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Senate Bills 111 through 114 (as introduced 2-27-24)

Sponsor: Senator Veronica Klinefelt (S.B. 111)

Senator Sarah Anthony (S.B. 112)

Senator Kevin Hertel (S.B. 113)

Senator Jeff Irwin (S.B. 114)

Committee: Civil Rights, Judiciary, and Public Safety

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### **INTRODUCTION**

The bills would enhance protections against financial exploitation, abuse, and neglect of vulnerable adults. Specifically, they would create a process for certain elder and vulnerable adults to petition a circuit court to enter an elder and vulnerable adult personal protection order (PPO). They also would allow a county or region to create a vulnerable adult multidisciplinary team (team) that would work within that area to protect against and bring awareness to vulnerable adult abuse, neglect, and financial exploitation. Additionally, the bills would include embezzlement from a vulnerable adult during and after the vulnerable adult's life as a violation of racketeering and expand the way that penalties for the fraudulent use or attempted use of a vulnerable adult's money or property could be calculated.

Senate Bill 112 and Senate Bill 113 would each take effect 90 days after its enactment.

### **PREVIOUS LEGISLATION**

*(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)*

Senate Bills 111 through 114 are respectively reintroductions of Senate Bills 922 through 925 of the 2023-2024 Legislative Session. Senate Bills 922 through 925 passed the Senate and were reported by the House Committee on Families, Children and Seniors but received no further action.

### **BRIEF FISCAL IMPACT**

Senate Bill 111 likely would create hearing costs for circuit and probate courts throughout Michigan to an unknown amount. Senate Bills 112 and 113 are not expected to have a fiscal impact on State or local court systems. Senate Bill 114 would not create administrative costs for counties unless a county elected to create a vulnerable adult multidisciplinary team.

Proposed MCL 600.2950p (S.B. 111)

MCL 750.159g (S.B. 112)

750.174a (S.B. 113)

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## **CONTENT**

**Senate Bill 111 would amend the Revised Judicature Act to do the following:**

- Allow certain elder and vulnerable adults to petition a circuit court to enter an elder and vulnerable adult PPO.
- Prescribe the relief an elder and vulnerable adult PPO could offer, including protecting the petitioner from certain financial exploitation and enjoining or restraining an individual from harming or attempting to harm the petitioner or the petitioner's property.
- Specify that if the petitioner were a ward or protected individual in a guardianship or conservatorship proceeding, the issuing court would have to transfer the order to a probate court.
- Require a court to issue an elder and vulnerable adult PPO upon determination of reasonable cause and specify what would be considered reasonable cause.
- Prohibit a court from refusing to issue a PPO solely because of the absence of a police report, medical report, or signs of physical abuse, among other things.
- Require that a respondent's employer be notified prior to issuing a PPO if that respondent were licensed and required to carry a concealed weapon as a condition of employment.
- Require a PPO form to include certain enforceability information and to specify the actions the PPO would cover, the penalties for violating it, and the instructions for modification, among other things.
- Prescribe the process for a court to issue an elder or vulnerable adult ex parte PPO.
- Prescribe the duties of a court clerk following the issuance of a PPO, such as filing true copies of the PPO with a law enforcement agency.
- Prescribe the process for a law enforcement agency to serve an individual with an elder and vulnerable adult PPO.

**Senate Bill 112 would amend the Michigan Penal Code to include as a violation of "racketeering" a person obtaining or using or attempting to obtain or use a vulnerable adult's money or property through fraud, deceit, misrepresentation, coercion, or unjust enrichment.**

**Senate Bill 113 would amend the Michigan Penal Code to do the following:**

- Specify that a person who fraudulently obtained, used, or attempted to obtain or use a vulnerable adult's money or property while that vulnerable adult was alive and continued after that vulnerable adult died would be subject to prosecution for the acts committed during and after the vulnerable adult's lifetime.
- Allow the values of money or property used, obtained, or attempted to be used or obtained during and after the vulnerable adult's life to be aggregated when determining penalties.

