

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 378 (as reported without amendment)
Senate Bill 597 (Substitute S-1 as reported)
Sponsor: Senator Joel D. Gougeon
Committee: Judiciary

Date Completed: 8-13-99

RATIONALE

Elderly and disabled persons sometimes need assistance with their day-to-day care and financial affairs, such as paying bills and buying groceries. In cases in which a court-appointed fiduciary (such as a guardian, conservator, or trustee) provides those services, there may be sufficient court oversight of their activities to protect the person on whose behalf the fiduciary is charged to act. Often, though, the responsibility for caring for these vulnerable adults, including managing their finances, falls informally on a family member or trusted friend. In these cases, there is no mechanism for legal oversight of the activities of the caregiver and little, if any, protection from financial exploitation for the older or disabled adult. While it is possible that a caretaker who helped himself or herself to the financial resources of the person under his or her care could be prosecuted under existing larceny laws, some people believe that this problem is significant enough to warrant a new felony offense with harsh penalties.

CONTENT

Senate Bills 378 and 597 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to establish penalties for a "person in a relationship of trust" who embezzled the money or property of a "vulnerable adult", and to classify the offense in the sentencing guidelines system. Senate Bill 597 (S-1) is tie-barred to Senate Bill 378.

Senate Bill 378

The bill would prescribe penalties for a person in a relationship of trust with a vulnerable adult who knowingly, by deception or intimidation, obtained or used or attempted to obtain or use the vulnerable adult's money or property for the benefit of any person other than the vulnerable adult and with the intent to deprive the vulnerable adult, temporarily or permanently, of the use, benefit, or possession of that money or property.

A violation of the bill would be a felony, punishable by up to 10 years' imprisonment, a maximum fine of \$5,000, or both. The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law that the person committed while violating the bill.

"Person in a relationship of trust" would mean a person for whom both of the following were true:

- He or she was a caregiver; relative by blood, marriage, or adoption; household member; or other person who was entrusted with or had assumed the use or management of a vulnerable adult's money or property.
- He or she had a relationship with a vulnerable adult based upon the vulnerable adult's trust and confidence, regardless of the reasonableness of the vulnerable adult's expectations or the existence of a formal agreement or court order, so that the person was, in equity and good conscience, bound to act in good faith and with due regard for the vulnerable adult's interests.

"Vulnerable adult" would mean either of the following:

- A person 18 years of age or older who, because of age, developmental disability, mental illness, or physical handicap required supervision or personal care, lacked personal and social skills required to live independently, or had one or more physical or mental limitations that substantially restricted the ability to perform normal activities of daily living.
- A person 60 years of age or older who suffered from infirmities of aging manifested by physical, mental, or emotional dysfunctioning to the extent that his or her ability to provide adequately for his or her own care or protection or live independently was impaired.

"Deception" would mean a misrepresentation or concealment of a material fact. "Intimidation" would mean communication by word or act that the vulnerable adult would be deprived of food or nutrition, clothing, shelter, supervision, assistance, medication or medical services, financial support, or care or other support, or would suffer physical violence.

Senate Bill 597 (S-1)

The bill would include in the Code's sentencing guidelines provisions the felony of embezzlement by a person in a relationship of trust with a vulnerable adult, as proposed by Senate Bill 378. The offense would be categorized as a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

Proposed MCL 750.174a (S.B. 378)
MCL 777.16i (S.B. 597)

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

Strong punitive actions should be taken against those who exploit the elderly and infirm. According to testimony before the Senate Judiciary Committee by the Director of the Bay County Division on Aging, the elderly sometimes suffer neglect and financial exploitation at the hands of caregivers who are remiss in their duties. Often, the abuser is someone in a position of trust or has established access and opportunity to take advantage of a vulnerable senior citizen.

Several dilemmas arise in trying to combat this problem, however. It can be difficult to recognize warning signs of financial abuse, and it may not be clear to a victim that a trusted friend or relative has taken funds or assets. When a caregiver inveigles money or other valuables from an unsuspecting senior, the victim is often too embarrassed or ashamed to pursue legal action against the perpetrator. There is no legal oversight of the activities of a caregiver who is a trusted friend or relative if that arrangement is informal and not court-ordered. In order to deter this kind of exploitation of vulnerable adults by trusted persons and to punish that activity appropriately, the law should include a specific criminal prohibition with severe penalties.

Response: The bill's maximum fine may not be sufficient. For instance, if someone successfully [A9900\378a](#)

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secured \$50,000 of a vulnerable adult's money or other assets, a \$5,000 fine might not serve as a deterrent. Perhaps the maximum fine should be based on the value of money and/or property redirected from the victim.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data available to indicate how many people may be convicted of embezzlement by a fiduciary. The proposed crime would carry a penalty (10 years' maximum imprisonment and/or up to a \$5,000 fine) similar to the penalty for embezzlement by an agent under MCL 750.174. In 1997, there were 49 people committed to State correctional facilities for violation of MCL 750.174 and, of those, 86% had minimum sentences of three years or less.

Senate Bill 597 (S-1) would assign this crime to sentencing guideline grid "D" for determination of the minimum sentence. The minimum sentence range on the "D" grid is from 0-6 months' incarceration to 43-76 months' incarceration. Assuming that the number of offenders and the average minimum sentence imposed for the proposed crime would be equal to the 1997 data for the existing crime and offenders would serve a three-year minimum sentence under the enacted guidelines, given that an annual cost of incarceration is \$22,000, the cost for offenders convicted of this crime would be \$1,716,000.

Fiscal Analyst: K. Firestone