

EMBEZZLEMENT PENALTIES & SENTENCING GUIDELINES FOR FINANCIAL HARM

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House Bill 6553 as introduced
Sponsor: Rep. John Stakoe
House Committee: Judiciary

Senate Bills 454 and 455 as passed by the Senate
Sponsor: Sen. Valde Garcia
Senate Committee: Judiciary
House Committee: Judiciary

Complete to 11-30-06

A SUMMARY OF HOUSE BILL 6553 AND SENATE BILLS 454-455 AS REPORTED FROM COMMITTEE 11-29-06

BACKGROUND INFORMATION:

Recent incidents in which an employee embezzled several million dollars from the United Way and a financial planner cheated elderly clients of their life savings have led some to believe that penalties for such conduct should be increased.

House Bill 6553 would address the issue by amending Offense Variable 9 (Number of Victims). Offense variables are used by a judge to determine the recommended minimum sentence range for a particular offense. The statutory sentencing guidelines apply to felony offenses for which the penalty prescribed is an indeterminate sentence, for example, a maximum of 15 years imprisonment; they do not apply if the statute establishes a mandatory determinate penalty or a mandatory penalty of life imprisonment. Using a grid system, the recommended minimum sentence range is found by finding the offense category for the offense, determining the offense variables to be scored for that offense category, scoring and totaling only those offense variables, and scoring and totaling all prior record variables for the offense. Then, using the offense class, the judge finds the intersection of the offender's offense variable level and prior record variable level on the sentencing grid to determine the recommended minimum sentence (the sentencing grid shows the recommended sentence within a "cell" as a range of months or life imprisonment).

If the score falls within a "prison cell" (minimum recommended sentence exceeds one year), a minimum sentence within the indicated range is appropriate. If the score is within a "straddle cell" (lower limit of the recommended range is one year or less and the upper limit is more than 18 months), a minimum sentence within the range indicated in the cell or an intermediate sanction is appropriate. If the score is within an "intermediate sanction cell" (the upper limit is 18 months or less), the court must sentence the offender

to an intermediate sanction which may include a jail term of 0-12 months or the cell maximum, whichever is less.

Currently, points are scored under Offense Variable 9 if the victim suffered physical harm. Some believe that OV 9 should be amended to allow points to be scored also for financial harm to the victims because in some situations, a victim's physical health may be impacted when the crime involves significant financial or property loss. The impact would be that the additional points could move an offender from an intermediate sanction cell to a straddle cell, or from a straddle cell to a prison cell, thus allowing for a longer minimum sentence and time in jail instead of just probation, or serving time in prison instead of a county jail.

Some also feel that those who embezzle from charitable organizations or from senior citizens or vulnerable adults should face harsher penalties than currently allowed under the state's larceny statutes because of the violation of trust involved and the financial harm (that can in turn result in physical harm) to elderly or vulnerable victims. In addition, some believe the penalty for embezzling more than \$50,000 should be punished more severely than currently allowed. Some also feel that a judge should have the discretion to order the sentences imposed for multiple convictions embezzlement to be served consecutively. Currently, these sentences are served concurrently, meaning that a person convicted of 10 counts of embezzlement may serve the same amount of time as if he or she had only been convicted of one count.

BILL SUMMARIES:

House Bill 6553

House Bill 6553 would amend the Code of Criminal Procedure (MCL 777.39) to revise Offense Variable 9 (Number of Victims). When scoring Offense Variable 9, a judge counts each person who was placed in danger of injury or loss of life as a victim. For example, if there are two to nine victims, the judge would score 10 points; 25 points would be scored if there were ten or more victims. The bill would clarify that this would apply to each person placed in danger of physical injury. In addition, a victim who had suffered loss of property would also have to be counted.

Senate Bill 454

Under the penal code, if an agent, servant, or employee embezzles money or personal property valued at \$200 or more but less than \$1,000, or embezzles less than \$200 and has a prior conviction for embezzlement, that person is guilty of a misdemeanor punishable by imprisonment for up to one year; a maximum fine of \$2,000 or three times the value of the embezzled money or property, whichever is greater; or both imprisonment and a fine.

Under the bill, which would amend the Michigan Penal Code (MCL 174), a person who embezzled money or property worth less than \$200 from a nonprofit corporation or charitable organization under Federal or State law would be subject to the same penalty.

Under the code, if the money or personal property embezzled has a value of at least \$1,000 but less than \$20,000, or if its value is at least \$200 but less than \$1,000 and the person has a prior conviction for embezzlement, then the person is guilty of a felony punishable by up to five years' imprisonment; a maximum fine of \$10,000 or three times the value of the embezzled money or property, whichever is greater; or both imprisonment and a fine.

The bill would extend that penalty to the following cases:

- The person embezzled money or property worth at least \$200 but less than \$1,000 from a nonprofit corporation or charitable organization under federal or state law.
- The person embezzled money or property worth less than \$200 from a nonprofit corporation or charitable organization and had a prior conviction for embezzlement.

