



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 454 (Substitute S-1 as passed by the Senate)
Senate Bill 455 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Valde Garcia
Committee: Judiciary

(as enrolled)

Date Completed: 10-23-06

RATIONALE

The Michigan Penal Code contains graduated criminal penalties for embezzlement and other larceny offenses, based on the value of the money or property involved and prior convictions. The penalties are increasingly severe for larger amounts of money or property stolen, or for second or subsequent violations involving smaller amounts. The most severe penalty applies for a theft of money or property worth \$20,000 or more, or \$1,000 or more but less than \$20,000 if the offender has two or more prior convictions. Because of the violation of trust that is inherent in embezzlement, and the harm that can result to particular individuals and entities when they are victimized, some people believe that embezzlement from a nonprofit corporation or charitable organization should be subject to the higher tiers in this penalty structure, that someone who embezzles from such an entity or a senior citizen or other vulnerable adult should be subject to consecutive sentencing for multiple offenses, and that embezzlement involving \$50,000 or more should be punished more severely than allowed under current law.

CONTENT

Senate Bills 454 (S-1) and 455 (S-1) would amend the Michigan Penal Code and the Code of Criminal procedure, respectively, to do all of the following:

- Extend increased criminal penalties to embezzlement from nonprofit corporations or charitable organizations.**

- Prescribe new criminal penalties for embezzlement involving \$50,000 or more.**
- Allow the sentencing court to order consecutive terms of imprisonment for embezzlement and any other criminal offense if the victim were a nonprofit corporation or charitable organization, at least 60 years old, or a vulnerable adult.**
- Include felony violations for embezzlement from a nonprofit corporation or charitable organization in existing sentencing guidelines.**
- Add sentencing guidelines classifications for embezzlement of at least \$50,000 but less than \$100,000, and embezzlement of \$100,000 or more.**

Senate Bill 455 (S-1) is tie-barred to Senate Bill 454.

Senate Bill 454 (S-1)

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, 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 shown in Table 1.

Table 1

Value of Money or Personal Property	Maximum Term	Maximum Fine
\$50,000 or more, but less than \$100,000	15 years	\$25,000*
\$100,000 or more	20 years	\$50,000*
*or 3 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 (S-1)

The bill would amend the Code of Criminal Procedure 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 add sentencing guidelines classifications, as shown in Table 2.

Table 2

Violation	Felony Category	Felony Class	Statutory Maximum
Embezzlement of \$50,000 or more, but less than \$100,000	Property	C	15 years
Embezzlement of \$100,000 or more	Property	B	20 years

MCL 750.174 (S.B. 454)
777.16i (S.B. 455)

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

Embezzlement is a more egregious crime than other forms of theft because it involves a violation of trust by a person empowered with access to an entity's or individual's finances. Like most larceny provisions, Michigan's embezzlement prohibition includes a graduated scale of penalties based on the amount stolen and/or the offender's prior convictions. The most severe penalty applies to violations involving \$20,000 or more. Unlike many other larceny violations, such as retail fraud, embezzlement frequently involves sums of money much larger than \$20,000. Under the current penalty structure, however, a person who embezzles \$100,000 faces no more criminal liability than someone who steals \$20,000. Since embezzlers violate someone's trust and can cause great financial loss to an individual, business, or organization, the penalty structure should provide for more severe punishment for

embezzlement involving increments over \$20,000.

In addition, the violation of trust inherent in embezzlement is compounded when a nonprofit or charitable organization is victimized, because the scandal of the violation can taint the organization and erode the community support the organization may have received. For nonprofits, the scandal of theft by one entrusted with the organization's finances can wreak havoc on fund-raising efforts. For example, the Capital Area United Way reportedly saw a sharp decline in giving several years ago, after an employee embezzled more than \$2 million from the organization. Because of the nature of this crime, offenses committed against a nonprofit corporation or charitable organization should be subject to the more severe penalties prescribed for embezzlement.

Supporting Argument

A person who embezzles from a nonprofit or charitable organization or a vulnerable person, such as a senior citizen or disabled individual, should be harshly punished but, due to concurrent sentencing, may be subject only to the term of imprisonment for one violation even if there are multiple victims or other crimes committed. In a 2002 case in Eaton County, Daniel Neuenschwander was convicted of 21 counts of embezzlement involving a combined \$2.2 million. He apparently swindled at least 19 people, including some senior citizens, out of their life's savings, but he can serve only a maximum of 10 years' imprisonment for those crimes. In another Eaton County case, which is pending, a long-time area attorney who was a court-appointed guardian is accused of stealing more than \$630,000 from two elderly sisters, both of whom had Alzheimer's disease. By allowing a court to order consecutive sentences if the victim were a nonprofit corporation or charitable organization, a vulnerable adult, or an individual who was at least 60, the bill would provide an opportunity to impose a more appropriate penalty on offenders like Neuenschwander and the court-appointed guardian.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of embezzling \$50,000 or more, or embezzling from a nonprofit corporation, a person 60 years of age or older, or a vulnerable adult. In 2003, 578 offenders were convicted of felony embezzlement and 122 offenders were convicted of attempting to commit felony embezzlement. Of these 700 offenders, 78 were sentenced to prison, 519 were sentenced to probation, 32 were sentenced to jail, and 71 received other types of sentences, such as a delayed or suspended sentence. There are no data to indicate the number of misdemeanor convictions for embezzlement.

An offender convicted of the Class B offense under the bills would receive a sentencing guidelines minimum sentence range of 0-18 months to 117-160 months. An offender convicted of the Class C offense would receive a sentencing guidelines minimum sentence range of 0-11 months to 62-114 months. An offender convicted of the Class D offense would receive a sentencing guidelines minimum sentence range of 0-6 months to 43-76 months. An offender convicted of the Class E offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. To the extent that the bills would result in increased sentences to incarceration or increased time spent incarcerated, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur increased costs of felony probation at an annual average cost of \$2,000, as well as increased costs of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.