**Senate Bill 114 would enact a new law to allow a county or region to create a team and to do the following:**

- Require a team to work to further certain goals to protect vulnerable adults from financial exploitation, abuse, or neglect, and to disseminate information to the public about protecting and supporting vulnerable adults, among other things.
- Prescribe how information or records produced or obtained by the team could be used and specify certain confidentiality provisions.

## **Senate Bill 111**

### Elder and Vulnerable Adult PPO; Generally

The bill would amend the Revised Judicature Act to allow an individual who was 60 years of age or older, who was a vulnerable adult, or who had a developmental disability to petition the circuit court to enter an elder and vulnerable adult PPO by commencing an independent action to obtain relief, by joining a claim to action, or by filing a motion in an action in which the petitioner and the respondent were parties.

"Vulnerable adult" would mean an individual who is a vulnerable adult as defined in Section 145m of the Michigan Penal Code, or who is an adult who is vulnerable as that term is defined in Section 11 of the Social Welfare Act. Generally, under the Michigan Penal Code the term means an individual aged 18 or over that is unable to live independently or requires supervision or personal care. This could be due to age, developmental disability, mental illness, or physical disability. Under the Code, a vulnerable adult also includes a person who is placed in an adult foster care family home or an adult foster care small group home. Under the Social Welfare Act, the term also may mean any adult person who is suspected or believed to be abused, neglected, or exploited. Additionally, the term would specify that the individual would not have to be determined incapacitated by a court.

"Developmental disability" would mean that term as defined in the Mental Health Code: 1) if applied to a minor from birth to five years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability described below if services are not provided; or 2) if applied to an individual older than five years of age, a severe, chronic condition that met the following conditions:

- Is likely to continue indefinitely.
- Is attributable to a mental or physical impairment or a combination of those impairments.
- Manifests before the individual is 22 years of age.
- Results in substantive functional limitations in three of the following areas: a) Self-care; b) receptive and expressive language; c) learning; d) mobility; e) self-direction; f) capacity for independent living; and g) economic self-sufficiency.
- Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

"Elder and vulnerable adult PPO" would mean an injunctive order issued by the family division of the circuit court or a probate court restraining or enjoining activity and individuals described under Elder and Vulnerable Adult PPO Specific Protections.

### Petitioner under Guardianship or Conservatorship

If the petitioner for an elder and vulnerable adult PPO were a ward or protected individual in a guardianship or conservatorship proceeding, the issuing court, after issuing the protection order, would have to immediately transfer the action to the probate court with continuing jurisdiction over the guardianship or conservatorship proceeding. The transferring court would have to inform the receiving court of the transfer.

Following a transfer any responsive proceeding would have to be commenced in the receiving court. If a responsive proceeding were commenced erroneously in the issuing court, that court, on learning of the error, would have to transfer the responsive proceeding to the receiving court. The transferring court would have to inform the receiving court of the transfer. Additionally, a court that ordered the transfer would have to send all pertinent records to the

receiving court. The clerk of the transferring court would have to prepare the court records for transfer in accordance with the transfer order and the Michigan Trial Court Records Management Standards.<sup>1</sup> The records would have to be sent to the receiving court by a secure method within one business day after the date of the transfer order.

If a respondent in an action for an elder or vulnerable adult PPO were currently serving as a court-appointed fiduciary for the petitioner under a prior valid guardianship or conservatorship order, the respondent would have to notify the court with jurisdiction over the guardianship or conservatorship proceeding within seven days after being served with the PPO.

#### Elder and Vulnerable Adult PPO Specific Protections

An elder and vulnerable adult PPO could restrain or enjoin an individual from doing any of the following:

- Entering onto or refusing to leave premises.
- Assaulting, attacking, beating, molesting, or wounding the petitioner.
- Threatening to kill, physically injure, or sexually assault the petitioner.
- Purchasing or possessing a firearm.
- Engaging in conduct that is prohibited under section 411h or 411i of the Michigan Penal Code, which generally prescribe penalties for stalking and aggravated stalking, respectively, unless the individual to be restrained had decision-making authority under an order of another court that required contact with the petitioner.
- Threatening to destroy or destroying the petitioner's owned or leased property, both real and personal.
- Exercising decision-making authority over the petitioner, unless the decision-making authority was granted under an order of another court.
- Any other specific act or conduct that imposed on or interfered with the petitioner's personal liberty, safety, or health, or that caused a reasonable apprehension of violence.

