

HOUSE BILL 1282

E4, D4

0lr3040

By: **Delegates Mautz, Arikan, Buckel, Corderman, Hornberger, McComas, and Saab**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Vulnerable Adult Abuse Registry**

3 FOR the purpose of establishing a vulnerable adult abuse registry; requiring the Maryland
4 Department of Health to establish and maintain a registry containing the names of
5 certain individuals; requiring that names and information contained in the registry
6 be available for public inspection; authorizing the Department to discharge certain
7 responsibilities in a certain manner; requiring a State agency that makes a certain
8 finding to notify the Department in a certain manner; requiring the State's Attorney
9 to report a conviction of an individual for a certain crime to the Department;
10 requiring the Department to enter the names of certain individuals and information
11 in the registry in certain circumstances; requiring the Department to notify an
12 individual of inclusion in the registry in a certain manner; authorizing the individual
13 to challenge the accuracy of a certain report in a certain manner; requiring the
14 removal of a certain individual's name from the registry under certain
15 circumstances; authorizing a State agency to recommend the removal of an
16 individual's name from the registry under certain circumstances; authorizing a
17 certain appeal; requiring a certain State agency to consult the registry before hiring
18 an employee or using a volunteer; prohibiting a certain agency from hiring or
19 otherwise using the services of an individual who is listed in the registry; providing
20 immunity for certain persons; defining certain terms; and generally relating to abuse
21 of vulnerable adults.

22 BY adding to

23 Article – Criminal Procedure

24 Section 11–1201 through 11–1205 to be under the new subtitle “Subtitle 12.
25 Vulnerable Adult Abuse Registry”

26 Annotated Code of Maryland

27 (2018 Replacement Volume and 2019 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



That the Laws of Maryland read as follows:

Article – Criminal Procedure

SUBTITLE 12. VULNERABLE ADULT ABUSE REGISTRY.

11–1201.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CONVICTION” MEANS THE INDIVIDUAL:

(1) HAS BEEN FOUND GUILTY OF A CRIME BY A JURY OR JUDICIAL OFFICER;

(2) HAS ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE;

(3) HAS BEEN GRANTED PROBATION BEFORE JUDGMENT AFTER A FINDING OF GUILT FOR A CRIME IF THE COURT, AS A CONDITION OF PROBATION, ORDERS COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE; OR

(4) HAS BEEN FOUND CRIMINALLY RESPONSIBLE FOR A CRIME.

(C) “EXPLOITATION” MEANS THE IMPROPER USE BY A CARETAKER OF FUNDS THAT HAVE BEEN PAID BY A GOVERNMENT AGENCY TO AN ADULT OR TO THE CARETAKER OF AN ADULT FOR THE USE OR CARE OF THE ADULT.

(D) “MISAPPROPRIATION” MEANS A TAKING, POSSESSION, OR USE OF THE PROPERTY OF A VULNERABLE ADULT, THE ELEMENTS OF WHICH CONSTITUTE A CRIMINAL OFFENSE INVOLVING THE PROPERTY OR CONSTITUTE A VIOLATION OF A FIDUCIARY DUTY OF A CARETAKER OF A VULNERABLE ADULT.

(E) “OFFENSE AGAINST A VULNERABLE ADULT” MEANS AN ACT THAT CONSTITUTES ABUSE, NEGLECT, OR MISAPPROPRIATION OR EXPLOITATION OF THE PROPERTY OF A VULNERABLE ADULT, EVEN IF THE ACT DOES NOT CONSTITUTE A CRIMINAL ACT OR A CRIME, THE ELEMENTS OF WHICH CONSTITUTE ABUSE, NEGLECT, OR MISAPPROPRIATION OR EXPLOITATION OF THE PROPERTY OF THE VULNERABLE ADULT.

(F) “PROPERTY” HAS THE MEANING STATED IN § 7–101 OF THE CRIMINAL LAW ARTICLE.

(G) “REGISTRY” MEANS THE VULNERABLE ADULT ABUSE REGISTRY

1 ESTABLISHED AND MAINTAINED BY THE MARYLAND DEPARTMENT OF HEALTH.

2 (H) "VULNERABLE ADULT" HAS THE MEANING STATED IN § 3-604 OF THE
3 CRIMINAL LAW ARTICLE.

