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House Bill 4320 (Substitute H-1 as passed by the House)
House Bill 4387 (as passed by the House)
Sponsor: Representative Sharon MacDonell
House Committee: Families, Children and Seniors
Senate Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 10-25-23

CONTENT

House Bill 4320 (H-1) would amend the Michigan Penal Code to prohibit a person from intentionally taking actions against a vulnerable adult in a way that caused the vulnerable adult to provide that person, or any other person, sexually explicit visual material. The bill would prescribe misdemeanor and felony penalties for a violation.

House Bill 4387 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felony proposed by House Bill 4320 (H-1).

House Bill 4387 is tie-barred to House Bill 4320, and each bill would take effect 90 days after its enactment.

House Bill 4320 (H-1)

Specifically, the bill would amend the Michigan Penal Code to prohibit a person from intentionally or knowingly harassing, abusing, threatening, forcing, coercing, compelling, or exploiting the vulnerability of a vulnerable adult in a manner that caused the adult to provide that person, or any other person, sexually explicit visual material.

("Sexually explicit visual material" would mean that term as defined in Section 145e of the Code: a photograph or video that depicts nudity, erotic fondling, sexual intercourse, or sadomasochistic abuse. "Vulnerable adult" would mean one or more of the following: 1) an individual age 18 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; 2) an adult placed in an adult foster care family home or in an adult foster care small group home; or 3) a vulnerable person at least 18 years old who is suspected of being or believed to be abused, neglected, or exploited.)

A person who violated the bill's prohibition would be guilty of a misdemeanor punishable by up to one year's imprisonment or a fine of up to \$500, or both. A person who had a previous conviction for a violation of the prohibition and who subsequently violated the prohibition again would be guilty of a felony punishable by up to two years' imprisonment or a fine of up to \$1,000, or both.

If the prosecuting attorney intended to seek an enhanced sentence base on a prior conviction, the prosecuting attorney would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of prior convictions would have to be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including one or more of the following:

- A copy of the judgement or conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

House Bill 4387

The bill would add a Class G felony against a person with a statutory maximum of two years' imprisonment to the sentencing guidelines in the Code of Criminal Procedure for a subsequent offense of causing a vulnerable adult to provide sexually explicit visual material.

Proposed MCL 750.145h (H.B. 4320)
MCL 777.16g (H.B. 4387)

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

House Bill 4320 (H-1)

The bill could have a negative fiscal impact on the State and local governments. Violations of its proposed criminal penalties would be punishable as misdemeanors and felonies of different severity. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Misdemeanor convictions could increase county jail and local probation supervision costs, which vary by jurisdiction. Based on 2022 data, the average cost to State government for felony probation supervision is approximately \$4,800 per probationer per year. For any increase in prison intakes the average annual cost of housing a prisoner in a State correctional facility is an estimated \$47,500. Per diem rates for housing a prisoner in a State correctional facility range from \$98 to \$192 per day, depending on the security level of the facility. Additionally, any associated fine revenue would increase funding to public libraries. Any fiscal impact upon State or local courts is indeterminate.

House Bill 4387

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the bill's additions to the guidelines would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Joe Carrasco, Jr.
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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.