

HOUSE BILL 581

D3
HB 724/14 – JUD

5lr0612

By: **Delegates Kramer, Afzali, Barkley, Barron, Carr, Fraser–Hidalgo, Frick, McComas, W. Miller, Platt, B. Robinson, and Valderrama**

Introduced and read first time: February 12, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Damages for Crimes Against Vulnerable or Elderly Adults –**
3 **Standing**

4 FOR the purpose of authorizing the Attorney General to bring a civil action for damages
5 against a certain person who violates certain provisions of criminal law on behalf of
6 a certain person; providing that a certain criminal conviction is not a prerequisite for
7 maintenance of an action under this Act; providing that the Attorney General may
8 recover certain damages under this Act; providing, under certain circumstances, for
9 the recovery of certain costs by the Attorney General; providing for the application
10 of this Act; and generally relating to the authority of the Attorney General to bring
11 a certain cause of action.

12 BY repealing and reenacting, without amendments,
13 Article – Criminal Law
14 Section 3–604, 3–605, and 8–801
15 Annotated Code of Maryland
16 (2012 Replacement Volume and 2014 Supplement)

17 BY adding to
18 Article – Courts and Judicial Proceedings
19 Section 3–2101 to be under the new subtitle “Subtitle 21. Civil Damages for Crimes
20 Against Vulnerable or Elderly Adults”
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2014 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3–604.

2 (a) (1) In this section and §§ 3–605 and 3–606 of this subtitle the following
3 words have the meanings indicated.

4 (2) (i) “Abuse” means the sustaining of physical pain or injury by a
5 vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious
6 act under circumstances that indicate that the vulnerable adult’s health or welfare is
7 harmed or threatened.

8 (ii) “Abuse” includes the sexual abuse of a vulnerable adult.

9 (iii) “Abuse” does not include an accepted medical or behavioral
10 procedure ordered by a health care provider authorized to practice under the Health
11 Occupations Article or § 13–516 of the Education Article acting within the scope of the
12 health care provider’s practice.

13 (3) “Caregiver” means a person under a duty to care for a vulnerable adult
14 because of a contractual undertaking to provide care.

15 (4) “Family member” means a relative of a vulnerable adult by blood,
16 marriage, adoption, or the marriage of a child.

17 (5) “Household” means the location:

18 (i) in which the vulnerable adult resides;

19 (ii) where the abuse or neglect of a vulnerable adult is alleged to
20 have taken place; or

21 (iii) where the person suspected of abusing or neglecting a vulnerable
22 adult resides.

23 (6) “Household member” means an individual who lives with or is a regular
24 presence in a home of a vulnerable adult at the time of the alleged abuse or neglect.

25 (7) (i) “Neglect” means the intentional failure to provide necessary
26 assistance and resources for the physical needs of a vulnerable adult, including:

27 1. food;

28 2. clothing;

29 3. toileting;

30 4. essential medical treatment;

1 5. shelter; or

2 6. supervision.

3 (ii) “Neglect” does not include the provision of nonmedical remedial
4 care and treatment for the healing of injury or disease that is:

5 1. given with the consent of the vulnerable adult; and

6 2. recognized by State law in place of medical treatment.

7 (8) “Serious physical injury” means physical injury that:

8 (i) creates a substantial risk of death; or

9 (ii) causes permanent or protracted serious:

10 1. disfigurement;

11 2. loss of the function of any bodily member or organ; or

12 3. impairment of the function of any bodily member or organ.

13 (9) (i) “Sexual abuse” means an act that involves sexual molestation or
14 exploitation of a vulnerable adult.

15 (ii) “Sexual abuse” includes:

16 1. incest;

17 2. rape;

18 3. sexual offense in any degree;

19 4. sodomy; and

20 5. unnatural or perverted sexual practices.

21 (10) “Vulnerable adult” means an adult who lacks the physical or mental
22 capacity to provide for the adult’s daily needs.

23 (b) (1) A caregiver, a parent, or other person who has permanent or temporary
24 care or responsibility for the supervision of a vulnerable adult may not cause abuse or
25 neglect of the vulnerable adult that:

26 (i) results in the death of the vulnerable adult;

1 (ii) causes serious physical injury to the vulnerable adult; or

2 (iii) involves sexual abuse of the vulnerable adult.

3 (2) A household member or family member may not cause abuse or neglect
4 of a vulnerable adult that:

5 (i) results in the death of the vulnerable adult;

6 (ii) causes serious physical injury to the vulnerable adult; or

7 (iii) involves sexual abuse of the vulnerable adult.

8 (c) A person who violates this section is guilty of the felony of abuse or neglect of
9 a vulnerable adult in the first degree and on conviction is subject to imprisonment not
10 exceeding 10 years or a fine not exceeding \$10,000 or both.

11 (d) A sentence imposed under this section shall be in addition to any other
12 sentence imposed for a conviction arising from the same facts and circumstances unless the
13 evidence required to prove each crime is substantially identical.

14 3-605.

15 (a) This section does not apply to abuse that involves sexual abuse of a vulnerable
16 adult.

17 (b) (1) A caregiver, a parent, or other person who has permanent or temporary
18 care or responsibility for the supervision of a vulnerable adult may not cause abuse or
19 neglect of the vulnerable adult.

20 (2) A household member or family member may not cause abuse or neglect
21 of a vulnerable adult.

22 (c) A person who violates this section is guilty of the misdemeanor of abuse or
23 neglect of a vulnerable adult in the second degree and on conviction is subject to
24 imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

25 (d) A sentence imposed under this section shall be in addition to any other
26 sentence imposed for a conviction arising from the same facts and circumstances unless the
27 evidence required to prove each crime is substantially identical.

