

Legislative Analysis



ELDER AND VULNERABLE ADULT ABUSE

Phone: (517) 373-8080
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House Bill 4254 as referred to second committee
 Sponsor: Rep. Douglas C. Wozniak

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4255 as referred to second committee
 Sponsor: Rep. Graham Filler

House Bill 4256 as referred
 Sponsor: Rep. Kyra Harris Bolden

House Bill 4259 as referred
 Sponsor: Rep. Vanessa Guerra

House Bill 4257 (H-1) as referred
 Sponsor: Rep. Kathy Crawford

House Bill 4260 (H-3) as referred
 Sponsor: Rep. Sarah Anthony

House Bill 4258 as referred
 Sponsor: Rep. Tenisha Yancey

House Bill 4265 (H-1) as referred
 Sponsor: Rep. Diana Farrington

1st Committee: Families, Children and Seniors
 2nd Committee: Judiciary
 Complete to 2-3-20

SUMMARY:

The bills would make it a crime to assault or restrain an elder adult or vulnerable adult; expand a prohibition against embezzlement from a vulnerable adult to include an elder adult; prescribe penalties; define terms; and amend the sentencing guidelines, among other acts, to account for these changes. Each bill would take effect 90 days after its enactment.

House Bill 4254 would amend the Michigan Penal Code to prohibit a person from assaulting another person that he or she knows or reasonably should know is an *elder adult* or *vulnerable adult* and to prohibit a person from *restraining* an elder adult or vulnerable adult by the use of violence, menace, fraud, or deceit. The penalty for a conviction could include imprisonment, a fine, or both, and range from a misdemeanor to a 25-year felony depending on the offense and the level of injury to the elder adult or vulnerable adult, as shown in the table below.

Offense Description	Offense Level	Maximum Term of Imprisonment	Maximum Fine
Assault	Misdemeanor	1 year	\$1,000
Assault causing physical injury, pain or mental suffering	Felony	4 years	\$5,000
Assault causing <i>serious impairment of a body function</i>	Felony	15 years	\$10,000
Assault causing death	Felony	25 years	\$25,000
Restrain by use of violence, menace, fraud, or deceit	Felony	4 years	\$5,000

Elder adult would mean a person who is 65 years of age or older.

Vulnerable adult is currently defined in section 145m of the Penal Code as meaning one or more of the following:

- An individual who is 18 years of age or older 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).

Restrains would mean to restrict a person's movements or to confine the person so as to interfere with that person's liberty without his or her consent or without legal authority. The restraint would not have to exist for any particular length of time and could be related or incidental to the commission of other criminal acts.

Serious impairment of a body function would mean that term as defined in section 58c of the Michigan Vehicle Code (MCL 257.58c).

The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as a violation of assault of an elder adult or vulnerable adult. A court could order a term of imprisonment imposed for a violation of the bill to be served consecutively (back-to-back) to a term of imprisonment imposed for any other crime, including any other violation arising out of the same transaction. A local Area Agency on Aging that became aware of a violation of the bill's provisions would have to promptly report it to the Department of Health and Human Services (DHHS).

The bill would also revise the title of Chapter XXA of the Penal Code from "Vulnerable Adults" to "Vulnerable Adults and Elder Adults."

House Bill 4254 is tie-barred to HB 4260, which means that it cannot take effect unless HB 4260 is also enacted into law.

Proposed MCL 750.145a

House Bills 4255, 4256, 4257, and 4258 would amend the acts described below to update citations to reflect the addition of section 145s to Chapter XXA of the Penal Code (as proposed by HB 4254):

House Bill 4255: Mental Health Code (MCL 330.1134a)

House Bill 4256: Public Health Code (MCL 333.20173a and 333.21313)

House Bill 4257: Adult Foster Care Facility Licensing Act (MCL 400.713 et seq.)

House Bill 4258: Estates and Protected Individuals Code (MCL 700.2802)

These bills are each tie-barred to HB 4254, which means that they cannot take effect unless HB 4254 is also enacted into law.

House Bill 4265 would amend sentencing guidelines provisions in the Code of Criminal Procedure to add the felony penalties for elder or vulnerable adult abuse and for restraining an elder or vulnerable adult by violence, menace, fraud, or force, as proposed by HB 4254 and

described above. The bill is tie-barred to HB 4254, which means that it cannot take effect unless HB 4254 is also enacted into law.

MCL 777.16g

House Bill 4260

Section 174a of the Penal Code currently prohibits a person from obtaining or using (or attempting to obtain or use), through fraud, deceit, misrepresentation, coercion, or unjust enrichment, 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.

The bill would amend section 174a to apply also to conduct against an elder adult and to include obtaining, using, or attempting to obtain or use a vulnerable or elder adult's money or property. The bill would also revise a provision that currently requires the Office of Services to the Aging to promptly report a violation of section 174a that it becomes aware of to DHHS. The bill would require a local Area Agency on Aging to report a violation of which it becomes aware to DHHS, and allow the agency to report the violation to a local law enforcement agency.

The bill would also create a rebuttable presumption of fraud, deceit, misrepresentation, coercion, or unjust enrichment if a vulnerable adult who is also an elder adult transferred to any person money or property worth more than \$10,000 for which the vulnerable adult did not receive the reasonably equivalent financial value in goods or services. This presumption would apply whether the \$10,000 threshold was exceeded in a one-time transaction or multiple transactions and regardless of whether the transfer was denoted by the vulnerable adult and other person as a gift or a loan. The presumption would not apply to a valid loan that was evidenced in writing and that included definite repayment dates, unless repayment of the loan was in default, in whole or in part, for more than 65 days. The rebuttable presumption would also not apply to either of the following:

- A person in the business of making loans.
- Bona fide charitable donations to nonprofit organizations that qualify for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

Penalties

Currently, if a person is convicted of more than one felony under section 174a, a court may order the sentences to be served consecutively (back-to-back) to any other sentence imposed for a violation of the section. The bill would instead allow a court to impose a term of imprisonment for a violation of section 174a to be served consecutively to a term of imprisonment imposed for any other crime, including any other violation of law arising out of the same transaction as the violation of section 174a.

MCL 750.174a

House Bill 4259 would amend the sentencing guidelines provisions in the Code of Criminal Procedure that contain the felony penalties for embezzlement from a vulnerable adult to include embezzlement against an elder adult, as proposed by HB 4260. The bill is tie-barred to HB 4260, which means that it cannot take effect unless HB 4260 is also enacted into law.

MCL 777.16i

FISCAL IMPACT:

House Bills 4254 and 4260 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bills is not known. Violations could be either misdemeanors or felonies, depending on the circumstances. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,800 per supervised offender in the same year. Costs to the state for felony convictions are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bills affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bills 4259 and 4265 are companion bills to HBs 4260 and 4254, respectively, and amend sentencing guidelines. The bills would not have a direct fiscal impact on the state or on local units of government.

House Bills 4255, 4256, 4257, and 4258 would have no fiscal impact on the state or local units of government.

POSITIONS:

The following entities indicated support for the bills:

Department of Health and Human Services (5-1-19)

Area Agency on Aging Association (9-18-19)

Michigan Catholic Conference (5-1-19)

A representative of the Senior Alliance testified in support of HBs 4254 and 4260. (5-1-19)

The Michigan Elder Justice Initiative indicated support for HBs 4254 to 4258 and 4265 and indicated opposition to House Bill 4260. (5-1-19; 9-18-19)

The Great Lakes Justice Center indicated support for House Bill 4255. (5-1-19)

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