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BILL ANALYSIS



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Senate Bill 455 (Substitute S-2)
Senate Bill 459 (as introduced 6-15-11)
Senate Bill 465 (Substitute S-2)
Sponsor: Senator Tory Rocca (S.B. 455)
 Senator Judy K. Emmons (S.B. 459)
 Senator Dave Hildenbrand (S.B. 465)
Committee: Families, Seniors, and Human Services

Date Completed: 9-26-11

CONTENT

Senate Bill 459 would amend the Michigan Penal Code to prescribe 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. It also would revise a prohibition against fraudulently obtaining a signature, by deleting references to certain financial documents.

Senate Bills 455 (S-2) and 465 (S-2) would amend the Code of Criminal Procedure to include the enhanced felony penalties proposed by Senate Bill 459 in the sentencing guidelines.

Senate Bills 455 (S-2) and 465 (S-2) are tie-barred to Senate Bill 459.

Senate Bill 459

Enhanced Penalties

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.

Table 1

Value of Money or Property	Offense	Maximum Sentence	
		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	Maximum Sentence	
		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
\$100,000 or more; 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 would 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.

Fraudulently Obtaining Signature

Under the Code, it is a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000 for a person to obtain the signature of another individual, by representing that he or she is the agent of any person, company, firm, or corporation or by any other means, with the intent to cheat and defraud the individual, to any promissory note, bill of exchange, due bill, order, contract, or any paper writing.

Under the bill, the penalty instead would apply to a person who fraudulently obtained the signature of any individual with the intent to cheat and defraud that person.

Senate Bills 455 (S-2) & 465 (S-2)

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 bills, that sentencing guidelines designation would apply to embezzlement of \$20,000 to \$50,000 (or \$1,000 to \$20,000 with prior convictions).

The bills would add sentencing guidelines designations for the enhanced penalties proposed by Senate Bill 459, 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) from a vulnerable adult	C – Property	15 years
Embezzlement of \$100,000 or more (or \$50,000 to \$100,000 with priors) from a vulnerable adult	B – Property	20 years

The bills also would revise the sentencing guidelines descriptions for the current felonies of embezzlement from a vulnerable adult, by deleting the references to a person in a relationship of trust with a vulnerable adult. Under the bills, the descriptions instead would refer to embezzlement from a vulnerable adult.

In addition, Senate Bill 455 (S-2) would revise the sentencing guidelines description for the felony of fraudulently obtaining a signature. Currently, the description refers to obtaining a signature to a financial document with intent to defraud. Under the bill, the description would refer to obtaining a signature with intent to defraud. (The offense is a Class E property felony, with a statutory maximum penalty of 10 years' imprisonment.)

MCL 777.16i & 777.16o (S.B. 455)
 750.159g et al. (S.B. 459)
 777.16i (S.B. 465)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. To the extent that the new felony penalties led to an increase in incarceration, the State and local units of government would incur additional costs. 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 \$34,000. To the extent that the revised penalties led to an increase in penal fines, the additional revenue would benefit public libraries.

Fiscal Analyst: Matthew Grabowski