28 8-801.

29 (a) (1) In this section the following words have the meanings indicated.

30 (2) "Deception" has the meaning stated in § 7-101 of this article.

1 (3) “Deprive” has the meaning stated in § 7–101 of this article.

2 (4) “Obtain” has the meaning stated in § 7–101 of this article.

3 (5) “Property” has the meaning stated in § 7–101 of this article.

4 (6) (i) “Undue influence” means domination and influence amounting
5 to force and coercion exercised by another person to such an extent that a vulnerable adult
6 or an individual at least 68 years old was prevented from exercising free judgment and
7 choice.

8 (ii) “Undue influence” does not include the normal influence that one
9 member of a family has over another member of the family.

10 (7) “Value” has the meaning stated in § 7–103 of this article.

11 (8) “Vulnerable adult” has the meaning stated in § 3–604 of this article.

12 (b) (1) A person may not knowingly and willfully obtain by deception,
13 intimidation, or undue influence the property of an individual that the person knows or
14 reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult
15 of the vulnerable adult’s property.

16 (2) A person may not knowingly and willfully obtain by deception,
17 intimidation, or undue influence the property of an individual that the person knows or
18 reasonably should know is at least 68 years old, with intent to deprive the individual of the
19 individual’s property.

20 (c) (1) (i) A person convicted of a violation of this section when the value of
21 the property is at least \$1,000 but less than \$10,000 is guilty of a felony and:

22 1. is subject to imprisonment not exceeding 10 years or a fine
23 not exceeding \$10,000 or both; and

24 2. shall restore the property taken or its value to the owner,
25 or, if the owner is deceased, restore the property or its value to the owner’s estate.

26 (ii) A person convicted of a violation of this section when the value of
27 the property is at least \$10,000 but less than \$100,000 is guilty of a felony and:

28 1. is subject to imprisonment not exceeding 15 years or a fine
29 not exceeding \$15,000 or both; and

30 2. shall restore the property taken or its value to the owner,
31 or, if the owner is deceased, restore the property or its value to the owner’s estate.

1 (iii) A person convicted of a violation of this section when the value of
2 the property is \$100,000 or more is guilty of a felony and:

3 1. is subject to imprisonment not exceeding 25 years or a fine
4 not exceeding \$25,000 or both; and

5 2. shall restore the property taken or its value to the owner,
6 or, if the owner is deceased, restore the property or its value to the owner's estate.

7 (2) A person convicted of a violation of this section when the value of the
8 property is less than \$1,000 is guilty of a misdemeanor and:

9 (i) is subject to imprisonment not exceeding 18 months or a fine not
10 exceeding \$500 or both; and

11 (ii) shall restore the property taken or its value to the owner, or, if
12 the owner is deceased, restore the property or its value to the owner's estate.

13 (d) A sentence imposed under this section may be separate from and consecutive
14 to or concurrent with a sentence for any crime based on the act or acts establishing the
15 violation of this section.

16 (e) (1) If a defendant fails to restore fully the property taken or its value as
17 ordered under subsection (c) of this section, the defendant is disqualified, to the extent of
18 the defendant's failure to restore the property or its value, from inheriting, taking, enjoying,
19 receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the
20 victim of the offense, whether by operation of law or pursuant to a legal document executed
21 or entered into by the victim before the defendant shall have been convicted under this
22 section.

23 (2) The defendant has the burden of proof with respect to establishing
24 under paragraph (1) of this subsection that the defendant has fully restored the property
25 taken or its value.

26 (f) This section may not be construed to impose criminal liability on a person who,
27 at the request of the victim of the offense, the victim's family, or the court appointed
28 guardian of the victim, has made a good faith effort to assist the victim in the management
29 of or transfer of the victim's property.

30 Article – Courts and Judicial Proceedings

31 SUBTITLE 21. CIVIL DAMAGES FOR CRIMES AGAINST VULNERABLE OR ELDERLY 32 ADULTS.

33 3-2101.

1 **(A) (1) IN ADDITION TO ANY OTHER ACTION AUTHORIZED BY LAW, THE**
2 **ATTORNEY GENERAL MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST A PERSON**
3 **WHO VIOLATES § 3-604, § 3-605, OR § 8-801 OF THE CRIMINAL LAW ARTICLE ON**
4 **BEHALF OF A VICTIM OF THE OFFENSE OR A BENEFICIARY OF THE VICTIM.**

5 **(2) A CONVICTION FOR AN OFFENSE UNDER § 3-604, § 3-605, OR §**
6 **8-801 OF THE CRIMINAL LAW ARTICLE IS NOT A PREREQUISITE FOR MAINTENANCE**
7 **OF AN ACTION UNDER THIS SECTION.**

8 **(B) THE ATTORNEY GENERAL MAY RECOVER DAMAGES UNDER THIS**
9 **SECTION FOR PERSONAL INJURY, DEATH, OR PROPERTY LOSS OR DAMAGE.**

10 **(C) IF THE ATTORNEY GENERAL PREVAILS IN AN ACTION BROUGHT UNDER**
11 **THIS SECTION, THE ATTORNEY GENERAL MAY RECOVER THE COSTS OF THE ACTION**
12 **FOR THE USE OF THE STATE.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
14 apply only prospectively and may not be applied or interpreted to have any effect on or
15 application to any cause of action arising before the effective date of this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
17 1, 2015.