4 (I) "VULNERABLE ADULT ABUSE CRIME" MEANS:

5 (1) A CONVICTION UNDER § 3-604, § 3-605, § 3-606, OR § 8-801 OF
6 THE CRIMINAL LAW ARTICLE; OR

7 (2) A CRIME COMMITTED IN A FEDERAL, STATE, OR FOREIGN
8 JURISDICTION THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ONE OF
9 THE CRIMES LISTED IN ITEM (1) OF THIS SUBSECTION.

10 11-1202.

11 (A) THE MARYLAND DEPARTMENT OF HEALTH SHALL ESTABLISH AND
12 MAINTAIN A REGISTRY CONTAINING THE NAMES OF INDIVIDUALS WHO HAVE BEEN
13 FOUND BY A STATE AGENCY TO HAVE ABUSED, NEGLECTED, OR MISAPPROPRIATED
14 OR EXPLOITED THE PROPERTY OF A VULNERABLE ADULT OR WHO HAVE BEEN
15 CONVICTED OF A VULNERABLE ADULT ABUSE CRIME.

16 (B) THE NAMES AND INFORMATION CONTAINED IN THE REGISTRY SHALL BE
17 AVAILABLE FOR PUBLIC INSPECTION AS PROVIDED IN THIS SUBTITLE.

18 (C) THE MARYLAND DEPARTMENT OF HEALTH MAY DISCHARGE ITS
19 RESPONSIBILITIES UNDER THIS SUBTITLE DIRECTLY, OR THROUGH INTERAGENCY
20 AGREEMENT, IF AUTHORIZED ACCESS TO THE RECORDS BY MEANS OF A SINGLE
21 CENTRALIZED AGENCY IS ASSURED.

22 11-1203.

23 (A) (1) (I) A STATE AGENCY THAT MAKES A FINDING THAT AN
24 INDIVIDUAL HAS COMMITTED MORE THAN ONE OFFENSE AGAINST A VULNERABLE
25 ADULT WITHIN A 5-YEAR PERIOD, AFTER PROVIDING THE INDIVIDUAL AN
26 OPPORTUNITY FOR AN ADMINISTRATIVE DUE PROCESS HEARING IN ACCORDANCE
27 WITH THE REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT
28 ARTICLE, SHALL PROVIDE NOTIFICATION TO THE MARYLAND DEPARTMENT OF
29 HEALTH OF INFORMATION REGARDING THE INDIVIDUAL IN ACCORDANCE WITH
30 PARAGRAPH (2) OF THIS SUBSECTION.

31 (II) THE MARYLAND DEPARTMENT OF HEALTH SHALL
32 INCLUDE THE NAME OF AN INDIVIDUAL IN THE REGISTRY UNDER THIS SUBTITLE

1 WHEN THE DEPARTMENT RECEIVES NOTIFICATION FROM A STATE AGENCY IN
2 ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH.

3 (2) (I) THE NOTIFICATION DESCRIBED IN PARAGRAPH (1) OF THIS
4 SUBSECTION SHALL INCLUDE:

5 1. A COPY OF AN EMERGENCY, INITIAL, OR FINAL
6 ADMINISTRATIVE ORDER, A JUDICIAL ORDER, OR ANY OTHER EVIDENCE
7 INDICATING THAT THE AGENCY HAS AFFORDED AN INDIVIDUAL AN OPPORTUNITY
8 FOR AN ADMINISTRATIVE DUE PROCESS HEARING IN ACCORDANCE WITH THE
9 REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE;

10 2. THE INDIVIDUAL'S LAST KNOWN MAILING ADDRESS;

11 3. THE DEFINITION OF ABUSE, NEGLECT, OR
12 MISAPPROPRIATION OR EXPLOITATION OF PROPERTY THAT WAS USED BY THE
13 AGENCY IN MAKING THE FINDINGS OF ABUSE; AND

14 4. OTHER INFORMATION THAT THE MARYLAND
15 DEPARTMENT OF HEALTH MAY DETERMINE IS NECESSARY TO ADEQUATELY
16 IDENTIFY THE INDIVIDUAL FOR PURPOSES OF ADMINISTRATIVE HEARINGS
17 PROVIDED BY THIS SUBTITLE OR TO ADEQUATELY IDENTIFY THE INDIVIDUAL WHEN
18 INQUIRY TO THE REGISTRY IS MADE.

