



**House
Legislative
Analysis
Section**

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**SENT. GUIDELINES REVISIONS AND
REPEAL SENT. COMMISSION**

**House Bill 5392 as enrolled
Public Act 31 of 2002
Sponsor: Rep. Larry Julian**

**House Committee: Criminal Justice
Senate Committee: Judiciary**

Second Analysis (11-5-02)

THE APPARENT PROBLEM:

Chapter XVII of the Code of Criminal Procedure, entitled "Sentencing Guidelines", contains the statutory maximum terms of imprisonment for felony violations of state and local laws. Whenever a term of imprisonment for a crime is changed, or if a provision pertaining to a crime is moved from one section of the law to another, the corresponding section or sections of the sentencing guidelines must be amended to reflect the change. However, if two or more bills requiring a sentencing guidelines companion bill are introduced in the same legislative session, the companion bill that moves more slowly must be replaced with a "conflict substitute" to reflect the changes to law brought about by the enactment of the bill or bills that have moved more quickly through the process. For example, this year alone, Section 12 (which contains the maximum sentences for over 80 felonies enumerated in Chapters 200 to 299 of the Michigan Compiled Laws), has been amended four times, with several other bills that would amend it further pending in the House and Senate. This has necessitated the drafting of many substitute bills so that changes in the law were not erased by subsequently enacted legislation. Some believe that breaking up these larger sections of the sentencing guidelines into smaller ones could reduce the number of conflict substitutes needed. To address this issue, it has been suggested that sections of the sentencing guidelines that encompass many felony references be broken into several smaller sections.

In an unrelated manner, some have felt that the Sentencing Commission has accomplished many of its statutory mandates and is no longer needed. Language has been proposed to eliminate provisions in the Code of Criminal Procedures pertaining to the Sentencing Commission, thereby abolishing the commission.

THE CONTENT OF THE BILL:

The bill would restructure a portion of the sentencing guidelines of the Code of Criminal Procedure and would repeal the provisions that created the Sentencing Commission. The bill would amend the code to add new sections to Chapter XVII to reorganize the statutory maximum sentences for felonies enumerated in Chapter 1 to 199 of the Michigan Compiled Laws. Currently, all of the sentencing guidelines for these felonies are contained within Section 11 of the code; the bill would instead place them in Sections 11a to 11e.

The bill would also repeal Sections 32 and 33 of Chapter IX of the code. The repealed chapters created the Sentencing Commission within the Legislative Council; specified commission membership, and proscribed commission powers and duties. The repeal of these sections of law abolished the commission. The bill also deleted several references contained in the code to the commission and deleted the definition of the term "total capacity of state correctional facilities". (One of the commission duties was to submit a prison impact report relating to any recommended modifications to the sentencing guidelines; the report had to include the projected impact on total capacity of state correctional facilities that the modifications were expected to have.)

The bill took effect April 1, 2002.

MCL 769.31 et al

BACKGROUND INFORMATION:

The Sentencing Commission was created by Public Act 445 of 1994 (enrolled House Bill 4782) as a means of addressing sentencing disparities whereby two offenders who committed similar crimes and who had similar criminal histories were being

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sentenced to widely differing minimum terms. A 1979 report of the Michigan Felony Sentencing Project, "Sentencing in Michigan," confirmed significant inconsistencies in Michigan sentences; data suggested that disparities existed along racial lines. Concerns over these disparities led to the development of sentencing guidelines intended to reduce or eliminate variations based on factors other than the facts of the crime and the prior record of the offender.

From 1984 until the enactment of the current sentencing guidelines in 1998, Michigan operated with a system of judicially-imposed guidelines. A supreme court advisory committee developed sentencing guidelines that were tested in a pilot program in 1981, revised, and then issued for voluntary use under a 1983 supreme court order. In 1984, the supreme court required all judges to use the sentencing guidelines. A second edition of the guidelines was put into use on October 1, 1988, under Supreme Court Administrative Order 1988-4.