Additionally, the PPO could restrain or enjoin an individual from doing any of the following with intent to cause the petitioner mental distress or to exert control over the petitioner with respect to an animal in which the petitioner had an ownership or interest:

- Injuring, killing, torturing, neglecting, or threatening to injure, kill, torture, or neglect the animal; however, this would not prohibit the lawful killing of the animal under Section 50(12) of the Michigan Penal Code, which generally includes hunting, fishing, scientific research, animal husbandry, and pest and rodent control.
- Removing the animal from the petitioner's possession.
- Retaining or obtaining possession of the animal.

The bill would specify that a petitioner would be considered to have an ownership interest in an animal if at least one or more of the following were applicable:

- The petitioner had a right of property in the animal.
- The petitioner kept or harbored the animal.
- The animal was in the petitioner's care.
- The petitioner permitted the animal to remain on or about premises occupied by the petitioner.

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<sup>1</sup> Michigan Administrative Order 1999-4 requires the State Court Administrators Office to establish, maintain, and enforce Michigan Trial Court Records Management Standards which prescribe standards for case records, data, and other trial court records.

"Neglect" would mean to fail to sufficiently and properly care for an animal to the extent that the animal's health is jeopardized.

The bill would prohibit a court from issuing an elder and vulnerable adult PPO that restrained or enjoined from entering onto or refusing to leave premises if the individual to be restrained or enjoined had a property interest in the premises and the petitioner had no property interest in the premises.

Finally, in addition to the relief available described above, an elder and vulnerable adult PPO could include any relief the court considered necessary to prevent or remedy the financial exploitation of the petitioner, including any of the following:

- Prohibiting the respondent from accessing, exercising, or transferring control over the funds, benefits, property, resources, belongings, or assets of the petitioner.
- Requiring the respondent to submit the paperwork necessary to remove the respondent as the petitioner's representative payee within a time period set by the court.
- After an evidentiary hearing, requiring the respondent to return custody or control of personal property to the petitioner.
- Awarding actual damages to the petitioner not exceeding \$7,000 or actual attorney fees for the petitioner after an evidentiary hearing.
- Requiring the respondent to furnish a bond for a reasonable period of time, set by the court, in the amount necessary to safeguard money, benefits, property, resources, belongings, or assets that were in dispute.
- Allowing the petitioner to file a notice of a pending suit for a reasonable period of time, set by the court, regarding any property that was in dispute; the notice would have to comply with Chapter 27 (Notice Lis Pendens).

"Financial exploitation" would mean the use of fraud, deceit, misrepresentation, coercion, or unjust enrichment to obtain or use, or attempt to obtain or use, money or property to directly or indirectly benefit the respondent, or the respondent's improper leveraging of a caregiver relationship for financial gain.

#### Determination of Reasonable Cause

Under the bill, the court would have to issue an elder and vulnerable adult PPO if the court determined that there was reasonable cause to believe that the individual to be restrained or enjoined could commit at least one of the following acts:

- Entering onto or refusing to leave the premises.
- Assaulting, attacking, beating, molesting, or wounding the petitioner.
- Threatening to kill, physically injure, or sexually assault the petitioner.
- Purchasing or possessing a firearm.
- Engaging in conduct that was prohibited under Section 411h or 411i of the Penal Code.
- The actual or threatened withholding or prevention of the petitioner's access to goods, services, or basic amenities required to avoid physical harm or mental suffering, including, safe and sanitary household goods, food, medical or mental health care or treatment, medication, transportation, law enforcement, communication technologies, and individuals who provide formal or informal supports to the petitioner.
- Destroying or threatening to destroy the petitioner's owned or leased property, including either real or personal property.
- Using a pattern of derogatory or inappropriate names, phrases or profanity, threats of forced change of residence or institutionalization, ridicule, harassment, coercion, threats, cursing, intimidation, or inappropriate sexual comments or conduct of such a nature as to cause emotional distress to the petitioner with whom the respondent resided.