19 (II) THIS SUBTITLE DOES NOT REQUIRE A STATE AGENCY TO
20 ESTABLISH NEW PROCEDURES OR TO MODIFY EXISTING PROCEDURES THE AGENCY
21 MAY USE FOR THE PROVISION OF DUE PROCESS TO THE INDIVIDUAL.

22 (B) ON CONVICTION OF AN INDIVIDUAL FOR A VULNERABLE ADULT ABUSE
23 CRIME, THE STATE'S ATTORNEY SHALL REPORT THE INDIVIDUAL'S NAME TO THE
24 MARYLAND DEPARTMENT OF HEALTH.

25 (C) ON RECEIVING A NOTIFICATION DESCRIBED IN SUBSECTION (A) OR (B)
26 OF THIS SECTION, THE MARYLAND DEPARTMENT OF HEALTH SHALL:

27 (1) ENTER THE INDIVIDUAL'S NAME IN THE REGISTRY; AND

28 (2) MAINTAIN AND MAKE AVAILABLE ON REQUEST THE NAME OF THE
29 REPORTING AGENCY OR COURT AND THE APPLICABLE DEFINITION OF ABUSE,
30 NEGLECT, OR MISAPPROPRIATION OR EXPLOITATION OF PROPERTY SUPPLIED BY
31 THE REPORTING AGENCY OR COURT.

32 (D) (1) ON ENTRY OF THE INFORMATION UNDER SUBSECTION (C) OF THIS

SECTION, THE MARYLAND DEPARTMENT OF HEALTH SHALL NOTIFY AN INDIVIDUAL, AT THE INDIVIDUAL'S LAST KNOWN MAILING ADDRESS, OF THE INDIVIDUAL'S INCLUSION IN THE REGISTRY.

(2) (I) AN INDIVIDUAL MAY CHALLENGE THE ACCURACY OF THE REPORT THAT THE FINDING OR CONVICTION OCCURRED OR OF A FACT ISSUE RELATED TO THE CORRECT IDENTITY OF THE INDIVIDUAL.

(II) IF THE INDIVIDUAL MAKES A CHALLENGE WITHIN 30 DAYS OF NOTIFICATION OF INCLUSION OF THE INDIVIDUAL'S NAME IN THE REGISTRY, THE MARYLAND DEPARTMENT OF HEALTH SHALL AFFORD THE INDIVIDUAL AN OPPORTUNITY FOR A HEARING ON THE MATTER THAT COMPLIES WITH THE REQUIREMENTS OF DUE PROCESS AND TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(E) AN INDIVIDUAL'S NAME SHALL BE REMOVED IMMEDIATELY FROM THE REGISTRY IF:

(1) AFTER A HEARING, THE MARYLAND DEPARTMENT OF HEALTH DETERMINES THAT THE FINDINGS OR CONVICTION NEVER OCCURRED; OR

(2) AT THE FINAL STEP TAKEN IN AN APPELLATE PROCESS, A REPORTED CONVICTION, AN EMERGENCY ORDER, OR AN ADMINISTRATIVE HEARING RESULT IS REVERSED.

(F) (1) A STATE AGENCY THAT HAS PLACED AN INDIVIDUAL'S NAME IN THE REGISTRY IN ACCORDANCE WITH THIS SUBTITLE MAY RECOMMEND TO THE MARYLAND DEPARTMENT OF HEALTH THE REMOVAL OF THE INDIVIDUAL'S NAME IF:

(I) THE AGENCY FINDS THAT THE PLACEMENT OF THE INDIVIDUAL'S NAME IN THE REGISTRY WAS IN ERROR; OR

(II) AN ADVISORY GROUP CONVENED BY THE AGENCY DETERMINES, BASED ON EVIDENCE PRESENTED TO THE GROUP, THAT REMOVAL OF THE INDIVIDUAL'S NAME FROM THE REGISTRY CLEARLY IS WARRANTED AND RECOMMENDS IN WRITING TO THE AGENCY A WAIVER AND REMOVAL OF THE INDIVIDUAL'S NAME FROM THE REGISTRY.

