

SUBSTITUTE FOR
SENATE BILL NO. 866

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by amending the heading of chapter XXA and
by adding section 145s.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER XXA

2

VULNERABLE ADULTS AND ELDER ADULTS

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SEC. 145S. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A

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PERSON WHO ASSAULTS ANOTHER PERSON THAT HE OR SHE KNOWS OR

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REASONABLY SHOULD KNOW IS AN ELDER ADULT OR VULNERABLE ADULT IS

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GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE

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THAN 1 YEAR OR A FINE OF UP TO \$1,000.00, OR BOTH.

8

(2) IF A VIOLATION OF SUBSECTION (1) CAUSES PHYSICAL INJURY,

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PAIN, OR MENTAL SUFFERING, THE PERSON IS GUILTY OF A FELONY

1 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A FINE OF
2 NOT MORE THAN \$5,000.00, OR BOTH.

3 (3) IF A VIOLATION OF SUBSECTION (1) CAUSES SERIOUS IMPAIRMENT
4 OF A BODY FUNCTION, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY
5 IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A FINE OF NOT MORE THAN
6 \$10,000.00, OR BOTH.

7 (4) IF A VIOLATION OF SUBSECTION (1) CAUSES THE DEATH OF THE
8 OTHER PERSON, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY
9 IMPRISONMENT FOR NOT MORE THAN 25 YEARS OR A FINE OF NOT MORE THAN
10 \$25,000.00, OR BOTH.

11 (5) A PERSON WHO RESTRAINS AN ELDER ADULT OR A VULNERABLE
12 ADULT BY THE USE OF VIOLENCE, MENACE, FRAUD, OR DECEIT IS GUILTY OF
13 A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A
14 FINE OF NOT MORE THAN \$5,000.00, OR BOTH.

15 (6) A PERSON SHALL NOT THROUGH FRAUD, DECEIT,
16 MISREPRESENTATION, COERCION, OR UNJUST ENRICHMENT OBTAIN OR USE OR
17 ATTEMPT TO OBTAIN OR USE AN ELDER ADULT'S MONEY OR PROPERTY TO
18 DIRECTLY OR INDIRECTLY BENEFIT THAT PERSON KNOWING OR HAVING REASON
19 TO KNOW THE ELDER ADULT IS A VULNERABLE ADULT.

20 (7) IF THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO
21 BE USED OR OBTAINED, HAS A VALUE OF LESS THAN \$200.00, THE PERSON
22 IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
23 THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE
24 VALUE OF THE MONEY OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE
25 USED OR OBTAINED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A
26 FINE.

27 (8) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A

1 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR
2 A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE MONEY
3 OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED,
4 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

5 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO BE
6 USED OR OBTAINED, HAS A VALUE OF \$200.00 OR MORE BUT LESS THAN
7 \$1,000.00.

8 (B) THE PERSON VIOLATES SUBSECTION (7) AND HAS 1 OR MORE PRIOR
9 CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE UNDER
10 SUBSECTIONS (6) TO (12).

11 (9) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
12 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
13 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE MONEY
14 OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED,
15 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

16 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO BE
17 USED OR OBTAINED, HAS A VALUE OF \$1,000.00 OR MORE BUT LESS THAN
18 \$20,000.00.

19 (B) THE PERSON VIOLATES SUBSECTION (8) (A) AND HAS 1 OR MORE
20 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
21 UNDER SUBSECTIONS (6) TO (12). FOR PURPOSES OF THIS SUBDIVISION,
22 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
23 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (7) OR (8) (B).

24 (10) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
25 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
26 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE MONEY
27 OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED,

1 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

2 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO BE
3 USED OR OBTAINED, HAS A VALUE OF \$20,000.00 OR MORE BUT LESS THAN
4 \$50,000.00.

5 (B) THE PERSON VIOLATES SUBSECTION (9) (A) AND HAS 2 OR MORE
6 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
7 UNDER SUBSECTIONS (6) TO (12). FOR PURPOSES OF THIS SUBDIVISION,
8 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
9 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (7) OR (8) (B).

10 (11) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
11 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A
12 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE MONEY
13 OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED,
14 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

15 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO BE
16 USED OR OBTAINED, HAS A VALUE OF \$50,000.00 OR MORE BUT LESS THAN
17 \$100,000.00.

18 (B) THE PERSON VIOLATES SUBSECTION (10) (A) AND HAS 2 OR MORE
19 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
20 UNDER SUBSECTIONS (6) TO (12). FOR PURPOSES OF THIS SUBDIVISION,
21 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
22 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (7) OR (8) (B).

23 (12) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
24 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR A
25 FINE OF NOT MORE THAN \$50,000.00 OR 3 TIMES THE VALUE OF THE MONEY
26 OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED,
27 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

1 (A) THE MONEY OR PROPERTY USED OR OBTAINED, OR ATTEMPTED TO BE
2 USED OR OBTAINED, HAS A VALUE OF \$100,000.00 OR MORE.