- Engaging in financial exploitation of the petitioner.
- Any other specific act or conduct that imposed on or interfered with the petitioner's personal liberty, safety, or health, or that caused a reasonable apprehension of violence.

"Institutionalization" would mean being removed from a community residence and placed or kept in a residential institution, such as a licensed long-term care facility or nursing home, adult foster care, a home for the aged, a mental health or drug treatment facility, or a hospital or unlicensed care facility.

Additionally, the court would have to issue an order if the court determined that there was reasonable cause to believe the individual to be restrained or enjoined could commit any of the following with the intent to cause the petitioner mental distress or to exert control over the petitioner with respect to an animal in which the petitioner had an ownership interest:

- Injuring, killing, torturing, neglecting, or threatening to injure, kill, torture, or neglect the animal.
- Removing the animal from the petitioner's possession.
- Retaining or obtaining possession of the animal.

The court would have to consider all the following in determining whether reasonable cause existed:

- Testimony, documents, or other evidence offered in support of the request for the PPO.
- Whether the individual to be restrained or enjoined had previously committed or threatened to commit at least one of the acts described above.
- Evidence of the respondent's commission of other acts of domestic violence, sexual assault, or financial exploitation.

The bill specifies that evidence of a respondent's commission of other acts of domestic violence, sexual assault, or financial exploitation would be admissible for any purpose to which it was relevant.

#### Court Refusal to Issue PPO

A court could not refuse to issue an elder and vulnerable adult PPO solely because of the absence of any of the following:

- A police report.
- A medical report.
- A report or finding of an administrative agency.
- Physical signs of abuse or violence.
- Physical access to the petitioner or the petitioner's residence.

If the court refused to grant the PPO, it would have to state immediately in writing the specific reasons it refused to issue an order. If a hearing were held, the court also would have to immediately state on the record the specific reasons it refused to issue the order.

#### Petitioner and Respondent Information

If the respondent were an individual who was issued a license to carry a concealed weapon and was required to carry a weapon as a condition of his or her employment, a police officer licensed or certified under the Michigan Commission on Law Enforcement Standards Act, a sheriff, a deputy sheriff, a member of the State Police, a local corrections officer, a Department of Corrections (MDOC) employee, or a Federal law enforcement officer who

carried a firearm during the normal course of the officer's employment, the petitioner would have to notify the court of the respondent's occupation before issuance of the elder and vulnerable adult PPO. This would not apply to a petitioner who did not know the respondent's occupation.

"Federal law enforcement officer" would mean an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.

A petitioner could omit the petitioner's address of residence from documents filed with the court. If a petitioner omitted the petitioner's address of residence, the petitioner would have to provide the court with a mailing address.

#### Court Issuance and Limitations on Issuance

Under the bill, a court could not issue a mutual elder and vulnerable adult PPO. A court also could not issue correlative separate elder and vulnerable adult PPOs unless both parties have properly petitioned the court as described under Elder and Vulnerable Adult PPO; Generally.

An elder and vulnerable adult PPO would be effective and immediately enforceable anywhere in the State after being signed by a judge. On service, an elder and vulnerable adult PPO could also be enforced by another state, an Indian Tribe, or a territory of the United States.

The issuing court would have to designate a law enforcement agency that was responsible for entering an elder and vulnerable adult PPO into the law enforcement information network as provided by the C.J.I.S. Policy Council Act, which provides for the creation of a criminal justice information systems policy and rules.

A court could not issue an elder and vulnerable adult PPO if the respondent were the unemancipated minor child of the petitioner. Additionally, if the respondent were less than 18 years of age, issuance of an elder and vulnerable adult PPO would have to be subject to the juvenile code.

