



**House  
Legislative  
Analysis  
Section**

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**SENTENCING GUIDELINES**

**House Bill 4191**

**Sponsor: Rep. Nick Ciaramitaro**  
**Committee: Judiciary**  
**Complete to 5-19-89**

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**A SUMMARY OF HOUSE BILL 4191 AS  
INTRODUCED 2-15-89**

The bill would amend the Code of Criminal Procedure to provide for felony sentencing guidelines to be enacted by the legislature. A felony sentence of imprisonment for a crime committed two or more years after the bill took effect would have to be a fixed sentence. An eleven-member sentencing advisory committee would be established within the legislative council to develop recommendations. The recommended sentence ranges would have to meet criteria specified by the bill; they would not take effect unless the legislature enacted them into law. A court could depart from a guideline sentence only if it had a substantial and compelling reason to do so; the court's reasons would have to be stated on the record. The bill would provide for prosecutorial and defense appeals on sentences that did not follow guidelines. The bill also would provide for prisoners being released from prison to undergo a supervised period of "community reentry status." A more detailed explanation follows.

**Advisory committee.** An eleven-member sentencing advisory committee, to be appointed by the governor, would be established within the legislative council. The committee would consist of three judges (including at least one circuit court judge and one recorder's court judge), representatives of prosecuting attorneys, the criminal defense bar, the Department of Corrections, the law enforcement community, and programs that promote alternatives to incarceration, plus three members of the general public, one of whom would be chairperson. The governor could remove a member for cause, which would have to be explained in writing to the member and the committee. Terms would be four years. Members would not receive salaries, but would be reimbursed for expenses. Committee business would be subject to the Open Meetings Act and the Freedom of Information Act.

The committee would assemble and disseminate information on state and local felony sentencing practices and prison and jail utilization, conduct research on sentencing guidelines developed by the committee; compile data and make projections on populations and capacities of state and local correctional facilities; in cooperation with the state court administrator, compile data and make projections on the effect of sentencing guidelines on case loads, docket flow, and case backlogs in Michigan.

The committee would recommend to the legislature sentence ranges and modifications to the ranges that the committee considered necessary or desirable. The committee would have to consider sentencing and release practices, prison and jail capacity and population, court docket management, prosecutorial charging discretion, and the protection of the public. Proposed sentence ranges would have to be submitted to the legislature on or after November 7, 1990.

**Guidelines.** The proposed guidelines would not take effect unless enacted Page 1 of 3 Pages into law. The sentence ranges and any modifications to them would have to do the following: reduce sentencing disparities based on factors other than offense and offender characteristics, and assure that offenders with similar offense and offender characteristics received substantially similar sentences; be proportionate to the seriousness of the offense and the offender's prior criminal record (generally, an offense involving violence against a person would be more severe than other offenses); provide for protection of the public; and, specify the various circumstances under which incarcerative and nonincarcerative sanctions were proper. In addition, the ranges would have to be within the minimum and maximum allowed by law.

**Prison and Jail Capacity.** If the committee determined that the proposed sentence ranges would cause the capacity of state and local correctional facilities to be exceeded, the committee would recommend to the governor and the legislature that capacity be increased.

**Sentencing procedure.** The bill would continue to require that a presentence investigation report (PSI) be prepared and made available to both prosecution and defense. In imposing a sentence, a judge would have to consider the PSI and any other factors brought forward by the prosecution, the defense, or the victim. The PSI for any felon sentenced under the guidelines would have to include the appropriate sentencing grid and the computation used to arrive at the appropriate range for each conviction, the recommended sentence, diagnostic opinions (if available), and the defendant's prior criminal record.

The offender characteristics, which along with offense characteristics would be used to determine the applicable sentencing range, would be limited to the defendant's prior criminal record. A defendant's prior criminal record would be his or her recorded criminal history, including all misdemeanor and felony convictions, probation violations, and juvenile adjudications for acts that would have been crimes if committed by an adult. Multiple convictions arising out of a single event would be treated as one conviction when determining a sentence for a conviction arising out of that event.

Generally, a felony sentence of imprisonment for a crime committed on or after the effective date of the sentencing ranges established under the bill would have to be within the appropriate sentence range in effect on the date the crime was committed. A felony sentence of imprisonment for a crime committed two or more years after the bill took effect would have to be a fixed sentence. When the court ordered imprisonment, it also could impose a fine, restitution, costs, or any combination of them. If a crime had a mandatory penalty, the court would impose that sentence rather than a guideline sentence. The bill would repeal a section of the code that authorized the resentencing of habitual offenders to lesser sentences.

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Whether a fixed sentence or a range, each sentence of imprisonment would have to have two parts: the period of time the person is to be imprisoned and the period of time the person is to be on community reentry status after release from prison and before final discharge on the sentence. The bill would add the following to the statutory list of conditions of probation which a judge may order: participation in a work-release, education release, or work-seeking program; and payment of a day fine not to exceed the probationer's daily gross earnings for the number of days the fine was imposed (and not to exceed the maximum amount allowed by law for the offense).

Departures from guidelines. A court could depart from the guidelines if it had a substantial and compelling reason for doing so. Its reason(s) would have to be stated on the record. The following factors would be explicitly disallowed as purposes for departing from guidelines: gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed legal counsel, and religion.

Appeals. Immediately upon sentencing, the court would advise the defendant of the right to appeal a sentence that departed from the appropriate guideline sentence. The prosecution could appeal a sentence that was less than the guideline sentence. Appeals would be to the court of appeals, which would remand the sentence back to the sentencing judge or another trial court if it found that the judge did not have a substantial and compelling reason for departing from guidelines. Upon remand, the court could only lower a sentence appealed by the defense, and increase a sentence appealed by the prosecution. An appeal would not act as a stay on the execution of the sentence.

Community reentry status. Imprisonment would be followed by a period of supervised release under the jurisdiction of the Department of Corrections. The period of this "community reentry status" would be the shorter of two years or the time remaining between the end of the fixed sentence and the maximum term allowed by law. However, a person could be discharged from the program after successfully completing one year. At least 30 days before a person went on community reentry status, the department would notify a victim who had requested notice under the Crime Victim's Rights Act. Community reentry status would commence only after the completion of the prison sentence less accumulated disciplinary credits. An incarcerated prisoner would not be eligible for any placement in the community except for community reentry status or community work release placement during the last 12 months or one-third of the term of imprisonment, whichever was shorter.

Community reentry status would be revocable. If it was revoked, the prisoner would be returned to prison for all or any part of the period of time the person was to be on community reentry status.

The bill would not allow community placement of any prisoner whose placement in the community was otherwise prohibited by law or corrections department rule.

Tie-bar. The bill could not take effect unless House Bill 4192, which would amend the corrections code to provide for the community reentry program, was enacted.

MCL 769.8 et al.