

VULNERABLE ADULTS

House Bill 4260 (Substitute H-1) First Analysis (2-13-04)

Sponsor: Rep. William Van Regenmorter
Committee: Criminal Justice

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 lies in 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 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 “an individual age 18 or over who, because of age, developmental disability, mental illness, or any other physical or mental disability or illness, whether or not determined by a court to be an incapacitated individual in need of protection, lacks the cognitive skills, interest, or ability required to manage some or all of his or her property.” (New language is highlighted.)

The bill would take effect July 1, 2004.

MCL 750.174a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, 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. (3-18-03)

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 that Public Act 222 of 2000 was meant to apply to. 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 by including those individuals who, by other physical or mental disabilities or illnesses, lack the interest or ability required to manage some or all of their property.

Against:

The bill is an improvement over the current language in the penal code, but there is still a problem with how the issue of "age" is handled. Neither the current law nor the bill recognizes that the elderly are targeted as a group, and therefore it should simply be a crime to target the elderly regardless of whether they need assistance to manage their affairs.

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.

Therefore, the bill would be improved if "age" were not connected with a lack of cognitive functioning or the ability to manage property. If so, it would acknowledge that seniors are often the selected targets of scams and cons and would likely result in increased reporting by seniors of abuses at the hands of friends, strangers, and relatives

POSITIONS:

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bill. (2-4-04)

A representative from AARP indicated support for the bill. (2-4-04)

A representative from Elder Law of Michigan indicated support for the bill. (2-4-04)

A representative from the State Bar of Michigan indicated support for the bill. (2-4-04)

A representative from the Department of Community Health indicated that the department supports the concept of the bill. (2-4-04)

Analyst: S. Stutzky

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