

Legislative Analysis



VULNERABLE ADULTS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4260 as enrolled

Public Act 255 of 2004

Sponsor: Rep. William Van Regenmorter

House Committee: Criminal Justice

Senate Committee: Judiciary

Second Analysis (4-5-05)

BRIEF SUMMARY: The bill would prohibit any person from embezzling the money or property of a vulnerable adult; currently that prohibition in the penal code applies to a "person in a relationship of trust." The bill also would revise the definition of "vulnerable adult."

FISCAL IMPACT: To the extent that the bill enabled prosecutors to obtain convictions in cases that otherwise would be stymied, it could increase state or local correctional costs, and increase penal fine revenue going to local libraries (which are the constitutionally-designated recipients of penal fine revenue). However, there are no data on convictions under the statute to be amended by the bill; the most recent year for which felony disposition data is available is 2000, but the section that the bill would amend did not take effect until September 25, 2000.

THE APPARENT PROBLEM:

Public Act 222 of 2000 amended the Michigan Penal Code to establish penalties for a "person in a relationship of trust" who embezzles the money or property of a "vulnerable adult". The penalty structure is tiered and based on the value of the money or property taken and whether the crime represented a first or subsequent offense and is similar to current theft and embezzlement statutes. Now that the act has been in effect for several years, a few problems have begun to surface with the definitions of "person in a relationship of trust" and "vulnerable adult."

Currently, the act defines a "person in a relationship of trust" as person who is a caregiver; relative by blood, marriage, or adoption; household member; court-appointed fiduciary; or other person who is entrusted with or has assumed responsibility for the management of the vulnerable adult's money or property." The problem with this approach is that in order to prosecute a person under Public Act 222, a prosecutor must first prove that the person who embezzled the money or property for his or her own benefit had been entrusted with or had assumed responsibility for the management of the elderly person's affairs.

This element of the crime has left many scenarios uncovered. For instance, if an elderly person were to ask a neighbor to pick up groceries or merchandise at a store and gave the neighbor his or her credit card, and the neighbor used the credit card to make

unauthorized personal purchases, would the action rise to the level of being entrusted with or assuming management responsibilities? The intent of Public Act 222 was to protect elderly and other vulnerable adults from such acts by unscrupulous friends, neighbors, and relatives, and so the action of the neighbor would seem to be the sort of action intended to be punished under these provisions. However, prosecutors report that it is difficult to establish beyond a reasonable doubt that such a level of management responsibility has been met in scenarios such as this one.

In addition, the definition of “vulnerable adult” has proved troublesome. The act defines the term as “an individual age 18 or over who, because of age, developmental disability, mental illness, or disability, whether or not determined by a court to be an incapacitated individual in need of protection, lacks the cognitive skills required to manage his or her property.” According to prosecutors, this definition does not cover scenarios in which a person cannot manage his or her affairs due to a physical disability (e.g., a quadriplegic) but still has his or her mental faculties. In such a case, prosecutors say they are unable to charge a suspect under the vulnerable adult statute.

Legislation has been offered to address these concerns.

THE CONTENT OF THE BILL:

Public Act 222 of 2000 amended the Michigan Penal Code to establish penalties for a “person in a relationship of trust” who embezzles the money or property of a “vulnerable adult”. The bill would eliminate references to “person in a relationship of trust” and delete the definition of that term. By doing so, the bill would apply the prohibition against using fraud, deceit, misrepresentation, or unjust enrichment to obtain or use (or attempt to do so) a vulnerable adult’s money or property for personal benefit to all persons. The bill would also prohibit the use of coercion as a means to misappropriate a vulnerable adult’s money or property.

In addition, the bill would revise the definition of “vulnerable adult” to mean that term as defined in Section 145m of the code, whether or not the individual had been determined by a court to be incapacitated.

(Section 145 defines "vulnerable adult" to mean “an individual age 18 or over 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 also includes minors placed in Adult Foster Care facilities under the Adult Foster Care Facility Licensing Act and adults suspected of being abused, neglected, or exploited as defined in the Social Welfare Act.)

The bill would take effect September 1, 2004.

MCL 750.174a

ARGUMENTS:

For:

The bill would correct several deficiencies with the vulnerable adult statute. Currently, prosecutors must prove that a person is in a “relationship of trust” in order to prosecute under the provisions of the statute. Reportedly, this is not always easy to prove, especially in those situations in which a person may ask a friend or neighbor to give some assistance in an informal manner, such as picking up groceries or merchandise from a store or help with bill payments. It would seem that this is the type of action to which Public Act 222 of 2000 was meant to apply. Broadening the scope to any person who takes advantage of a vulnerable adult for personal gain seems to be more within the stated intent of that legislation.

The bill would also eliminate problems with the definition of “vulnerable adult.” As currently written, the vulnerable adult must lack the cognitive skills to manage his or her affairs. However, there are many diseases, illnesses, and types of injuries that may render people incapable of managing their own affairs, in whole or in part, but still leave them with all cognitive functioning intact; for example, people with cerebral palsy or quadriplegia. Some forms of brain and spinal cord damage leave people with impaired motor functions, but with full intelligence and cognitive functioning. However, because of their physical limitations, they may be viewed as easy “marks” by unscrupulous people looking for individuals to target. The bill would correct this problem.

Furthermore, the enrolled version of the bill addresses concerns with how the issue of “age” is handled. By incorporating definitions contained in the Social Welfare Act pertaining to vulnerable adults, the bill makes it a crime to target the elderly regardless of whether they need assistance to manage their affairs.

This is important since seniors as a whole are less likely to report thefts and embezzlements because they lack the energy or resources to deal with the judicial system; they tend to be hesitant to turn in a friend, neighbor, relative, or acquaintance for prosecution; or they may be embarrassed or too proud to publicly admit they were duped. Most often, however, the reticence to come forward is because they are fearful that in so doing, other relatives will use the situation as grounds to petition a court to declare them incompetent and have a guardian appointed. A guardian can then commit them to a nursing home without their consent. Rather than face a complete loss of independence, many seniors choose to not report incidents of financial abuse. By acknowledging that seniors are often the selected targets of scams and cons, the bill should result in increased reporting by seniors of abuses at the hands of friends, strangers, and relatives.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

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