3 (B) THE PERSON VIOLATES SUBSECTION (11)(A) AND HAS 2 OR MORE
4 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
5 UNDER SUBSECTIONS (6) TO (12). FOR PURPOSES OF THIS SUBDIVISION,
6 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
7 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (7) OR (8)(B).

8 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
9 VALUES OF MONEY OR PROPERTY USED OR OBTAINED OR ATTEMPTED TO BE
10 USED OR OBTAINED IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR
11 COURSE OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO
12 DETERMINE THE TOTAL VALUE OF MONEY OR PERSONAL PROPERTY USED OR
13 OBTAINED OR ATTEMPTED TO BE USED OR OBTAINED. IF THE SCHEME OR
14 COURSE OF CONDUCT IS DIRECTED AGAINST ONLY 1 PERSON, NO TIME LIMIT
15 APPLIES TO AGGREGATION UNDER THIS SUBSECTION.

16 (14) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
17 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR
18 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE
19 COMPLAINT AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION
20 OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
21 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY, AT
22 SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
23 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTABLISHED
24 BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT NOT
25 LIMITED TO, 1 OR MORE OF THE FOLLOWING:

26 (A) A COPY OF THE JUDGMENT OF CONVICTION.

27 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR SENTENCING.

1 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

2 (D) THE DEFENDANT'S STATEMENT.

3 (15) IF THE SENTENCE FOR A CONVICTION UNDER SUBSECTIONS (6) TO
4 (12) IS ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR
5 CONVICTIONS SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR
6 THE CONVICTION UNDER SECTION 10, 11, OR 12 OF CHAPTER IX OF THE
7 CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND
8 769.12.

9 (16) A FINANCIAL INSTITUTION OR A BROKER OR A DIRECTOR,
10 OFFICER, EMPLOYEE, OR AGENT OF A FINANCIAL INSTITUTION OR BROKER IS
11 NOT IN VIOLATION OF SUBSECTIONS (6) TO (12) WHILE PERFORMING DUTIES
12 IN THE NORMAL COURSE OF BUSINESS OF A FINANCIAL INSTITUTION OR
13 BROKER OR A DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF A FINANCIAL
14 INSTITUTION OR BROKER.

15 (17) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING
16 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF
17 LAW ARISING OUT OF THE SAME TRANSACTION AS THE VIOLATION OF THIS
18 SECTION.

19 (18) THE COURT MAY ORDER A TERM OF IMPRISONMENT IMPOSED FOR A
20 VIOLATION OF THIS SECTION TO BE SERVED CONSECUTIVELY TO A TERM OF
21 IMPRISONMENT IMPOSED FOR ANY OTHER CRIME, INCLUDING ANY OTHER
22 VIOLATION OF LAW ARISING OUT OF THE SAME TRANSACTION AS THE
23 VIOLATION OF THIS SECTION.

24 (19) AS USED IN THIS SECTION:

25 (A) "BROKER" MEANS THAT TERM AS DEFINED IN SECTION 8102 OF THE
26 UNIFORM COMMERCIAL CODE, 1962 PA 174, MCL 440.8102.

27 (B) "ELDER ADULT" MEANS A PERSON WHO IS 65 YEARS OF AGE OR

1 OLDER.

2 (C) "FINANCIAL INSTITUTION" MEANS A BANK, CREDIT UNION, SAVING
3 BANK, OR A SAVINGS AND LOAN CHARTERED UNDER STATE OR FEDERAL LAW OR
4 AN AFFILIATE OF A BANK, CREDIT UNION, SAVING BANK, OR SAVINGS AND
5 LOAN CHARTERED UNDER STATE OR FEDERAL LAW.

6 (D) "RESTRAINS" MEANS TO RESTRICT A PERSON'S MOVEMENTS OR TO
7 CONFINE THE PERSON SO AS TO INTERFERE WITH THAT PERSON'S LIBERTY
8 WITHOUT THAT PERSON'S CONSENT OR WITHOUT LEGAL AUTHORITY. THE
9 RESTRAINT DOES NOT HAVE TO EXIST FOR ANY PARTICULAR LENGTH OF TIME
10 AND MAY BE RELATED OR INCIDENTAL TO THE COMMISSION OF OTHER
11 CRIMINAL ACTS.

12 (E) "SERIOUS IMPAIRMENT OF A BODY FUNCTION" MEANS THAT TERM AS
13 DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,
14 MCL 257.58C.

15 (20) IF THE OFFICE OF SERVICES TO THE AGING BECOMES AWARE OF A
16 VIOLATION OF THIS SECTION, THE OFFICE OF SERVICES TO THE AGING
17 SHALL PROMPTLY REPORT THE VIOLATION TO THE DEPARTMENT OF HUMAN
18 SERVICES.