Legislative Analysis

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ELDER AND VULNERABLE ADULT ABUSE

House Bill 4472 as introduced
Sponsor: Rep. Sarah Anthony

House Bill 4473 as introduced
Sponsor: Rep. Douglas C. Wozniak

House Bill 4474 as introduced
Sponsor: Rep. Rodney Wakeman

House Bill 4475 as introduced
Sponsor: Rep. Kyra Harris Bolden

House Bill 4476 as introduced
Sponsor: Rep. Mark A. Tisdel

House Bill 4477 as introduced
Sponsor: Rep. Jim Ellison

House Bill 4478 as introduced
Sponsor: Rep. Diana Farrington

House Bill 4479 as introduced
Sponsor: Rep. Brenda Carter

Committee: Families, Children and Seniors
Complete to 6-7-21

SUMMARY:

House Bills 4472 to 4479 would make it a crime to assault or restrain an elder adult or vulnerable adult, expand a prohibition against embezzlement from a vulnerable adult to include elder adults, prescribe penalties, define terms, and amend the sentencing guidelines and other acts to account for these changes. Each bill would take effect 90 days after its enactment.

House Bill 4473 would amend the Michigan Penal Code to prohibit a person from assaulting another person who he or she knows or reasonably should know is an ***elder adult*** or ***vulnerable adult*** and to prohibit a person from ***restraining*** an elder adult or vulnerable adult using violence, menace, fraud, or deceit. The penalty for a conviction could include imprisonment, a fine, or both, and would depend on the offense and the level of injury to the elder adult or vulnerable adult, as shown in the table below.

Offense Description	Offense Level	Maximum Term of Imprisonment	Maximum Fine
Assault	Misdemeanor	1 year	$1,000
Assault causing physical injury, pain or mental suffering	Felony	4 years	$5,000
Assault causing ***serious impairment of a body function***	Felony	15 years	$10,000
Assault causing death	Felony	25 years	$25,000
Restrain by use of violence, menace, fraud, or deceit	Felony	4 years	$5,000

Elder adult would mean a person who is 80 years old or older.

Vulnerable adult is currently defined in section 145m of the Penal Code to mean one or more of the following:

- An individual 18 years of age or older 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 person 18 years of age or older who is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or advanced age and who is suspected of being abused, neglected, or exploited.[1]
- A child who is placed in an adult foster care family home or an adult foster care small group home under the child care licensing act, 1973 PA 116.

Restrain would mean to restrict a person's movements or to confine the person so as to interfere with that person's liberty without his or her consent or without legal authority. The restraint would not have to exist for any particular length of time and could be related or incidental to the commission of other criminal acts.

Serious impairment of a body function would mean that term as defined in section 58c of the Michigan Vehicle Code.

The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as a violation of assault of an elder adult or vulnerable adult. A court could order a term of imprisonment imposed for a violation of the bill to be served consecutively to a term of imprisonment imposed for any other crime, including any other violation arising out of the same transaction. A local area agency on aging that became aware of a violation of the bill's provisions would have to promptly report it to the Department of Health and Human Services (DHHS).

The bill also would revise the title of Chapter XXA of the Penal Code from "Vulnerable Adults" to "Vulnerable Adults and Elder Adults."

Proposed MCL 750.145a

House Bills 4474, 4476, and 4479 would amend the acts described below to update citations to reflect the addition of section 145s to Chapter XXA of the Penal Code:

House Bill 4474: Mental Health Code (MCL 330.1134a)
House Bill 4475: Public Health Code (MCL 333.20173a and 333.21313)
House Bill 4476: Adult Foster Care Facility Licensing Act (MCL 400.713 et seq.)
House Bill 4479: Estates and Protected Individuals Code (MCL 700.2802)

These bills are each tie-barred to HB 4473, which means that they cannot take effect unless HB 4473 is also enacted into law.

[1] For the definitions of "abuse," "neglect," and "exploitation" that pertain to this provision, see MCL 400.11: https://www.legislature.mi.gov/documents/mcl/pdf/mcl-400-11.pdf

House Bill 4478 would amend sentencing guidelines provisions in the Code of Criminal Procedure to add the felony penalties for elder or vulnerable adult abuse and for restraining an elder or vulnerable adult by violence, menace, fraud, or force, as proposed by HB 4473 and described above. The bill is tie-barred to HB 4473, which means that it cannot take effect unless HB 4473 is also enacted.

MCL 777.16g

House Bill 4472

Section 174a of the Penal Code currently prohibits a person from obtaining or using (or attempting to obtain or use), through fraud, deceit, misrepresentation, coercion, or unjust enrichment, a vulnerable adult's money or property to directly or indirectly benefit himself or herself knowing, or having reason to know, that the vulnerable adult is a vulnerable adult. Penalties for a violation are based on the value of the money or property involved in the crime (along with certain prior offenses) and range from a 93-day misdemeanor to a 20-year felony.

The bill would amend section 174a to apply also to conduct against an elder adult and to include obtaining, using, or attempting to obtain or use a vulnerable or elder adult's money or property. The bill also would revise a provision that currently requires the Office of Services to the Aging to promptly report a violation of section 174a that it becomes aware of to DHHS. Instead, under the bill, a person required to report abuse, neglect, or exploitation of an adult under section 11a of the Social Welfare Act who became aware of a violation of section 174a would have to promptly report that violation as required under section 11a of the Social Welfare Act.

Currently, if a person is convicted of more than one felony under section 174a, a court may order the sentences to be served consecutively to any other sentence imposed for a violation of the section. The bill instead would allow a court to impose a term of imprisonment for a violation of section 174a to be served consecutively to a term of imprisonment imposed for any other crime, including any other violation of law arising out of the same transaction as the violation of section 174a.

MCL 750.174a

House Bill 4477 would amend the sentencing guidelines provisions in the Code of Criminal Procedure for embezzlement from a vulnerable adult to include embezzlement against an elder adult, as proposed by HB 4472. The bill is tie-barred to HB 4472, which means that it cannot take effect unless HB 4472 is also enacted.

MCL 777.16i

BACKGROUND:

The bill package is identical to House Bills 4254 to 4260 and 4265 of the 2019-20 legislative session. Those bills were passed by the House of Representatives.

FISCAL IMPACT:

House Bills 4472 through 4476 and 4479 will have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions

of the bills is not known. Violations could be either misdemeanors or felonies, and would depend on amounts of money or property obtained and levels of elder abuse or vulnerable adult assaults, if offenders had prior convictions, and if so, how many prior convictions. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly $42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about $4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bills affected court caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bills 4477 and 4478 are companion bills to House Bills 4472 through 4476 and 4479 and would amend sentencing guidelines to include embezzlement from elder adults, elder abuse or vulnerable adult assault causing injury, pain, suffering, impairment of a body function, or death, and restraining elder adults or vulnerable adults by violence, menace, fraud, or deceit. The bills would not have a direct fiscal impact on the state or on local units of government.

Legislative Analysts: E. Best
Emily S. Smith
Susan Stutzky
Fiscal Analyst: Robin Risko

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