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Senate Bills 80 and 81 (as introduced 1-27-11)
Sponsor: Senator Gretchen Whitmer
Committee: Judiciary

Date Completed: 2-8-11

CONTENT

Senate Bill 80 would amend the Michigan Penal Code to impose enhanced felony penalties for embezzlement of a vulnerable adult if the money or property used or obtained had a value of \$50,000 or more.

Senate Bill 81 would amend the Code of Criminal Procedure to include the felony penalties proposed by Senate Bill 80 in the sentencing guidelines.

Senate Bill 81 is tie-barred to Senate Bill 80.

Senate Bill 80

The Penal Code prescribes penalties for a person who, through fraud, deceit, misrepresentation, or unjust enrichment, obtains or uses or attempts to obtain or use a vulnerable adult's money or property to benefit himself or herself, knowing or having reason to know that the other person is a vulnerable adult.

The Code includes a graduated sentencing structure that imposes more serious penalties for greater values of money or property or for repeat convictions, as shown in Table 1. In all cases, the maximum fine is the amount specified or three times the value of the money or property used or obtained, or attempted to be used or obtained, whichever is greater. Also, a court may impose either a fine or imprisonment, or both a fine and imprisonment.

Table 1

Value of Money or Property	Offense	<u>Maximum Sentence</u>	
		Fine	Imprisonment
Under \$200	Misdemeanor	\$500	93 days
\$200 or more but < \$1,000; or < \$200 + 1 or more priors	Misdemeanor	\$2,000	1 year
\$1,000 or more but < \$20,000; or \$200 but < \$1,000 + 1 or more priors*	Felony	\$10,000	5 years
\$20,000 or more; or \$1,000 or more but < \$20,000 + 2 or more priors*	Felony	\$15,000	10 years
* For purposes of this sentence, a prior conviction does not include a conviction for a violation or attempted violation involving money or property valued at less than \$200.			

Under the bill, the greatest penalty currently available would apply to a violation in which the value of the money or property was \$20,000 or more, but less than \$50,000 (or the lower amount with prior convictions, as shown in Table 1). Also, the graduated sentencing structure would include two levels of penalties for greater values of money or property, as shown in Table 2.

Table 2

Value of Money or Property	Offense	<u>Maximum Sentence</u>	
		Fine	Imprisonment
\$50,000 or more but < \$100,000; or \$20,000 or more but < \$50,000 + 2 or more priors*	Felony	\$15,000	15 years
More than \$100,000; or \$50,000 or more but < \$100,000 + 2 or more priors*	Felony	\$50,000	20 years
* For purposes of this sentence, a prior conviction does not include a conviction for a violation or attempted violation involving money or property valued at less than \$200.			

Under the Code, the values of money or property used or obtained or attempted to be used or obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of money or personal property used or obtained or attempted to be used or obtained. If the scheme or course of conduct is directed against only one person, however, no time limit applies to the aggregation of values.

"Vulnerable adult" means one or more of the following, regardless of whether the individual has been determined by the court to be incapacitated:

- An individual, 18 years old or over, who, because of age, developmental disability, mental illness, or physical disability, requires supervision or personal care or lacks the personal and social skills required to live independently.
- A child placed in an adult foster care family home or an adult foster care small group home pursuant to the child care licensing act.
- A vulnerable person, 18 years old or over, who is suspected of being or believed to be abused, neglected, or exploited.

Senate Bill 81

Under the Code of Criminal Procedure, embezzlement of \$20,000 or more (or of \$1,000 to \$20,000 with prior convictions) by a person in a relationship of trust with a vulnerable adult is a Class D property felony with a statutory maximum sentence of 10 years. Under the bill, that sentencing guidelines designation would apply to embezzlement of \$20,000 to \$50,000, or of the lower amount with prior convictions.

The bill would add sentencing guidelines designations for the enhanced penalties proposed by Senate Bill 80, as shown in Table 3.

Table 3

Felony	Class & Category	Statutory Max. Sentence
Embezzlement of \$50,000 to \$100,000 (or \$20,000 to \$50,000 with priors) by a person in a relationship of trust with a vulnerable adult	C – Property	15 years
Embezzlement of more than \$100,000 (or \$50,000 to \$100,000 with priors) by a person in a relationship of trust with a vulnerable adult	B – Property	20 years

MCL 750.174a (S.B. 80)
777.16i (S.B. 81)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of vulnerable adult embezzlement in an amount that would be subject to the proposed higher penalties. An offender convicted of the Class B felony offense under the bills would receive a sentencing guidelines minimum sentence range of 0-18 months to 117-160 months, with a statutory maximum of 20 years. An offender convicted of the Class C felony offense under the bills would receive a sentencing guidelines minimum sentence range of 0-11 months to 62-114 months, with a statutory maximum of 15 years. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$35,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.