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House Bill 5928 (Substitute H-2 as passed by the House)
House Bill 5930 (Substitute H-2 as passed by the House)
Sponsor: Representative Joe Haveman
House Committee: Appropriations
Senate Committee: Judiciary

Date Completed: 12-9-14

CONTENT

House Bill 5928 (H-2) would amend Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure to do the following:

- Create a Criminal Justice Policy Commission within the Legislative Council.
- Specify the Commission's duties, including conducting ongoing research regarding the effectiveness of sentencing guidelines and developing modifications to sentencing guidelines.
- Require the Commission to submit to the Legislature a prison and jail impact report relating to any proposed modifications to sentencing guidelines.
- Require certain policies to be reflected in proposed modifications to sentencing guidelines.
- Require the Commission to submit any recommended modifications to the sentencing guidelines or other laws, administrative rules, or policies to the Senate Majority Leader, the Speaker of the House of Representatives, and the Governor.
- Revise provisions for enhanced sentencing of habitual offenders.
- Require the Department of Corrections (DOC) to track and report prisoner restitution collection as a performance measure.

The bill also would amend Chapter XVII (Sentencing Guidelines) of the Code to revise sentencing guidelines scoring instructions for an offender sentenced under the habitual offender provisions of Chapter IX.

House Bill 5930 (H-2) would amend Chapter XI (Probation) and Chapter XIA (the Probation Swift and Sure Sanctions Act) of the Code of Criminal Procedure to do the following:

- Allow a judge to reduce or terminate a person's period of probation after the person served one-third of that probationary period.
- Create the "Swift and Sure Probation Supervision Fund" and require the State Treasurer to allocate money from the Fund to allow the State Court Administrative Office to provide grants for the Program.
- Allow a court that received swift and sure grants to accept participants from other jurisdictions in the State.
- Provide for the eligibility of participants in the swift and sure program.

House Bill 5928 (H-2) is tie-barred to House Bill 5930.

House Bill 5928 (H-2)

Criminal Justice Policy Commission

The bill would create a 16-member Criminal Justice Policy Commission in the Legislative Council. The Commission would include two members of the Senate; two members of the House of Representatives; and the Attorney General or his or her designee, representing crime victims. The Senate and House members would have to be submitted by the Senate Majority Leader and the Speaker of the House, respectively, and would have to represent each caucus.

The Commission also would include the following members, who would have to be appointed by the Governor before March 1, 2015:

- One circuit court judge, appointed from a list of three names submitted by the Michigan Judges Association.
- One district court judge, appointed from a list of three names submitted by the Michigan District Judges Association.
- One person representing the State's prosecuting attorneys, appointed from a list of three names submitted by the Prosecuting Attorneys Association of Michigan.
- One person representing criminal defense attorneys, appointed from a list of three names submitted by the Criminal Defense Attorneys of Michigan.
- One person appointed from a list of three names submitted by the Michigan Sheriffs' Association.
- One person appointed from a list of three names submitted by the DOC Director.
- One person representing advocates of alternatives to incarceration.
- One mental health expert.
- One person appointed from a list of three names submitted by the Michigan Association of Counties.
- One person representing community corrections agencies.
- One person representing the general public.

The Governor would have to designate the member representing the general public as chairperson of the Commission.

Except for some of the members first appointed, Commission members would serve four-year terms. A vacancy on the Commission would have to be filled in the same manner as the original appointment. Commission members would not receive a salary but would have to be reimbursed for reasonable, actual, and necessary expenses incurred in the performance of their duties.

The Commission could establish subcommittees that could include people who were not members of the Commission, including experts in matters of interest to the Commission.

The Commission would be subject to the Open Meetings Act and the Freedom of Information Act.

The Legislative Council would have to provide the Commission with suitable office space, staff, and necessary equipment.

Duties of the Commission

The Criminal Justice Policy Commission would have to do the following:

- Collect, prepare, analyze, and disseminate information regarding State and local sentencing and release policies and practices for felonies and the use of prisons and jails.
- Collect and analyze information concerning the effect on local jails of misdemeanor sentences and the detention of defendants pending trial.
- Conduct ongoing research regarding the effectiveness of sentencing guidelines in achieving purposes set forth in the bill.
- In cooperation with the State Court Administrator, collect, analyze, and compile data regarding the effect of sentencing guidelines on the caseload, docket flow, and case backlog of the State's trial and appellate courts.
- Consider the suitability and impact of offense variable scoring in applying sentencing guidelines, with regard to physical and psychological injury to victims and victims' families.

