

Legislative Analysis



SPECIFY PENALTY FOR MANUFACTURE OR DELIVERY OF HEROIN OR FENTANYL OR A MIXTURE OF BOTH

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5137 as introduced
Sponsor: Rep. Julie Alexander

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5138 as introduced
Sponsor: Rep. Joe Tate

Committee: Judiciary
Revised 12-11-19

SUMMARY:

House Bill 5138 would amend the sentencing guidelines in the Code of Criminal Procedure to change the felony classification for certain crimes involving the manufacture of heroin, fentanyl, or a mixture of heroin and fentanyl. Under the bill, delivery or manufacture of 50 or more grams but less than 450 grams of heroin, fentanyl, or a mixture of the two would be a Class A felony (rather than a Class B felony as under current law). Delivery or manufacture of less than 50 grams of heroin, fentanyl, or a mixture of heroin and fentanyl would also be designated a Class A felony (it is currently a Class D felony). The bill would also make a technical correction to a provision pertaining to possession of a counterfeit prescription to reflect changes made to the Public Health Code by 2001 PA 236.

[Michigan uses an indeterminate sentencing structure in which the maximum term of imprisonment that may be imposed for an offense is established in statute and an appropriate range of imprisonment for a particular offender is determined by scoring various elements of the crime, known as offense variables, and then using a sentencing grid that relates to the felony classification of the offense to determine a sentence range appropriate for the offense and the offender. The score, and which grid is used, can make the difference as to whether an offender may be sentenced to community sanctions, such as probation, or is prison-bound, with a Class A felony typically resulting in a lengthier sentence than a Class E felony.

Scoring an offense as a Class A felony under the sentencing guidelines, rather than as a Class B or D felony, as the bill would do, impacts the recommended sentence range for an offense by increasing the minimum sentence; the maximum term of imprisonment for a violation involving either heroin, fentanyl, or a mixture containing both would not change.]

MCL 777.13m

House Bill 5137 would revise a provision in the Public Health Code that prohibits the manufacture, creation, delivery, or possession with intent to deliver a Schedule 1 controlled substance or a Schedule 2 substance, or a mixture containing any Schedule 1 or 2 controlled substance and prescribes penalties for a violation.

Currently, the penalties for a violation involving a Schedule 1 controlled substance or a Schedule 2 controlled substance that is a narcotic, or any mixture containing that substance, are as follows:

- 1,000 grams or more *of any mixture containing that substance* is a felony punishable by imprisonment for life or any term of years and/or a fine of up to \$1.0 million.
- 450 grams but less than 1,000 grams is a felony punishable by imprisonment for up to 30 years and/or a fine of up to \$500,000.
- 50 grams but less than 450 grams is a felony punishable by imprisonment for up to 20 years or a fine of up to \$250,000.
- Less than 50 grams is a felony punishable by imprisonment for up to 20 years and/or a fine of up to \$25,000.

The bill would restate and apply the above penalties specifically to a violation involving heroin, fentanyl, or a mixture containing both substances in a new subdivision to comport with the change proposed by HB 5138 to the felony classifications for violations involving 50 grams but less than 450 grams, and violations involving less than 50 grams, of the substances.

[A controlled substance is designated as Schedule 1 if it has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. A Schedule 2 controlled substance also has high potential for abuse but has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions, and its abuse may lead to severe psychic or physical dependence.]

MCL 333.7401

The bills are tie-barred to each other, which means that neither could take effect unless both were enacted, and each bill would take effect 90 days after being enacted.

FISCAL IMPACT:

House Bill 5137 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. The increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5138 is a companion bill to HB 5137 and amends sentencing guidelines to change the felony classification for crimes involving the manufacture or delivery of heroin, fentanyl, or a mixture of the two from Class B and Class D felonies (depending on the amount manufactured and/or delivered) to Class A felonies. Increasing the minimum sentence of those who are convicted would have an indeterminate fiscal impact on the state's correctional system, because convicted offenders would more likely be sentenced to prison instead of sentenced to jail or other community alternative placements. In fiscal year 2018, the average annual cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue.

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