Under the supreme court's sentencing guidelines, a range for a person's minimum sentence was determined using a grid that measured the severity of the crime against the offender's criminal history. Offense and criminal record scores were calculated by adding the scores assigned to various weighted variables. Whenever a judge determined that a minimum sentence outside the recommended minimum range should be imposed, the judge was able to do so, but had to state his or her reasons on the sentencing information report that was sent to the State Court Administrative Office. Case law was looked to in determining what constituted acceptable reason.

However, the supreme court's guidelines were criticized for failing to sufficiently restrict sentencing departures. In addition, whether or not they reduced sentencing disparities based on race and other unacceptable factors was a matter of dispute. Further, the guidelines essentially codified the practices in use at that time and were seen by some as failing to ensure a coherent and consistent system of punishment – leading to both excessive leniency and undue harshness.

In 1991, House Bill 4127, which would have created a sentencing commission to develop sentencing guidelines, was passed by the House of Representatives but failed to see Senate action. The legislation was revamped and in 1994, Public Act 445 (enrolled House Bill 4782) was signed into law. The bill created a 19-member commission within the

Legislative Council, set guidelines criteria, restricted judicial departures from the guidelines to those having a "substantial and compelling" reason and provided for appeals, required the use of "intermediate sanctions" when guidelines called for a sentence of 18 months or less, and provided for the development of separate sentence ranges to apply to habitual offenders. The provisions for intermediate sanctions, application of guidelines, departures from guidelines, and sentence appeals were to take effect when enacted sentencing guidelines took effect. The bill was tie-barred to House Bill 5439 (Public Act 322 of 1994), and Senate Bills 40 and 41 (Public Acts 217 and 218 of 1994), which constituted a package of legislation requiring defendants convicted of certain crimes to serve their full minimum sentences (truth-in-sentencing).

The guidelines developed and recommended by the commission were enacted in 1998 as Public Act 317 (enrolled House Bill 5419). Among many things, the bill classified over 700 criminal offenses into nine crime classes and six categories; provided for the classification of some attempted crimes; included instructions for scoring sentencing guidelines, including the application of 19 different offense variables and seven different prior record variables (recent legislation created Offense Variable 20 – anti-terrorism); and outlined sentencing grids, with various recommended minimum sentence ranges, for each of the nine crime classifications. Maximum terms of imprisonment for felonies are established in statute, and some crimes, such as for possession of narcotics, have a statutorily-specified minimum sentence.

In addition to developing sentencing guidelines, the Sentencing Commission was charged with assembling and disseminating information on state and local felony sentencing practices and prison and jail utilization; conducting research on the impact of the commission-developed sentencing guidelines; compiling data and making projections on populations and capacities of state and local correctional facilities and how sentencing guidelines affected them; and, in cooperation with the state court administrator, compiling data and making projections on the effect of sentencing guidelines on case loads, docket flow, and case backlogs in Michigan. The state court administrator's office was to continue to collect data on sentencing practices and provide the necessary data to the sentencing commission. Further, the commission was allowed to recommend modifications to the enacted guidelines, though modifications could not be implemented more often than every two years.

The first members were appointed to the Sentencing Commission in April of 1995 and the commission held its first meeting the following month. The report of the Sentencing Commission, which included recommended sentencing guidelines, was published on December 2, 1997 and submitted to the legislature for consideration. The majority of the recommendations by the commission contained in the report were enacted into law as Public Act 317 of 1998 (enrolled House Bill 5419). Reportedly, the last time the Sentencing Commission met was in November of 1997, and as members' terms expired, no new appointments were made.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would delete provisions for establishing and maintaining the sentencing guidelines commission, which has not existed or met as a body for several years. Funding for commission staff has been maintained, however. Commission expenditures in fiscal year 2000-2001 totaled approximately \$78,000. The allocation for fiscal year 2001-2002 was \$79,600, and year-to-date expenditures as of mid-October were under \$40,000. Following enrollment of House Bill 5392, no allocation for the commission was made in the Legislative Council budget for fiscal year 2002-2003. Enactment of the bill enables resources that might otherwise have been spent on commission expenses to be utilized elsewhere. (11-5-02)

ARGUMENTS:

