

Legislative Analysis



ALLOW CONSECUTIVE SENTENCING FOR FINANCIALLY EXPLOITING VULNERABLE ADULTS

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House Bill 4264 (reported from committee without amendment)

Sponsor: Rep. Tom Leonard

Committee: Judiciary

First Analysis (3-19-13)

BRIEF SUMMARY: If a person were convicted of more than one felony count of financial exploitation of a vulnerable adult, the bill would permit a court to order each sentence be served *consecutively* (back-to-back), as opposed to *concurrently* (at the same time).

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state. Information is not available on the number of persons that might be convicted under these provisions. Also, information is not available on how many judges would opt to sentence persons to consecutive terms versus concurrent terms. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs.

THE APPARENT PROBLEM:

Despite laws criminalizing the financial exploitation of senior citizens and other vulnerable adults, such acts continue at what seems an ever increasing rate. For example, a study of news articles of financial exploitation of senior citizens by MetLife Mature Market Institute found that "elder financial abuse continued to be the 'Crime of the 21st Century' (*Crimes of Occasion, Desperation, and Predation Against America's Elders*, June 2011). Key findings of the report included an estimate of annual financial losses by victims of at least \$2.9 billion nationally (a 12 percent increase since 2008). Most of the crimes reported in the news articles were perpetrated by strangers (51 percent), with 34 percent of the fraud perpetrated by family, friends, and neighbors. Elderly women were twice as likely to be victimized. In almost all instances, deceit, threats, and emotional manipulation of the elder were used by perpetrators to reach their goal of exploitation. However, physical and sexual violence frequently occurred in the context of the financial abuse.

In an attempt to deter such heinous treatment of the state's senior and vulnerable adult populations, some believe judges should have the discretion to require any sentences imposed for multiple felony convictions of financial exploitation of vulnerable adults to be served consecutively, or back to back, rather than all at the same time as is the only option under current law. The reasoning, they say, is that because many seniors or vulnerable adults have few assets and penalties are based on the amount of assets defrauded, even if the perpetrator is convicted of several instances of fraud, each penalty may only carry a low maximum term of imprisonment. Allowing a judge to require those sentences to be served *consecutively* may provide greater justice to the victims.

THE CONTENT OF THE BILL:

The Michigan Penal Code prohibits a person through fraud, deceit, misrepresentation, coercion, or unjust enrichment to obtain or use (or attempt to obtain or use) a vulnerable adult's money or property to directly or indirectly benefit himself or herself knowing, or having reason to know, that the vulnerable adult is a vulnerable adult. Penalties for a violation are based on the value of the money or property involved in the crime (along with certain prior offenses) and range from a 93-day misdemeanor to a 20-year felony. Currently, if a person is convicted of more than one offense under this statute, the sentences are served *concurrently*, or all at the same time, rather than back-to-back.

House Bill 4264 would amend the penal code (MCL 750.174a) to allow a court to order a sentence imposed for a felony violation of the financial exploitation of a vulnerable adult statute to be served ***consecutively*** to any other sentence imposed for a felony violation of the statute. A consecutive sentence would be up to the discretion of the sentencing judge; the judge could still order multiple felony sentences to be served concurrently.

("Vulnerable adult" is defined in statute as meaning one or more of the following:

- 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.
- An adult as defined in Section 3(1)(b) of the Adult Foster Care Facility Licensing Act, MCL 400.703.
- An adult as defined in Section 11(b) of the Social Welfare Act, MCL 400.11.)

BACKGROUND INFORMATION:

To report an incident or suspected incident of financial exploitation (or other abuse) of a vulnerable adult, contact your local police department or Adult Protective Services within the Michigan Department of Human Services at 855-444-3911, available 24 hours per day.

Knowledgeable observers say that signs of financial abuse can include unexplained bank withdrawals; a caregiver's name added to an account; unexplained transfers of assets to other accounts; loan applications signed by the elder or vulnerable adult; or missing personal belongings, papers, or credit cards. A victim of financial exploitation may show signs of fear, anxiety, depression, confusion, contradictory statements, or isolation and withdrawal. A caregiver who is exploiting a charge may prevent visits by family or friends, exhibit aggressive behavior toward the victim, have a history of substance abuse, demonstrate a lack of affection toward the victim, and/or provide conflicting accounts of incidents involving the victim or the victim's assets.