In cooperation with the DOC, the Commission also would have to collect, analyze, and compile data and make projections regarding the population and capacity of State and local correctional facilities; the impact of sentencing guidelines and other laws, rules, and policies on the population and capacity of State and local correctional facilities; and the effectiveness of efforts to reduce recidivism. Measurement of recidivism would have to include, as applicable, analysis of all of the following:

- Rates of rearrest, resentencing, and return to prison.
- One-, two-, and three-year intervals after exiting prison or jail and after entering probation.
- The statewide level, and by locality and discrete program, to the extent practicable.

The Commission also would have to develop modifications to the sentencing guidelines as described below.

Sentencing Guidelines Modifications; Recommendations

Any sentencing guidelines modification would have to accomplish all of the following:

- Provide for the protection of the public.
- Consider offenses involving violence against a person or serious and substantial pecuniary loss as more severe than other offenses.
- Be proportionate to the seriousness of the offense and the offender's prior criminal record.
- Reduce sentencing disparities based on factors other than offense characteristics and offender characteristics, and ensure that offenders with similar offense and offender characteristics received substantially similar sentences.
- Specify the circumstances under which a term of imprisonment was proper and the circumstances under which intermediate sanctions were proper.
- Establish sentence ranges for imprisonment that were within the minimum and maximum sentences allowed by law for the offenses to which the ranges applied.
- Maintain separate sentence ranges for convictions under the habitual offender provisions of Chapter IX, which could include as an aggravating factor, among other relevant considerations, that the accused had engaged in a pattern of proven or admitted criminal behavior.
- Establish sentence ranges that the Commission considered appropriate.
- Recognize the availability of beds in the local corrections system and "that the local corrections system is an equal partner in corrections policy", and preserve its funding mechanisms.

In developing modifications to the sentencing guidelines, the Criminal Justice Policy Commission would have to submit to the Legislature a prison and jail impact report relating

to any modifications. The report would have to include the projected impact on total capacity of State and local correctional facilities. Modifications would have to include recommended intermediate sanctions for each case in which the upper limit of the recommended minimum sentence range was 18 months or less.

The Commission also could recommend modifications to any law, administrative rule, or policy that affected sentencing or the use and length of incarceration. The recommendations would have to reflect all of the following policies:

- To render sentences in all cases within a range of severity proportionate to the gravity of offenses, the harm done to crime victims, and the blameworthiness of offenders.
- When reasonably feasible, to achieve offender rehabilitation, general deterrence, incapacitation of dangerous offenders, restoration of crime victims and communities, and reintegration of offenders into the law-abiding community.
- To render sentences no more severe than necessary to achieve the applicable purposes described in the two items above.
- To preserve judicial discretion to individualize sentences within a framework of law.
- To produce sentences uniform in their reasoned pursuit of the purposes specified in the bill.
- To eliminate inequities in sentencing and length of incarceration across population groups.
- To encourage the use of intermediate sanctions.
- To ensure that adequate resources were available for carrying out sentences imposed and that rational priorities were established for the use of those resources.
- To promote research on sentencing policy and practices, including assessments of the effectiveness of criminal sanctions as measured against their purposes.
- To increase the transparency of the sentencing and corrections system, its accountability to the public, and the legitimacy of its operations.

The Commission would have to submit any recommended modifications to the sentencing guidelines or other laws, administrative rules, or policies to the Senate Majority Leader, the Speaker of the House, and the Governor.

Habitual Offender Revisions

One Prior Conviction. Section 10 of Chapter IX provides for enhanced sentencing of a person who has been convicted of a felony or an attempt to commit a felony, in Michigan or another state, and commits a subsequent felony in Michigan. The bill would repeal Section 10.

The bill also would delete a provision that requires the upper limit of the recommended minimum sentence range to be increased by 25% if the offender is being sentenced under Section 10 of Chapter IX.

Two or More Prior Convictions. If a person has been convicted of any combination of two or more felonies or attempts to commit felonies, in Michigan or another state, and commits a subsequent felony in Michigan, he or she must be punished upon conviction of the subsequent felony under the habitual offender provisions of Chapter IX. If the subsequent felony is punishable upon a first conviction by imprisonment for a term less than life, the court may sentence the person to a maximum term that is not more than twice the longest term prescribed by law for a first conviction of that offense or for a lesser term. Under the bill, the maximum sentence the court could impose would be 1.5 times the longest term prescribed by law for a first conviction of that offense.