For:

It is not unusual for multiple bills introduced in the same session to be amending the same section of law. When this happens, "conflict" substitutes must be drafted so that changes made by a recently enrolled bill are not inadvertently "wiped out" by a subsequent one. This year, several bills have amended certain sections of the Code of Criminal Procedure containing sentencing guidelines for felony offenses. With close to 70 felony offenses lumped into Section 11, each substitute bill for this section has been 10 pages or longer. Some have suggested that if the sections of the code containing sentencing guidelines were broken up into smaller sections, that fewer conflict substitutes (as they are known) would be needed. In addition, the substitute bill would likely be shorter, which would save printing costs as well as time needed to read the bill in order to identify the proposed changes. Instead of all of the felonies enumerated in chapters 100 to 199 of the MCL being placed in a single section of the

Code of Criminal Procedure, felonies enumerated in chapters 1 to 27 of the MCL would be placed in Section 11a, felonies enumerated in Chapter 28 of the MCL would be placed in Section 11b, and so forth.

For:

The Sentencing Commission, created by 1994 legislation, has accomplished what it set out to do. Therefore, some believe that it has outlived its usefulness. Guidelines developed by the commission were subject to legislative approval and were modified and enacted in 1998. Since that time, many new crimes (e.g., the new anti-terrorism laws) have been created, sentencing variables have been modified, and the maximum sentences for many other crimes have been adjusted by the legislature. This supports the contention that the commission is no longer needed. Further, it has long been within the purview of the legislature to set the maximum term of imprisonment for felony offenses and to prescribe mandatory minimums for certain crimes; the legislature is therefore fully capable of making any necessary alterations to the scoring variables used in determining minimum sentencing ranges.

Against:

Prior to the guidelines enacted in 1998 that were developed by the Sentencing Commission, judges used sentencing guidelines developed by a Michigan supreme court advisory committee. Though it was believed that the supreme court should be able to devise a system where fairness and objectivity reigned, the guidelines were criticized as engendering sentences that were too lenient and others that were too harsh. In essence, the experience and knowledge of the court alone were deemed insufficient to develop a system able to eradicate sentencing disparities – even disparities based on such factors as race. Therefore, an independent commission comprised of members of the legislature, judges, prosecuting attorneys, criminal defense attorneys, law enforcement, the Departments of Corrections and Management and Budget, advocates of alternatives to incarceration, crime victims, and the general public were assembled to provide input for the creation of a new and fairer system of establishing sentences for felony offenses. Abolishing the Sentencing Commission and relying solely on the legislature to steward the sentencing guidelines is akin to going back in time when only the state supreme court had input on the guidelines.

In addition, the statutory mandate of the commission went beyond creating the guidelines. The commission was also charged with an ongoing

mission of compiling and reviewing data to see if the new guidelines were in fact reducing the sentencing disparities of the past. Also, the commission was to be studying the effects of the guidelines on prison and jail overcrowding and the effect on the court system, such as the effect on case loads, docket flow, and case backlogs. Reportedly, the commission also intended to study the probation sentencing guidelines and any unintended results arising from the implementation of the new sentencing guidelines. These are not tasks typically accomplished by the legislature, nor is the legislature likely to conduct such research before amending the sentence guidelines for particular crimes or before creating a range of penalties for new crimes. A case in point is the range of maximum terms of imprisonment and fines for the crimes created by the newly enacted anti-terrorism legislation, which seem to some to be unreasonably high. Further, it has been argued in the past that the legislature tends more to reflect current public thought (or fears) when amending penal laws than to reflect sound research in adopting a course of action most likely to deter crime and safely reduce prison overcrowding. With that in mind, some feel that there is still a need for an independent commission to periodically review sentencing practices and make recommendations – for legislative consideration and approval - for modifications to the sentencing guidelines as needed.

Against:

Though the bill struck references to the Sentencing Commission in the body of the statute, it failed to delete corresponding language in the act's title which specifies that it is "[a]n act to . . . establish a sentencing commission and to prescribe its powers and duties . . .".

Analyst: S. Stutzky

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