



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 49 (Substitute S-1 as reported)
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Sponsor: Senator Virgil Smith
Committee: Judiciary

Date Completed: 9-14-15

RATIONALE

Elder abuse, which can take the form of physical assault, neglect, or financial exploitation, has been referred to as an "invisible problem" because victims often are reluctant to come forward and perpetrators frequently are the elderly person's caregiver or close family member. Reportedly, about 10% of adults over the age of 60 annually are victims of emotional or physical mistreatment or neglect. In addition, according to an article in *State Legislatures* magazine, a study by the MetLife Mature Market Institute found that the nation's elderly lose more than \$2.9 billion annually to financial exploitation ("Fighting Crimes Against the Elderly", May 2015). Some people believe that prescribing harsher penalties for assault or restraint, and for financial exploitation, of an elder or vulnerable adult would raise awareness of these problems, allow appropriate punishment, and perhaps deter abusive activity.

CONTENT

Senate Bill 49 (S-1) would amend Chapter 20A (Vulnerable Adults) of the Michigan Penal Code to prohibit and prescribe criminal penalties for the following:

- **Assaulting an elder adult or vulnerable adult.**
- **Restraining an elder adult or vulnerable adult by the use of violence, menace, fraud, or deceit.**
- **Fraudulently obtaining or using an elder adult's money or property.**

The bill also would do the following:

- **Establish requirements for a prosecutor seeking an enhanced sentence.**
- **Allow consecutive sentencing.**
- **Require the Office of Services to the Aging promptly to report to the Department of Health and Human Services (DHHS) if the Office became aware of a violation of the bill.**

Senate Bill 50 (S-1) would amend the Code of Criminal Procedure to add the felonies proposed by Senate Bill 49 (S-1) to the sentencing guidelines.

Senate Bill 50 (S-1) is tie-barred to Senate Bill 49. Both bills would take effect 90 days after their enactment.

Senate Bill 49 (S-1) would define "elder adult" as a person who is 65 years of age or older. Under Chapter 20A, "vulnerable adult" means an individual who is 18 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. The term includes a person placed in an adult foster care home and a vulnerable person who is 18 or older and is suspected of being or believed to be abused, neglected, or exploited.

Senate Bill 49 (S-1) also would change the heading of Chapter 20A to "Vulnerable Adults and Elder Adults".

Senate Bill 49 (S-1)

Assault of Elder or Vulnerable Adult

Under the bill, a person who assaulted another person whom he or she knew or reasonably should have known was an elder adult or vulnerable adult would be guilty of a crime punishable as shown in Table 1.

Table 1

Violation	Level	Maximum Prison and/or 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

("Serious impairment of a body function" would mean that term as defined in the Michigan Vehicle Code.)

Restraint of an Elder or Vulnerable Adult

A person who restrained an elder adult or a vulnerable adult by the use of violence, menace, fraud, or deceit would be guilty of a felony punishable by up to four years' imprisonment and/or a maximum fine of \$5,000.

The bill would define "restrains" as to restrict a person's movements or to confine the person so as to interfere with his or her liberty without the person's 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.

Obtaining/Using Elder Adult's Money or Property

The bill would prohibit a person from obtaining or using, or attempting to obtain or use, an elder adult's money or property through fraud, deceit, misrepresentation, coercion, or unjust enrichment, to directly or indirectly benefit that person, knowing or having reason to know the elder adult was a vulnerable adult. A violation would be punishable as shown in Table 2, based on the amount of money as value of the property and the offender's prior convictions for this offense:

Table 2

Value/Prior Convictions	Level	Maximum Prison and/or Fine ¹⁾
<\$200	Misdemeanor	93 days; \$500
\$200 or more but <\$1,000 or at least 1 prior conviction	Misdemeanor	1 year; \$2,000
\$1,000 or more but <\$20,000 or at least 1 prior conviction ²⁾	Felony	5 years; \$10,000
\$20,000 or more but <\$50,000 or at least 2 prior convictions ²⁾	Felony	10 years; \$15,000
\$50,000 or more but <\$100,000 or at least 2 prior convictions ²⁾	Felony	15 years; \$15,000
\$100,000 or more, or at least 2 prior convictions ²⁾	Felony	20 years; \$50,000
¹⁾ Or 3 times the value of the money or property, whichever is more.		
²⁾ Except for a conviction involving money or property valued at less than \$200.		

The value of money or property in separate incidents pursuant to a scheme or course of conduct within any 12-month period could be aggregated to determine the total value. If the scheme or course of conduct were directed against only one person, no time limit would apply.

A financial institution or a broker, or a director, officer, employee, or agent of a financial institution or broker, would not be in violation of the bill's prohibition against fraudulently obtaining or using an elder adult's money or property while performing duties in the normal course of business.

Enhanced Sentence

If the prosecuting attorney intended to seek an enhanced sentence based on the defendant's having one or more prior convictions, he or she would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of a prior conviction would have to be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing.

