

Legislative Analysis



ELDER ADULT ABUSE

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<http://www.house.mi.gov/hfa>

House Bill 5027 as introduced
Sponsor: Rep. Clint Kesto

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

House Bill 5028 as introduced
Sponsor: Rep. Diana Farrington

House Bill 5029 as introduced
Sponsor: Rep. Vanessa Guerra

House Bill 5032 as introduced
Sponsor: Rep. Patrick Green

Committee: Law and Justice
Complete to 3-13-18

BRIEF SUMMARY:

House Bill 5028 would make it a crime to assault or restrain an elder adult or vulnerable adult, prescribe penalties, and define terms.

House Bill 5032 would expand a provision of law prohibiting embezzlement from a vulnerable adult to include an elderly adult, create a rebuttable presumption of exploitation, provide exceptions, expand the types of crimes arising out of the same transaction that could be ordered to be served consecutively, and define terms.

House Bills 5027 and 5029 would amend the sentencing guidelines.

Each bill would take effect 90 days after enactment.

DETAILED SUMMARY:

House Bill 5028 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 a 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 serious impairment of a body function | 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 |

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 (meaning 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 the violation to the Department of Health and Human Services.

The bill would also revise the title of Chapter XXA from “Vulnerable Adults” to “Vulnerable Adults and Elder Adults.”

Definitions

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

“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).

“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.

The bill is tie-barred to House Bill 5032, which means that it cannot take effect unless House Bill 5032 is also enacted into law.

Proposed MCL 750.145s

House Bill 5027 would amend the sentencing guidelines portion of the Code of Criminal Procedure to include the maximum terms of imprisonment that could be imposed for a conviction of a felony offense for restraining or knowingly assaulting an elder adult or vulnerable adult, as proposed by House Bill 5028. The bill is tie-barred to House Bill 5028, which means that it cannot take effect unless House Bill 5028 is also enacted into law.

MCL 777.16g

House Bill 5032

Section 174a of the Michigan 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 pertain 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 without consent. 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 the Department of Health and Human Services; the bill would require a *local Area Agency on Aging* to report a violation of which it becomes aware.

Rebuttable presumption of exploitation

The bill would create a rebuttable presumption of exploitation if an elder adult transferred money or property worth more than \$10,000 to a nonrelative whom the elder adult knew for less than 2 years before the first transfer and for which the elder 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 or transfers were denoted by the elder

adult and nonrelative as a gift or a loan. The presumption would not apply to a valid loan that was evidenced in writing that included definite repayment dates. However, if repayment of such a loan were in default, in whole or in part, for more than 65 days, the rebuttable presumption would apply.

Exceptions

The rebuttable presumption of exploitation would 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 (meaning 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.

Definitions

“Consent” would mean an informed decision-making consent, which includes the ability to communicate all of the following:

- The choice to engage in the decision or transaction.
- The cognitive ability to realize probable consequences and to weigh them and the expenditure of appropriate mental effort in doing so.
- An appreciation of the nature and effect of that choice.
- Freedom from duress and undue influence.
- A rationale for the choice and reasoning around the decision or transaction.

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

“Vulnerable adult” is defined in Section 145m of the Penal Code (see above).

MCL 750.174a

House Bill 5029 would amend sentencing guidelines provisions within the Code of Criminal Procedure containing the felony penalties for embezzlement from a vulnerable adult to include embezzlement against an “elder adult,” as proposed by HB 5032. The bill would also make technical corrections to statutory citations pertaining to crimes of racketeering and disorderly conduct at a funeral.

The bill is tie-barred to House Bill 5032, which means that it cannot take effect unless House Bill 5032 is also enacted into law.

MCL 777.16i

FISCAL IMPACT:

House Bills 5028 and 5032 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons who might be convicted under provisions of the bills. New felony convictions would result in increased costs related to state prisons and state probation/parole supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bills 5027 and 5029 amend sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

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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.