A court also could not issue a PPO that restrained or enjoined entrance or refusal to leave premises if the individual to be restrained or enjoined had a property interest in the premises and the petitioner had no property interest in the premises.

A finding that a petitioner was a vulnerable adult for purposes of obtaining an elder and vulnerable adult PPO would not give rise to an inference that the petitioner required a guardianship or conservatorship when considering a petition for a guardianship or conservatorship under Article V (Protection of an Individual Under Disability and His or Her Property) of the Estates and Protected Individuals Code or for a guardianship under the Mental Health Code.

#### Personal Protection Order Form

An elder and vulnerable adult PPO would have to include all the following, to the extent practicable in a single form:

- A statement that the elder and vulnerable adult PPO was effective and immediately enforceable anywhere in the State after being signed by a judge and that, on service, a PPO also could be enforced by another state, an Indian Tribe, or a territory of the United States.
- A statement listing the type or types of conduct enjoined or compelled.

- An expiration date stated clearly on the face of the order.
- A statement that the PPO was enforceable anywhere in the State by any law enforcement agency.
- The name of the law enforcement agency designated by the court to enter the PPO into the law enforcement information network.
- For ex parte orders, a statement that the individual restrained or enjoined could file a motion to modify or rescind the PPO and request a hearing within 14 days after the individual restrained or enjoined had been served or had received actual notice of the order and that motion forms and filing instructions were available from the clerk of the court.<sup>2</sup>
- A statement providing the respondent a designated period of time to collect personal belongings from the petitioner's premises only when accompanied by law enforcement and with reasonable prior notice to the petitioner.
- Notice of any monetary award to the petitioner that provided an exact amount for actual damages, costs, and reasonable attorney fees, a date on which payment was due, the way payment could be made, and notice that failure to pay could result in a money judgment against the respondent.

Additionally, to the extent practicable in a single form, the PPO would have to include a statement that the order had been entered to restrain, enjoin, or compel conduct listed in the order and that violation of the elder and vulnerable adult PPO would subject the respondent to at least one of the following:

- If the respondent were 18 years of age or older, immediate arrest and the civil and criminal contempt powers of the court and, if the respondent were found guilty of criminal contempt, up to 93 days imprisonment and a maximum fine of \$500.
- If the respondent were less than 18 years of age, immediate apprehension or being taken into custody and the dispositional alternatives listed in Section 18 of the juvenile code.<sup>3</sup>
- If the respondent violated the PPO in a jurisdiction other than the State, the enforcement procedures and penalties of the State, Indian Tribe, or United States territory under whose jurisdiction the violation occurred.

#### Ex Parte Order

A court would have to issue an ex parte elder and vulnerable adult PPO without written or oral notice to the individual restrained or enjoined or the individual's attorney if it clearly appeared from specific facts shown by a verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage would result from the delay required to effectuate notice or that the notice would itself precipitate adverse action before a PPO could be issued. An ex parte elder and vulnerable adult PPO would have to be valid for at least 182 days. The individual restrained or enjoined could file a motion to modify or rescind the order and request a hearing under the Michigan Court Rules. A motion to modify or rescind the order would have to be filed within 14 days after the order was served or after the individual restrained or enjoined had received actual notice of the PPO unless good cause was shown for filing the motion after the 14 days had elapsed.

Except as otherwise described below, the court would have to schedule a hearing on a motion to modify or rescind the ex parte elder and vulnerable adult PPO within 14 days after the

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<sup>2</sup> Generally, an ex parte order is an order issued without notice to or appearance of the opposing party.

<sup>3</sup> Section 18 of the juvenile code allows a court that has found a juvenile for whom a petition is filed to enter certain orders of disposition including warning the juvenile's parents or guardians and dismissing the petition, placing the juvenile on probation, providing the juvenile medical care, or ordering the juvenile to do community service, among other things.



motion was filed. If the respondent were a person licensed to carry a concealed weapon and was required to carry that weapon as a condition of employment; a police officer licensed or certified under the Michigan Commission on Law Enforcement Standards Act; a sheriff; a deputy sheriff; a member of the State Police; a local corrections officer; an MDOC employee; or a Federal law enforcement officer who carried a firearm during the normal course of the officer's employment and the order prohibited the respondent from purchasing or possessing a firearm, the court would have to schedule a hearing on the motion to modify or rescind the ex parte order within five days after the motion was filed.