Under the code, if the money or personal property embezzled has a value of \$20,000 or more, or if its value is at least \$1,000 but less than \$20,000 and the person has two or more prior convictions for embezzlement, then the person is guilty of a felony punishable by imprisonment for up to 10 years; a maximum fine of \$15,000 or three times the value of the embezzled money or property, whichever is greater; or both imprisonment and a fine.

Under the bill, that penalty would apply if the money or property had a value of at least \$20,000 but less than \$50,000 (rather than \$20,000 or more). The penalty also would apply in the following cases:

- The person embezzled money or property worth at least \$1,000 but less than \$20,000 from a nonprofit corporation or charitable organization under federal or state law.
- The person embezzled money or property worth at least \$200 but less than \$1,000 from a nonprofit corporation or charitable organization and had two or more prior convictions for embezzlement.

The bill would add felony penalties for embezzlement involving \$50,000 or more, as follows:

Value of Money or Personal Property Maximum Term Maximum Fine

- For the value of money or personal property of \$50,000 or more, but less than \$100,000, a maximum term of 15 years and/or a maximum fine of \$25,000 (or three times the value, whichever was greater).
- For the value of money or personal property of \$100,000 or more, a maximum term of imprisonment of 20 years and/or a maximum fine of \$50,000 (or three times the value, whichever was greater).

In addition, the bill would allow the court to order a term of imprisonment for felony embezzlement to be served consecutively to any term of imprisonment imposed for any other criminal offense, if the embezzlement victim were any of the following:

- A nonprofit corporation or charitable organization under federal or state law.
- A person who was 60 or older.
- A "vulnerable adult" as that term is defined elsewhere in the code.

(The code defines "vulnerable adult" as an individual at least 18 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; a person placed in an adult foster care family home or an adult foster care small group home; or a vulnerable person not less than 18 who is suspected of being or believed to be abused, neglected, or exploited.)

Senate Bill 455

The bill would amend the Code of Criminal Procedure (777.16i) to include felony violations for embezzlement from a nonprofit organization in the sentencing guidelines.

The sentencing guidelines provide that embezzlement by an agent of \$1,000 to \$20,000, or embezzlement with prior convictions, is a Class E property felony subject to a statutory maximum of five years' imprisonment. Under the bill, embezzlement by an agent of \$200 to \$1,000 from a nonprofit corporation or charitable organization would be subject to the same classification.

Under the guidelines, embezzlement by an agent of \$20,000 or more, or of \$1,000 to \$20,000 with prior convictions, is a Class D property felony subject to a statutory maximum sentence of 10 years' imprisonment. Under the bill, the same classification would apply to embezzlement of \$1,000 to \$20,000 from a nonprofit corporation or charitable organization.

The bill also would specify that embezzlement by an agent of \$50,000 or more but less than \$100,000 would be a Class C felony involving property with a maximum term of imprisonment of 15 years and that embezzlement by an agent of \$100,000 or more would be a Class B felony involving property with a maximum term of imprisonment of 20 years.

FISCAL IMPACT:

House Bill 6553: There are no data to indicate how many offenders and their sentences might be affected by the proposed change in guidelines scoring. Depending on circumstances, a higher offense variable score could make an offender more likely to receive a prison sentence rather than a jail sentence, thereby increasing costs to the state and reducing costs to the affected county.

Senate Bills 454 and 455: The bills' fiscal impact would depend on how they affected sentencing for felony embezzlement offenses. There are no data to indicate how many offenders would be affected by the bill. In 2004, however, there were 635 sentences for felony embezzlement and 133 sentences for attempted felony embezzlement. Of those 768 sentences, 63 were prison sentences, 558 were probation, 75 were jail sentences, and 72 were "other," such as delayed or suspended sentences.

Under the bill, to the extent that misdemeanors were elevated to felonies, lesser felonies were elevated to more serious felonies, or consecutive sentences were imposed, the state could incur increased costs of prison incarceration, which averages about \$30,000 per prisoner annually. If offenders who otherwise would have been sentenced as misdemeanants were placed on felony probation, the state could incur increased costs of probation supervision; parole and probation supervision average about \$2,000 per supervised offender annually.

Local costs or savings would vary by jurisdiction. Fewer offenders on misdemeanor probation could result in savings for affected local units of government; however, depending on circumstances, there could be more or fewer offenders receiving jail sentences, with accompanying fiscal impact for county jails. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

POSITIONS:

Representatives of the Prosecuting Attorneys Association of Michigan testified in support of the bills. (11-29-06)

The Department of Corrections indicated support for House Bill 6553. (11-29-06)

The Department of State Police indicated support for Senate Bill 454. (11-29-06)

The American Red Cross indicated support for Senate Bill 454. (11-29-06)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ 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.