(2) AN ADVISORY GROUP UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE COMPOSED OF INDIVIDUALS:

(I) WITH EXPERIENCE IN THE SUBJECT MATTER AREAS OF THE

1 AGENCY'S WORK; OR

2 (II) WHO ARE QUALIFIED BY EXPERIENCE OR EDUCATION, AS
3 DETERMINED BY THE AGENCY, TO PROVIDE RECOMMENDATIONS TO THE AGENCY
4 REGARDING AN INDIVIDUAL'S LIKELIHOOD OF COMMITTING FURTHER ACTS OR
5 OMISSIONS THAT LED TO THE INDIVIDUAL'S NAME BEING PLACED IN THE REGISTRY.

6 (3) (I) THE FINAL DECISION REGARDING THE RECOMMENDATION
7 FOR REMOVAL OF AN INDIVIDUAL'S NAME FROM THE REGISTRY SHALL BE MADE BY
8 THE STATE AGENCY.

9 (II) A RECOMMENDATION UNDER SUBPARAGRAPH (I) OF THIS
10 PARAGRAPH SHALL BE IN WRITING, SHALL GIVE THE AGENCY'S REASONS FOR THE
11 DECISION, AND SHALL BE SENT TO THE INDIVIDUAL SEEKING THE WAIVER.

12 (4) IF THE DECISION IS TO REMOVE AN INDIVIDUAL'S NAME FROM
13 THE REGISTRY, THE RECOMMENDATION SHALL BE SENT TO THE MARYLAND
14 DEPARTMENT OF HEALTH AND THE INDIVIDUAL'S NAME SHALL BE REMOVED BY
15 THE DEPARTMENT.

16 (5) (I) AN INDIVIDUAL SEEKING A WAIVER WHO IS DISSATISFIED
17 WITH THE DETERMINATION MADE BY THE STATE AGENCY MAY APPEAL.

18 (II) THE APPEAL SHALL BE CONDUCTED AS A CONTESTED CASE
19 HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
20 GOVERNMENT ARTICLE.

21 (6) THE DECISION AND THE WRITTEN RECOMMENDATIONS OF THE
22 ADVISORY GROUP AND THE STATE AGENCY SHALL BE OPEN FOR PUBLIC
23 INSPECTION.

24 11-1204.

25 (A) A STATE AGENCY THAT PROVIDES INSTITUTIONAL OR IN-HOME
26 SERVICES TO VULNERABLE ADULTS SHALL CONSULT THE REGISTRY BEFORE HIRING
27 AN EMPLOYEE OR USING A VOLUNTEER.

28 (B) A STATE AGENCY DESCRIBED IN SUBSECTION (A) OF THIS SECTION MAY
29 NOT HIRE OR OTHERWISE USE THE SERVICES OF AN INDIVIDUAL WHO IS LISTED IN
30 THE REGISTRY.

31 11-1205.

1 **(A) UNLESS THE INDIVIDUAL ACTED IN BAD FAITH OR WITH MALICIOUS**
2 **PURPOSE, AN INDIVIDUAL WHO SUBMITS AN ALLEGATION OF ABUSE, NEGLECT, OR**
3 **MISAPPROPRIATION OR EXPLOITATION OF PROPERTY TO THE MARYLAND**
4 **DEPARTMENT OF HEALTH FOR INCLUSION IN THE REGISTRY OR WHO TESTIFIES IN**
5 **AN ADMINISTRATIVE OR JUDICIAL PROCEEDING ARISING FROM THE ALLEGATION IS**
6 **IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR MAKING THE REPORT AND FOR**
7 **TESTIFYING, EXCEPT FOR LIABILITY FOR PERJURY.**

8 **(B) A PERSON THAT DECLINES TO EMPLOY OR OTHERWISE USE THE**
9 **SERVICES OF AN INDIVIDUAL LISTED IN THE REGISTRY OR THAT TERMINATES THE**
10 **INDIVIDUAL IS IMMUNE FROM SUIT BY OR ON BEHALF OF THAT INDIVIDUAL.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2020.