#### Clerk and Law Enforcement Agency Duties

The clerk of the court that issued an elder and vulnerable adult PPO would have to do all the following immediately on issuance and without requiring a proof of service on the individual restrained or enjoined:

- File a true copy of the PPO with the law enforcement agency designated by the court in the order.
- Provide the petitioner with at least two true copies of the PPO.
- If the respondent were identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the PPO.
- If the respondent were identified in the pleadings as a local corrections officer, notify the officer's employing local agency, if known, about the existence of the PPO.
- If the PPO prohibited the respondent from purchasing or possessing a firearm, notify the county clerk of the respondent's county of residence about the PPO.
- If the respondent were identified in the pleadings as an MDOC employee, notify the MDOC about the existence of the PPO.

The clerk of the court would have to inform the petitioner that the petitioner could take a true copy of the PPO to the law enforcement agency designated by the court to be immediately entered into the law enforcement information network. The law enforcement agency that received a true copy of the PPO from a clerk of a court would have to immediately and without requiring proof of service, enter the order into the law enforcement information network.

An elder and vulnerable adult PPO issued would have to be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner allowed by the Michigan Court Rules. If the individual restrained or enjoined had not been served, a law enforcement officer or clerk of the court who knew that a PPO existed could, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined could obtain a copy of the order. If the respondent were less than 18 years of age, the parent, guardian, or custodian of the individual would also have to be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian.

Proof of service or proof of oral notice would have to be filed with the clerk of the court issuing the order; however, the bill would specify that the lack of proof of service or oral notice would not prohibit the immediate effectiveness of an elder and vulnerable adult PPO or its immediate enforcement.

The clerk of the court that issued the elder and vulnerable adult PPO would have to immediately notify the receiving law enforcement agency upon receipt of proof that the

individual restrained or enjoined had been served or if the order were rescinded, modified, or extended by court order.

The law enforcement agency that received proof that the individual restrained or enjoined was served, or that the order were rescinded, modified, or extended would have to enter the information or cause the information to be entered into the law enforcement information network. An elder and vulnerable adult PPO would be immediately enforceable anywhere in the State by any law enforcement agency that had received a true copy of the order, was shown a copy of it, or had verified its existence on the law enforcement information network.

If the individual restrained or enjoined had not been served, a law enforcement agency or officer responding to a call alleging a violation of an elder and vulnerable adult PPO would have to serve the individual with a true copy of the order or advise the individual of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined could obtain a copy of the order. The law enforcement officer would have to enforce the order and immediately enter or cause to be entered into the law enforcement information network that the individual received actual notice of the order. The law enforcement officer also would have to file a proof of service or proof of oral notice with the clerk of the court issuing the order. If the individual had not received notice, the law enforcement order would have to give the individual the opportunity to comply with the order prior to making a custodial arrest of a violation of the order and the failure to immediately comply would be grounds for an immediate custodial arrest. Serving and elder and vulnerable adult PPO and complying with an order would not preclude an arrest under Section 15 or 15a of Chapter IV (Arrest) of the Code of Criminal Procedure, or a proceeding under Section 14 of the juvenile code.<sup>4,5</sup>

An elder and vulnerable adult PPO also would be enforceable under Section 15b of chapter IV of the Code of Criminal Procedure, and Chapter 17 (Contempts), which allow for an arrest without a warrant for a violation of a PPO and provide for the penalties for contempt of court, respectively.

#### Penalties for Failure to Comply with a PPO

An individual who was 18 years of age or older and who refused or failed to comply with an elder and vulnerable adult PPO would be subject to the criminal contempt powers of the court and, if found guilty, would have to be imprisoned for up to 93 days and could be subject to a maximum fine of \$500.