The existence of a prior conviction could be established by any evidence relevant for that purpose, including one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

If a conviction for unlawfully obtaining or using an elder adult's money or property were enhanced by one or more prior convictions, the prior convictions could not be used to enhance the sentence further under the Code of Criminal Procedure's habitual offender provisions.

Other Prosecution; Consecutive Sentencing

The bill specifies that it 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 the bill. Also, the 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 of law arising out of the same transactions as the violation of the bill.

Senate Bill 50 (S-1)

The bill would include the felonies proposed by Senate Bill 49 (S-1) in the sentencing guidelines, as shown in Table 3.

Table 3

Violation	Category & Class	Statutory Max. Sentence
Elder abuse/vulnerable adult abuse causing physical injury, pain, or mental suffering	Person-F	4 years
Elder abuse causing serious impairment	Person-C	15 years
Elder abuse/vulnerable adult abuse causing death	Person-A	25 years
Restraining elder/vulnerable adult by violence, menace, fraud, or deceit	Person-F	4 years
Embezzlement from elder adult of \$1,000 to \$20,000 or with prior convictions	Property-E	5 years
Embezzlement from elder adult of \$20,000 to \$50,000 or with prior convictions	Property-D	10 years
Embezzlement from elder adult of \$50,000 to \$100,000 or with prior convictions	Property-C	15 years
Embezzlement from elder adult of \$100,000 or more or with prior convictions	Property-B	20 years

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Too many older adults are subjected to physical or financial abuse. Based on national survey statistics suggesting that 10% of people over 60 annually have experienced emotional, physical, or sexual mistreatment, about 223,000 older adults in Michigan likely suffered abuse in the past year. In addition, the *State Legislatures* article cited above suggests that swindlers often target vulnerable seniors, including recent widows or widowers who are easily found through published death notices. These financial exploitation crimes include identity theft as well as such violations as forging a signature and coercing or deceiving an older person to sign legal paperwork.

Physical and financial crimes against the elderly and other vulnerable adults are widely believed to be underreported. Abuse of the elderly is called the "invisible problem" because victims may avoid reporting abuse out of fear of retaliation or a sense of loyalty to a perpetrator who is a relative or who they depend on for care. This situation leaves the victims even more vulnerable to continued abuse. According to Committee testimony submitted on behalf of the Area Agency on Aging 1-B, efforts by elder abuse prevention advocates and elder justice coalitions across the State have made major headway in raising awareness of the problem of elder abuse. Also, according to a July 2014 Audit Report of Adult Protective Services (APS) in the Department of Human Services (now part of the DHHS), the Department realized a 62% increase in APS referrals between fiscal years 2010-11 and 2012-13. While this may be at least partly attributable to heightened awareness and advocacy, more can be done to educate the public and encourage victims to report abuse.

The bills would help to raise awareness of what is likely to be a continuing and growing societal issue, as more people in the baby boomer generation become senior citizens. The legislation also would impose appropriate, enhanced penalties for assault of older or vulnerable adults and for unjustly or fraudulently obtaining money or property from an older adult. Currently, for example, if no other punishment is prescribed by law, the maximum penalty for assault or assault and battery is 93 days' imprisonment and/or a \$500 fine. If the offender inflicts serious or aggravated injury, without a weapon, the maximum penalty is one year and/or \$1,000. Although the Penal Code prescribes enhanced penalties for a caregiver who commits vulnerable adult abuse, and for a person who fraudulently obtains or uses a vulnerable adult's money or property, those penalties do not apply to similar activity involving elderly individuals who do not fall under the definition of "vulnerable adult". In addition, a perpetrator who is not a caregiver is not subject to the penalties for vulnerable adult abuse. The penalties proposed by the bills would apply to anyone who assaulted an elder adult or a vulnerable adult, and the penalties for fraudulently using or obtaining an elder adult's money or property would parallel the existing penalties for such a violation involving a vulnerable adult's money or property.

Harsher penalties than those already available also could deter people from abusing or financially exploiting vulnerable and elderly adults. This approach to penal sanctions and graduated penalties is consistent with, and similar to, other provisions of law regarding the assault of a law enforcement officer, firefighter, or emergency medical service worker; a State human services employee; or an employee or contractor of a public utility.

Opposing Argument

Financial resources generated from fines imposed under Senate Bill 49 (S-1) should go the Aging and Adult Services Agency in the Department of Health and Human Services and be earmarked for elder abuse prevention efforts.

Response: Article VIII, Section 9 of the State Constitution requires fines assessed and collected for any breach of the State's penal laws to be used exclusively for the support of public libraries.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would create new misdemeanor and felony penalties. The sentences for felony convictions would cost the State approximately \$35,000 per prisoner per year. The new misdemeanor penalties could increase costs for local courts and jail systems to prosecute offenses under the bills. Additionally, any increased revenue from fines imposed for these offenses would be dedicated to public libraries.

Fiscal Analyst: John Maxwell

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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.