

SFA

BILL ANALYSIS

RECEIVED

MAR 01 1988

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

STATE LAW LIBRARY

Senate Bill 277 (as enrolled) (Public Act 275 of 1987)**Sponsor: Senator Robert Geake****Senate Committee: Judiciary****House Committee: Judiciary****Date Completed: 1-19-88****RATIONALE**

It has been suggested that the penalties for controlled substance offenses should be strengthened. Under the controlled substances Act, 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 be amended to mandate imprisonment for even small quantities of illegal drugs, as well as to remove the option of lifetime probation for large quantities. In addition, some criticize the law for excessive rigidity in its prescription of mandatory prison terms.

CONTENT

The bill would amend the controlled substances Act within the Public Health Code to revise the mandatory terms of imprisonment for the unauthorized manufacture or delivery of certain Schedule 1 or 2 controlled substances, or for the prescription of such a controlled substance by a licensed practitioner for illegitimate purposes. The bill would make the following changes:

- For 225 grams or more but less than 650 grams, the mandatory minimum prison term would be reduced from 20 to 10 years.
- For at least 50 but less than 225 grams, the mandatory minimum term would be reduced from 10 to five years, and the lifetime probation option would be removed.
- For less than 50 grams, the offender would have to be imprisoned for between one and 20 years, could be fined up to \$25,000, or would have to be put on probation for life. (Current law allows imprisonment for up to 20 years, a maximum fine of \$25,000, or both.)

A court could depart from these mandatory minimum terms if the court found on the record that there were substantial and compelling reasons to do so.

In addition, the current Act provides that individuals subject to a mandatory term of imprisonment for certain controlled substance offenses, including possession, are not eligible for probation, suspension of the sentence, or parole during the mandatory term, except as permitted for lifetime probation. Under the bill, an offender also could not

receive a reduction in the mandatory term by good time credits, disciplinary credits, or any other type of sentence credit reduction.

MCL 333.7401

FISCAL IMPACT

The bill would result in an expenditure increase of \$109 million for the State in FY 1986-87. For a conviction for 50 grams or more, the bill would impose a mandatory prison sentence and eliminate the probation option for sentencing judges, while the bill would impose a mandatory minimum sentence or allow lifetime probation for less than 50 grams. During 1985 there were 1,687 court dispositions for the controlled substance offenses that would be affected by this bill, of which only 405 (24%) resulted in a prison sentence. The remaining 1,282 dispositions resulted in probation (64%), jail (6%), and other (6%). Eliminating the use of probation, jail and other sentencing options would have increased new prison commitments in 1985 by 1,282. Based on a similar number of total dispositions during FY 1986-87, State expenditures would increase by an estimated \$25 million for housing the convicted felons. In addition, due to the current severe overcrowding problem, two additional prisons would have to be authorized for construction at a cost of \$40-42 million each.

ARGUMENTS**Supporting Argument**

The bill would put some teeth into the controlled substances Act by ensuring that anyone convicted of illegal drug deals, regardless of the quantity involved, would face mandatory imprisonment. Not only would at least one year's imprisonment have to be imposed for even the smallest sale of the drugs in question (unless lifetime probation were imposed for an amount under 50 grams), but those selling larger amounts also could not simply be placed on probation and allowed to avoid prison altogether.

Supporting Argument

By reducing certain minimum terms, and allowing judges to depart from them, the bill would moderate what has been an uncompromising law and would give judges greater flexibility in making sentencing decisions based on the individual circumstances of a case. At the same time, strong measures for major controlled substance violations would be retained.

Opposing Argument

The bill would dangerously weaken the law governing controlled substance offenses. A minimum prison term or

S.B. 277 (1-19-88)

lifetime probation for offenses involving small quantities would be more than offset by reductions in minimum sentences that are mandatory at present.

Legislative Analyst: S. Margules
Fiscal Analyst: B. Burghardt

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.