPE

Advancing hope, healing and resilience



HB347: Criminal Law - Exploitation of Vulnerable Adult or Elderly Individual - Undue Influence
Senate Judicial Proceedings Committee – March 16, 2021
Testimony of Joyce Lombardi, Director of Government Relations, LifeBridge Health Center for Hope,
jlombard@lifebridgehealth.org
Position: **SUPPORT**

Center for Hope SUPPORTS HB347. The Center for Hope is a comprehensive violence program that addresses violence through the lifespan, and includes child advocacy, domestic violence programs, street violence interruption programs and an elder abuse program.

Center for Hope's Elder Justice Program was created to provide an evidence-based approach to the growing -- but often overlooked -- problem of serious harm caused to older adults by family and caregivers. Based on the child advocacy center model, the project convenes a multi-disciplinary team of experts, including forensic interviewers, Baltimore City law enforcement and state's attorneys, medical and mental health professionals to review cases to identify gaps in services and systemic improvements that will better protect Maryland's senior populations.

Like child abuse, elder abuse is often a crime perpetrated by family or household members. In almost 60% of elder abuse and neglect incidents, the perpetrator is a family member. Two-thirds of perpetrators are adult children or spouses. In fiscal year 2019, Maryland authorities received over 12,000 complaints of abuse of seniors and vulnerable adults (over 7,000 for Maryland Adult Protective Services and over 5,000 complaints for Maryland Department of Aging). (Source: Md Dept of Aging FY2019 Fact Sheet).

Changes definition of "undue influence" on an elder or vulnerable adult. LBH Center for Hope supports HB347's expansion of the definition of "undue influence" from its current meaning, "domination and influence amounting to force and coercion" to include "excessive persuasion." The distinction better captures the nature of vulnerability of older and vulnerable adults.

Factors amounting to "excessive persuasion." The bill also provides courts a list of factors that provides an educational window into how abuse occurs. It directs the court to examine the victim's capacity, illness, isolation, dependency. It also focuses on defendant's actions such as controlling medication and sleep, using affection, or using secrecy or haste, or making changes at inappropriate times and places. Experience tells us that where there is financial exploitation, there is also often emotional, physical and/or sexual abuse of elders and vulnerable adults.

For all of the heretofore stated reasons, we request a **FAVORABLE** report for HB347.

Shetty_Senate_HB347.pdf

Uploaded by: Shetty, Emily

Position: FAV



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.