



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bills 49 and 50 (as introduced 1-28-15)  
Sponsor: Senator Virgil Smith  
Committee: Judiciary

Date Completed: 2-9-15

### **CONTENT**

**Senate Bill 49 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 Human Services if the Office became aware of a violation of the bill.

**Senate Bill 50 would amend the Code of Criminal Procedure to add the felonies proposed by Senate Bill 49 to the sentencing guidelines.**

Senate Bill 50 is tie-barred to Senate Bill 49.

Senate Bill 49 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 also would change the heading of Chapter 20A to "Vulnerable Adults and Elder Adults".

### **Senate Bill 49**

#### **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**

<b>Violation</b>	<b>Level</b>	<b>Maximum Prison and/or Fine</b>
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.

#### Obtain/Use 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.

**Table 2**

<b>Value/Prior Convictions</b>	<b>Level</b>	<b>Maximum Prison and/or Fine <sup>1)</sup></b>
<\$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 <sup>2)</sup>	Felony	5 years; \$10,000
\$20,000 or more but <\$50,000 or at least 2 prior convictions <sup>2)</sup>	Felony	10 years; \$15,000
\$50,000 or more but <\$100,000 or at least 2 prior convictions <sup>2)</sup>	Felony	15 years; \$15,000
\$100,000 or more, or at least 2 prior convictions <sup>2)</sup>	Felony	20 years; \$50,000
<sup>1)</sup> Or 3 times the value of the money or property, whichever is more.		
<sup>2)</sup> 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.

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**

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

**Table 3**

<b>Violation</b>	<b>Category &amp; Class</b>	<b>Statutory Max. Sentence</b>
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

Proposed MCL 750.145s (S.B. 49)  
MCL 777.16g (S.B. 50)

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

S1516\49sa

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.