An individual who was less than 18 years of age and who refused or failed to comply with an elder and vulnerable adult PPO would be subject to the dispositional alternatives listed in Section 18 of the juvenile code. The criminal penalty provided to a minor could be imposed in addition to a penalty that could be imposed for another criminal offense arising from the same conduct.

The bill would specify that an individual who knowingly and intentionally made a false statement to the court in support of the individual's petition for an elder and vulnerable adult PPO would have to be subject to the contempt powers of the court.

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<sup>4</sup> Generally, Section 15 and Section 15a of the Code of Criminal Procedure prescribe the situations for which a peace officer may arrest a person without a warrant or for domestic assault or domestic aggravated assault in a dating relationship, respectively.

<sup>5</sup> Section 14 of the juvenile code allows certain law enforcement officers to take a juvenile found to be violating a law or order or for whom there is reasonable cause to believe is violating or has violated a PPO into custody without a court order.

### **Senate Bill 112**

Generally, under the Penal Code, "racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain by obtaining money, property, or any other thing of value, involving certain violations specified in the Code.

Among other violations, the Code includes violations concerning embezzlement such as embezzlement by an agent of an individual, a public officer, an administrator, a bank, a partial owner of a property, and of a warehouseman. The bill would include among those violations a violation of Section 174a of the Code, which prohibits a person from obtaining or using or attempting to obtain or use a vulnerable adult's money or property through fraud, deceit, misrepresentation, coercion, or unjust enrichment.

### **Senate Bill 113**

Currently, the Michigan Penal Code 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 benefit that person while having the knowledge or reason to know that the vulnerable adult is a vulnerable adult. The bill would specify that a person who violated this prohibition while a vulnerable adult was alive and who continued to violate this prohibition after the vulnerable adult's death by attempting to use or obtain money or property from the vulnerable adult's estate would be subject to prosecution for the acts committed during the vulnerable adult's life and after the vulnerable adult's death.

The Code prescribes various misdemeanor and felony punishments for violators, the severity of which depends on the value of the money or property attempted to be used or obtained and the number of prior convictions for committing or attempting to commit a similar offense. The Code allows the values of money or property attempted to be used or obtained in separate incidents as part of a scheme or course of conduct within any 12-month period to be aggregated to determine the total value of money or personal property attempted to be used or obtained for the purposes of determining the appropriate penalties. The bill would specify that, if the violation in question were committed against a vulnerable adult while the vulnerable adult was alive and was continued subsequent to the vulnerable adult's death, the values of money or property attempted to be used or obtained during the vulnerable adult's life and after the vulnerable adult's death could be aggregated to determine the total value of money or personal property used or obtained or attempted to be used or obtained.

### **Senate Bill 114**

#### **Vulnerable Adult Multidisciplinary Team**

Under the bill, each county or area in the State that consisted of more than one county that was contiguous to at least one other county in the area (region) could create a team that would have to include at least two individuals qualified to provide a broad range of services related to the needs of vulnerable adults. A team's purpose would have to be to further at least one of the following goals:

- Prevent, investigate, or prosecute the abuse and financial exploitation offenses of vulnerable adults as permitted under State laws.
- Coordinate medical, social, and legal services for vulnerable adults and the families of vulnerable adults.

- Develop programs for the detection and prevention of the abuse, neglect, and exploitation of vulnerable adults.
- Promote community awareness and recommend actions to address key issues faced by vulnerable adults.

The team also could have a goal to disseminate information to the public regarding all the following:

- The abuse, neglect, and exploitation of vulnerable adults.
- Strategies and methods for preventing the abuse, neglect, and exploitation of vulnerable adults.
- Treatment options for vulnerable adults.

A county or region that created a team would have to ensure that the team included public, private, and represented professionals generally authorized to represent that individual's agency.

