

Legislative Analysis



INCREASE PENALTIES FOR FINANCIAL EXPLOITATION OF VULNERABLE ADULT

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Senate Bill 459 (without House amendment)

Sponsor: Sen. Judy K. Emmons

Senate Bill 465 (Substitute H-1)

Sponsor: Sen. Dave Hildenbrand

Senate Bill 455 (Substitute H-1)

Sponsor: Sen. Tory Rocca

House Committee: Families, Children, and Seniors

Senate Committee: Families, Seniors, and Human Services

Complete to 3-25-12

A SUMMARY OF SENATE BILL 459, 465, & 455 AS REPORTED FROM HOUSE COMMITTEE ON 3-20-12

Senate Bill 459 would increase penalties in some circumstances for the financial exploitation of vulnerable adults. It would also revise a prohibition against fraudulently obtaining a signature. The bill amends Sections 159g, 174a and 273 of the Michigan Penal Code (MCL 750.159g, 750.174a, 750, and 750.273). The bill would specify that:

**** A person in a relationship of trust with a vulnerable adult is guilty of a felony punishable by imprisonment for not more than 15 years and/or fine of up to \$15,000, or three times the value of the money or property involved, whichever is greater, if any of the following apply:**

- The money or property used or obtained has a value of \$50,000 or more, but less than \$100,000.
- The person has two or more prior convictions for committing or attempting to commit an offense involving between \$20,000 and \$50,000.

**** A person is guilty of a felony punishable by imprisonment of up to 20 years and/or a fine of not more than \$50,000, or three times the value of the money or property involved, whichever is greater, if any of the following apply:**

- The money or property used, obtained or attempted to be obtained has a value of \$100,000 or more.
- The money or property involved is between \$50,000 and \$100,000 and the person has two or more prior convictions for committing or attempting to commit an offense.

The bill would also specify that a person who obtains the signature of any person with the intent to cheat and defraud that person would be guilty of a felony punishable by imprisonment for up to 10 years or a fine of up to \$5,000, or both.

Currently, there are two felonies for this kind of offense, with the most severe punishment being a maximum of 10 years' imprisonment and/or a fine of up to \$15,000, or three times the value of the money or property involved, whichever is greater. This now applies to cases involving money or property with a value of \$20,000 or more or lesser amounts with prior convictions.

Senate Bill 465 would put the new felonies in the Code of Criminal Procedure (MCL 77.16i). Embezzlement from a vulnerable adult of \$50,000 to \$100,000 with prior convictions would be a Class C felony against property with a 15-year maximum sentence. A crime involving \$100,000 or more with prior convictions would be a Class B felony against property with a 20 year maximum sentence. The bill would also specify that embezzlement by an agent of \$1,000 to \$20,000 or, with prior convictions, of \$200 to \$1,000 from a non-profit corporation or charitable organization would be a Class E felony against property with a 5 year maximum sentence.

Senate Bill 455 would also amend the Code of Criminal Procedure to include the enhanced felony penalties proposed by Senate Bill 459 in the sentencing guidelines.

Senate Bills 465 and 455 are tie-barred to Senate Bill 459.

FISCAL IMPACT:

To the extent that the bills increase the length of incarceration for felony convictions related to high dollar value embezzlement from vulnerable adults, it could increase costs on state and local correctional systems. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local incarceration in a county jail varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,200 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

As background, during calendar years 2008, 2009, and 2010, Michigan Department of Corrections statistical reports indicate there were a total of 31 felony convictions for embezzlement of \$20,000 or more from a vulnerable adult under MCL 750.174a(5). Twenty of these convictions resulted in felony probation sentences, 10 resulted in state prison sentences, and 1 resulted in a county jail sentence. It is not known how many of these convictions might involve amounts high enough to fall within the new enhanced penalties created by the bill.

BACKGROUND INFORMATION:

Advocates for the elderly say that elder abuse is a serious problem. The oldest and most dependent seniors are said to be the most frequent victims. Victims are reluctant to report abuse because they feel ashamed, embarrassed, humiliated, afraid, and they may even defend the abuser. Financial exploitation and fraud is the form of elder abuse most often reported to law enforcement (and is said to be the fastest growing form of abuse). Financial abuse is notoriously underreported. Current estimates put the overall reporting of financial abuse at only 25 percent of cases.

Some advocates for seniors would prefer that the Legislature impose mandatory minimums rather than increase maximum penalties, which might never be applied.

POSITIONS:

Elder Law of Michigan supports the bills. (3-20-12)

Elder Law and Disability Rights Section of State Bar of Michigan supports the bills. (3-20-12)

Michigan Bankers Association supports the bills. (3-20-12)

Michigan Catholic Conference supports the bills. (3-20-12)

Michigan County Social Services Association supports the bills (3-20-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.