The types of financial fraud perpetrated against vulnerable adults include home improvement scams; mortgage fraud (e.g., taking out home equity lines of credit or even stealing the deed on homes that are paid off); fake charity scams; misuse of credit cards; using power of attorney to clean out bank accounts or open other lines of credit; embezzlement; and sweepstakes, various letter scams, and even phone calls from so-called "relatives" asking for money wires for a fake emergency.

ARGUMENTS:

For:

Being defrauded out of one's savings or personal property is devastating at any point in life, but especially so when one is at an age or state of health that makes it more difficult or impossible to replace the lost assets. The elderly or frail cannot simply go out and get a job to make ends meet. If their savings are wiped out, they then become dependent on public programs, such as food stamps or Medicaid if residing in or having to move to a nursing home. The important point is that fraud against vulnerable adults has a societal impact beyond just the immediate impact to the victim. Resources are taken from the greater community in regards to loss of property taxes, local purchases, money spent on entertainment or services, etc., that support the economic health of the local community.

To that end, House Bill 4264 would give prosecutors and judges more flexibility and discretion in crafting a fitting punishment based on the elements of a crime of financial exploitation of a vulnerable adult. For example, a person who committed many felony acts of fraud against an elderly or frail relative or neighbor, but in small amounts, would serve little to no prison time under current sentencing guidelines. Under the bill, however, the minimum a person could serve in prison could be lengthened if several short sentences were served consecutively instead of concurrently.

Since imposition of consecutive sentences is permissive and not required in all felony vulnerable adult fraud cases, the bill is not expected to result in prison overcrowding or greatly increased prison costs. Besides, a defendant placed on probation may be more motivated to comply with release conditions, such as timely restitution payments, if he or she faces the threat of a longer prison stay from consecutive sentences for a probation violation.

Against:

The bill appears to be another in a long line of legislation aimed at increasing criminal penalties after a particularly distressing or heinous crime makes headlines. Instead, some advocates plead for a more reasonable approach than the patchwork efforts taken over the past decade that have resulted in an increased fine here or a longer prison sentence there. Following are some of the weaknesses identified in the bill:

- Discretion to impose consecutive sentences for this crime category undermines the basis for establishing sentencing guidelines. Before establishment of the guidelines, there was great disparity in the length of sentences imposed for similar crimes from court to court around the state. However, before the Sentencing Commission had a chance to collect and review data to see if the penalties were a "good fit" for their respective crimes or needed tweaking, the Commission was abolished. A better approach would be to reestablish the Commission or other independent body and task it with reviewing crime and incarceration data to identify where the guidelines are working and where they are not; for instance, highlight specific crimes for which the current penalty is too lax or too harsh.

- Increasing the length of time in jail or prison has not been supported in the research either as an effective deterrent to crime or for reducing recidivism rates.
- The penalties for cases of financial exploitation of a vulnerable adult involving assets of \$50,000 or more were just increased less than a year ago (Public Act 172 of 2012 took effect June 19th of last year). Time should be given to see the impact of the legislation.
- The bill breaks from the current norm in law to impose concurrent sentences. Even though the sentences are served simultaneously, the longer sentence controls in regards to determining the minimum time that must be served before the earliest parole eligibility.
- Long prison sentences drive up the cost to taxpayers with little impact on public safety. Investing in known programs proven to reduce crime could be a better use of those dollars. For example, increasing funding to local law enforcement agencies, increasing education of the vulnerable adult population regarding financial exploitation and fraud, and/or tightening oversight of court-appointed guardians may stop the victimization before it occurs.
- Longer prison sentences make it more difficult, if not impossible, for timely restitution to be made in the victim's lifetime.

POSITIONS:

A representative of the Genesee County Prosecutor's Office testified in support of the bill. (2-28-13)

A representative of the Office of Attorney General testified in support of the bill. (2-28-13)

AARP Michigan indicated support for the bill. (2-28-13)

The Prosecuting Attorneys Association of Michigan indicated support for the bill. (2-28-13)

CAPPS (Citizens Alliance on Prison & Public Spending) did not indicate a formal position on the bill, instead requesting a moratorium on the bill and similar measures "until they can be evaluated in light of national sentencing norms and evidence-based, cost-effective approaches to public safety."

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■ 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.