The bill also specifies that not more than one conviction arising out of the same transaction could be considered a prior felony conviction.

Three or More Prior Convictions. If a person has been convicted of any combination of three or more felonies or attempts to commit felonies, in Michigan or another state, and commits a subsequent felony in Michigan, he or she must be punished upon conviction of the subsequent felony under the habitual offender provisions. If the subsequent felony is a serious crime or a conspiracy to commit a serious crime, and one or more of the prior convictions are for certain listed prior felonies, the court must sentence the person to at least 25 years' imprisonment.

If the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term of five years or more, or for life, the court may sentence the person to imprisonment for life or for a lesser term. Under the bill, if the subsequent felony were punishable upon a first conviction by imprisonment for less than life, the court could sentence the person to imprisonment for a maximum term that was not more than twice the longest term prescribed by law for a first conviction of that offense.

Currently, if the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term that is less than five years, the court may sentence the person to imprisonment for a maximum term of 15 years. Under the bill, if the subsequent felony were punishable upon a first conviction by imprisonment for life, the court could sentence the person to imprisonment for life or a lesser term.

The bill also specifies that not more than one conviction arising out of the same transaction could be considered a prior felony conviction.

Enhanced Sentencing. Under the habitual offender provisions, the prosecuting attorney may seek to enhance the sentence of the defendant by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense. The bill would change that period to within 35 days after those events.

Assessment & Collection of Restitution

Chapter IX requires a court, when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, to order the defendant to make full restitution to any victim of his or her course of conduct that gives rise to the conviction or to the victim's estate. The court must order restitution to the Crime Victim Services Commission or to any individuals or legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court also must order restitution for the costs of services provided to people or entities that have provided services to the victim as a result of the felony, misdemeanor, or ordinance violation.

The bill states: "It is the intent of the legislature that the Michigan supreme court implement measurement of restitution assessment and collection as a court performance measure for circuit courts and district courts."

In addition, the bill would require the DOC to track and report prisoner restitution collection as a performance measure.

House Bill 5930 (H-2)

Reduction of Period of Probation

Under Chapter XI, except as otherwise provided, if a defendant is convicted of an offense that is not a felony, the probation period may not exceed two years, and if the defendant is convicted of a felony, the probation period may not exceed five years.

Under the bill, at any time after the defendant had satisfactorily completed one-third of the original felony probation period or two years of his or her felony probation, whichever was less, the judge could terminate or reduce the period of probation. The judge would have to review the defendant's record and consider whether to reduce or terminate the period of probation, unless the defendant was delinquent in paying required restitution, fines, costs, or fees that he or she had the ability to pay or the defendant had not completed court-ordered counseling or treatment. Before reducing or terminating a period of probation or conducting a review, the judge would have to notify the prosecuting attorney and the defendant or, if the defendant had an attorney, the defendant's attorney.

Probation Swift & Sure Sanctions

Chapter XIA states legislative intent to create a voluntary State program to fund swift and sure probation supervision at the local level based on the immediate detection of probation violations and the prompt imposition of sanctions and remedies to address those violations. The bill would delete the references to a voluntary State program and the local level. In furtherance of this stated intent, Chapter XIA creates the State Swift and Sure Sanctions Program with specified objectives. The bill instead would require the program to be implemented and maintained as provided in Chapter XIA (subject to the provisions presently identified as objectives).

Currently, probationers are to be arrested as soon as a violation has been detected and are to be promptly taken before a judge for a hearing on the violation. Under the bill, that would apply unless the violation was a noncompliance violation and the probationer waived a hearing after being presented with a violation report.

Chapter XIA requires the State Court Administrative Office (SCAO), under the supervision of the Supreme Court, to provide grants to fund programs of swift and sure probation supervision in the circuit court. The bill instead would create the "Swift and Sure Probation Supervision Fund" within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, and would have to direct the investment of the Fund. The Treasurer would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

The State Treasurer would have to allocate sufficient funds to allow the SCAO to spend money from the Fund to administer Chapter XIA and to provide grants to fund programs of swift and sure probation supervision in the circuit court.