"Represented professionals" would include, but would not be limited to, the following:

- A law enforcement officer
- A representative of Adult Protective Services within the Department of Health and Human Services (DHHS).
- A representative of the Attorney General.
- The county prosecuting attorney of the county that created the team or a designated assistant county prosecutor of the county that created the team.
- A representative of the Long-Term Care Ombudsman Program.
- A representative of the DHHS or a local health department.
- A representative of the Area Agencies on Aging Association of Michigan.
- A healthcare professional licensed or registered under Article 15 of the Public Health Code, who had experience or training in the prevention of the abuse of elderly or vulnerable adults.
- A representative of Michigan Legal Services.
- A public administrator.
- A representative of a community mental health services program.
- An individual with expertise in finance or forensic accounting.

#### Team Confidentiality

Unless otherwise specified below, a team could share information among parties in performing the team's duties. A team would be bound by confidentiality and would have to execute a sworn statement attesting to its obligation to confidentiality. Additionally, a team could only use information or records produced or obtained by the team in the exercise of its proper functions and could only disclose the information or records to the following entities so long as the disclosure were not prohibited under another State law:

- Adult Protective Services within the DHHS.
- The Long-Term Care Ombudsman created under the Older Michiganians Act.
- The Attorney General.
- The county prosecutor of a county that created that team.
- A law enforcement officer.
- Another member of the team.

The information and records produced or obtained by a team would not be subject to disclosure under the Freedom of Information Act. A team would not be considered a public

body under the Open Meetings Act and meetings of that team would not be subject to the Open Meetings Act.

## **BACKGROUND**

### Types of Personal Protective Orders

Michigan Law provides for three types of PPOs, a domestic relationship PPO, a domestic stalking PPO, and a non-domestic stalking PPO. Generally, the process to file and be granted a PPO is similar regardless of the type of PPO and is described below. To be granted a domestic relationship PPO a petitioner must show that there is a domestic relationship and that the respondent is likely to assault, threaten, harass, or stalk the petitioner. Domestic PPOs are only available to individuals with an intimate partner relationship. Under a stalking PPO, a petitioner must show at least two incidents of harassment and under a sexual assault PPO a petitioner must show evidence of sexual abuse.

Generally, to be granted a PPO, an individual can obtain a PPO petition form in person or online and must file that petition with a county clerk's office by including specific details about the respondent, specific instances of abuse, stalking, or harassment, and the protections being requested. The county clerk will forward the petition to a judge for approval or denial and the petitioner will be notified of that decision. If the petition is granted, the petitioner must make arrangement to deliver (serve) the PPO to the respondent. Additionally, under certain emergency situations, a judge may order an ex parte PPO which does not require notification or hearing. A respondent that violates a PPO may be reported to the police and if not arrested, the petitioner may file a motion with a court to show cause. A violator found guilty of criminal contempt may face up to 93 days' imprisonment and a fine of up to \$500.

## **FISCAL IMPACT**

Senate Bill 111 likely would create hearing costs for circuit and probate courts throughout Michigan to an unknown amount. Data from Michigan's Interactive Court Data Dashboard shows that in 2023 there were 12,014 filings for PPOs in regards to stalking, 525 filings for PPOs under the juvenile code, and 22,608 filings for PPOs in regards to domestic relationships. It is not known to what degree the creation of a new protection hearing type for elder and vulnerable adults would add to circuit and probate court caseloads, though it is likely that a significant percentage of the over 34,000 filings in 2023 regarding stalking and domestic relationships may have involved an elder or vulnerable adult. According to 2020 Federal census data, nearly 2.5 million of Michigan's 10.07 million population, or 24.7%, are adults aged 60 and older.

Senate Bills 112 and 113 are not expected to have a fiscal impact on State or local court systems.

Senate Bill 114 would not have a fiscal impact on the State and would not have a direct fiscal impact on local units of government. The bill would allow for the creation of a county or regional vulnerable adult multidisciplinary team that could cost the local unit of government if the local unit of government decided to create a team. It is unknown how much it would cost the local unit of government, but the average salary of a social worker in Michigan is approximately \$55,000 per year plus benefits.

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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.