



**House
Legislative
Analysis
Section**

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DRUG OFFENSE PRISON TERMS

Senate Bill 277 (Substitute H-2)
First Analysis (12-16-87)

Sponsor: Sen. Robert Geake
Senate Committee: Judiciary
House Committee: Judiciary

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Michigan State Legislature

THE APPARENT PROBLEM:

Under the Public Health Code, the penalty for the unauthorized manufacture or delivery of certain Schedule 1 or 2 drugs, or the prescription of such drugs by a licensed practitioner for illegitimate purposes, depends upon the quantity involved. (The drugs in question include opium, cocaine, heroin, other opiates and opium derivatives, and hallucinogens.) For an amount of 50 grams or more but less than 225 grams, imprisonment is mandatory unless the offender is put on lifetime probation, and imprisonment is permitted but not required for an amount under 50 grams. Reportedly, many drug dealers avoid imprisonment by selling only a small quantity to a buyer upon the initial contact with that buyer, in case he or she turns out to be an undercover narcotics officer. Thus, many believe that the law should strongly encourage minimum terms of imprisonment for situations involving even small quantities of illegal drugs, and that the law should be strengthened by deleting authorization for lifetime probation for large quantities. In addition, many criticize the law for excessive rigidity in its use of mandatory minimum terms of imprisonment, and propose changes to moderate its sentencing provisions.

THE CONTENT OF THE BILL:

The bill would make the following changes to penalty provisions for the manufacture, delivery, or possession with intent to deliver narcotics or cocaine:

- for amounts between 225 and 650 grams, the minimum term of imprisonment would be reduced from 20 to 10 years;
- for amounts between 50 and 225 grams, the minimum term would be reduced from ten to five years, and provision for lifetime probation would be deleted.
- for amounts under 50 grams, a minimum term of one year would be established, and lifetime probation would be authorized (provisions for a maximum term of 20 years and a fine of up to \$25,000 would be retained);

In addition, the bill would allow the court to depart from one of these minimum terms if it found on the record that there were substantial and compelling reasons for doing so.

MCL 333.7401

HOUSE COMMITTEE ACTION:

The House Judiciary committee adopted a substitute that differed from the Senate-passed bill primarily in allowing departures from minimum terms of imprisonment which are mandatory under current law. While the Senate-passed bill would have reduced the minimum term for 50-to-225-gram quantities, Substitute H-2 also would reduce the minimum term for 225-to-650-gram quantities.

FISCAL IMPLICATIONS:

Fiscal information is not available. (12-14-87)

ARGUMENTS:

For:

The bill would put some teeth into the controlled substances act by making it highly likely that anyone convicted of illegal drug deals, regardless of the quantity involved, would face imprisonment. Not only would at least one year's imprisonment generally be imposed for even the smallest sale of the drugs in question, but someone convicted of such an offense could be placed on probation for life, rather than the five years otherwise authorized for felony convictions. Further, with the elimination of lifetime probation for larger quantities, judges would be strongly encouraged to impose prison terms for those more serious crimes.

For:

By reducing certain minimum terms now present in the law and allowing judges to depart from them, the bill would moderate what is now an uncompromising law and allow judges more flexibility to make sentencing decisions based on the individual circumstances of a case. Strong measures for major controlled substances violations would be retained, however: it would continue to mean mandatory life in prison to be convicted of an offense involving 650 grams or more of narcotics. The bill would make for a law that was strict without unduly interfering with judicial discretion.

Against:

The bill would be a dangerous weakening of the law on controlled substances. Its provisions for a minimum prison term and lifetime probation for offenses involving small quantities are more than offset by its reductions in specified minimums for larger quantities and its proposal to allow judges to depart from minimums that are at present mandatory. If judges are to be allowed to depart the minimum terms, then prosecutors should have specific authority to appeal sentences.

Against:

The bill would preserve the law's presumption for mandatory minimum terms of imprisonment. It is doubtful that mandatory minimums have any deterrent effect. The only discernible effect that mandatory minimum terms of imprisonment have is to worsen prison overcrowding. Sentencing issues are complex and should be addressed comprehensively through the development of carefully considered and internally consistent sentencing guidelines.

POSITIONS:

The Department of State Police supports the bill. (12-9-87)

The Prosecuting Attorneys Association of Michigan supports the bill upon passage of House Bill 4719 as introduced, which would provide for prosecutorial appeals, including appeal of sentences. (12-8-87)

The Michigan Council on Crime and Delinquency opposes the bill. (12-8-87)

S.B. 277 (12-16-87)