A court that received a grant under Chapter XIA could accept participants from any other jurisdiction in the State based upon either the residence of the participant in the receiving jurisdiction or the unavailability of a swift and sure probation supervision program in the jurisdiction where the participant was charged. The transfer could occur any time during the proceedings, including before adjudication. The receiving court would have jurisdiction to impose sentence. A transfer would not be valid unless all of the following agreed to it:

- The defendant or respondent.
- The attorney representing the defendant or respondent.

- The judge of the transferring court and the prosecutor of the case.
- The judge of the receiving court and the prosecutor of the receiving court funding unit.

The bill specifies that an individual would be eligible for the Swift and Sure Probation Supervision Program if he or she received a score of high on a validated risk assessment. If the sentencing judge, prosecutor, and defendant agreed to placement in the program, a person could be eligible for it if he or she were a violent offender or if he or she received a score other than high or low on a validated risk assessment.

MCL 769.1a et al. (H.B. 5928)
771.2 et al. (H.B. 5930)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5928 (H-2)

There are several areas in which the bill could have a fiscal impact on State and local government. First, the bill would have an indeterminate fiscal impact on the State's Legislative Council. Members of the proposed Criminal Justice Policy Commission would not receive a salary but would be eligible for reimbursement for necessary expenses. Also, the bill would require the Legislative Council to provide the Commission with office space, staff, and equipment. The bill does not specify the number of staff who would be needed; however, a similar commission that existed from fiscal year (FY) 1994-95 through FY 2001-02 (the former Michigan Sentencing Commission) was staffed with 2.0 FTE positions: an administrator and an administrative assistant.

The annual appropriations for the former commission ranged from a low of \$130,000 in FY 1998-99 to a peak of \$259,000 in FY 2000-01. The annual appropriation averaged an estimated \$250,000 for most fiscal years that the commission existed. The appropriation covered the costs of the 2.0 FTE positions, office space and equipment, and reimbursement to commission members for necessary costs. The estimated annual cost for the proposed Commission is indeterminate, but based on prior estimates could range between \$300,000 and \$400,000 annually. The current estimated average annual cost of one classified State employee is \$85,000 gross, \$45,000 GF/GP for salary and benefits. These estimates could be higher or lower based on the classification level of the staff hired.

Second, the bill would require the Michigan Department of Corrections to track prisoner restitution as a performance measure, which could increase the staffing and data collection costs to the Department. The bill also states legislative intent for the Michigan Supreme Court to use as a performance measure restitution collection from offenders at the circuit and district court level. To the extent that this would require additional staffing and data collection at the Michigan Supreme Court as well as the local district and circuit courts, there would be a cost to both State and local government to supply the staffing resources.

Finally, the bill would provide for a "one bad night" release from habitual offender penalties. If there were multiple felonies as a part of one criminal transaction, they could not be considered a prior felony conviction. This "one bad night" provision could reduce the maximum amount of time to which a given individual would be sentenced. To the extent that this reduced the number of people who otherwise would serve longer sentences, there would be fiscal savings to State government. Felony convictions, in the short term, have a marginal cost to the State of approximately \$4,100 per additional prisoner per year. Over the long term, the marginal cost to the State is approximately \$31,100 per additional prisoner per year. This amendment would have no fiscal impact to local government.

House Bill 5930 (H-2)

The bill would have a fiscal impact on State and local government. The bill would provide for the expansion of the State Swift and Sure Sanctions Program statewide. The bill also would create a fund which would allow funding to become more permanent than an annual appropriation. If there were wider adoption of the program, the population of those on probation could be reduced over time by policies that encourage shorter terms for lower-risk offenders. If there were a large increase in program participation, it is likely that sanctions for violations would be transferred from prison to jails, and the demand for bed space in jails probably would increase at the outset. However, models from the Council of State Governments (CSG) have shown an overall decrease in bed space in later years as a result of the increased deployment of swift and sure sanctions programs and shorter sanctions for violators. Depending on the rate at which the program was used statewide, it is expected that the demand for prison beds would decrease due to more violators being sent to jail rather than to prison, and due to shorter sanctions in response to violations. In FY 2014-15, there is an annual appropriation of \$6.0 million for the program in the judiciary budget. The sufficiency of this amount for the administration of the program depends on the number of courts that would elect to participate. According to the State Court Administrative Office, the program costs roughly \$2,750 per person per year, in addition to annual administrative costs. Additionally, under the bill, fiscal savings could occur if defendants were discharged from probation early due to successful completion of the program relative to the current procedures that require defendants to serve the full length of probation.

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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.