



**House
Legislative
Analysis
Section**

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SENTENCING GUIDELINES

House Bill 4782

Sponsor: Rep. Michael E. Nye

Committee: Judiciary

Complete to 6-7-93

A SUMMARY OF HOUSE BILL 4782 AS INTRODUCED 5-13-93

The bill would amend the Code of Criminal Procedure to create a sentencing commission to develop sentencing guidelines that would be made mandatory upon enactment into law. Sentencing would continue to be indeterminate. Guidelines would establish minimum sentence ranges based on certain offense and offender characteristics, and judges would continue to set sentence maximums within the limits established by law. In developing guidelines, the commission would consider the likelihood that the capacity of state and local correctional facilities would be exceeded. The bill would set guidelines criteria, restrict judicial departures from guidelines and provide for appeals, require the use of "intermediate sanctions" when guidelines called for a sentence of less than 12 months, and provide for the development of separate sentence ranges to apply to habitual offenders. An effective date of April 1, 1994 would be specified for provisions on habitual offenders (see below), guidelines development, and conditions of probation; other provisions on departures from guidelines, the use of intermediate sanctions, and presentence investigation reports would take effect upon the guidelines taking effect. A more detailed description follows.

Existing guidelines. When the sentencing guidelines developed under the bill took effect, existing guidelines promulgated by Michigan Supreme Court Administrative Order 1988-4 would no longer apply.

Guidelines criteria. Guidelines would include sentence ranges for the minimum sentence for each offense, along with "intermediate sanctions" (that is, punishments other than incarceration in a state prison) to be applied whenever a range included a recommended minimum sentence of less than 12 months. Separate sentence ranges would be developed for convictions that fell under the habitual offender provisions of the Code of Criminal Procedure.

In developing guidelines, the commission would consider the likelihood that the capacity of state and local correctional facilities would be exceeded. State correctional capacity would include the capacities of all permanent and temporary state facilities in use, plus those approved for construction under the joint capital outlay process.

Guidelines and any later modifications would have to reduce sentencing disparities based on factors other than offense and offender characteristics, and ensure that offenders with similar offense and offender characteristics received substantially similar sentences. "Offender characteristics" would mean only the prior criminal record of the offender. "Offense characteristics" would be the elements of the crime plus any aggravating or mitigating factors the commission considered appropriate, providing they were consistent

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with the bill. Guidelines also would have to be proportionate to the seriousness of the offense and the offender's prior criminal record (an offense involving violence against a person would be considered more severe than other offenses); provide for protection of the public; and, specify the circumstances under which a term of imprisonment or intermediate sanctions should be imposed. Guidelines sentence ranges would have to be within the minimum and maximum sentences allowed by law.

Sentencing commission. The guidelines and subsequent modifications would be developed by a seventeen-member commission appointed by the chair and alternate chair of the Legislative Council. The commission would be administratively housed in the Legislative Council, which would provide office space and staffing. The commission would consist of: three representatives (two majority members and one minority member), three senators (two majority and one minority member), three judges (including at least one circuit judge and one recorder's court judge), plus representatives of prosecuting attorneys, the criminal defense bar, the Department of Corrections, advocates of alternatives to incarceration, and crime victims, and three people representative of the general public, one of whom would chair the commission. Terms would be four years. Members would not receive salaries, but would be reimbursed for expenses. Commission business would be subject to the Open Meetings Act and the Freedom of Information Act.

Commission duties. In addition to developing guidelines meeting the bill's requirements, the commission would assemble and disseminate information on state and local felony sentencing practices and prison and jail utilization; conduct research on the impact of the sentencing guidelines developed by the commission; compile data and make projections on populations and capacities of state and local correctional facilities and how sentencing guidelines affect them; and, 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 state court administrator's office would continue to collect data on sentencing practices; it would have to provide this data to the commission.

Approval of guidelines, amendments. The commission's guidelines would not take effect unless they were enacted into law. The commission would submit its guidelines to the legislature on October 1, 1994. If the guidelines were not enacted into law within 90 days after they were submitted, the commission would revise them and resubmit them within 180 days after they were previously submitted. The process would continue until guidelines were enacted.

The commission could recommend modifications to the enacted guidelines. Generally, modifications could not be implemented more often than every two years; exceptions would be made for modifications based on omissions, technical errors, changes in the law, or court decisions. Modifications would follow the same enactment process applying to the initial guidelines.

Application of guidelines. An offender would be sentenced under the guidelines in effect on the date the crime was committed. Commencing April 1, 1994, multiple convictions arising out of a single transaction would be considered one conviction when

sentencing on a conviction arising out of that transaction. If a crime had a mandatory penalty, the court would impose that penalty; provisions on guideline departures and appeals therefrom would not apply. Whenever a term of incarceration was imposed, the court could also order that a fine, restitution, costs, or any combination of the three be paid.

Departures from guidelines. A court could depart from the bill's guidelines if it had a substantial and compelling reason to do so. Its reason(s) would have to be stated on the record, and could not be based on any offense or offender characteristic already taken into account in determining the recommended sentence range. The following factors would be specifically disallowed in departing from guidelines: gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, the type of legal representation (such as whether by appointed or retained counsel), and religion.

Appeals. The court would advise a defendant of the right to appeal a sentence that was more severe than the recommended 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 matter back to the sentencing judge or another trial court judge if it found that the trial court did not have a substantial and compelling reason for departing from the guidelines. Upon remand, the trial court could only lower a sentence appealed by the defense, or increase a sentence appealed by the prosecution. An appeal would not stay the execution of the sentence.

Consistent with court rules, the bill also would revise various deadlines applying to bringing appeals from district courts, circuit courts, and the Detroit recorder's court. Where the law now allows 60 days to bring an appeal, the bill would allow 42 days. Where 20-day deadlines now apply, the bill would provide 21 days.

Intermediate sanctions. Beginning on the effective date of the bill's guidelines, if the recommended minimum sentence for a defendant was less than 12 months, the court would have to impose an intermediate sanction unless it stated on the record a substantial and compelling reason to impose a sentence of imprisonment. An "intermediate sanction" would be any sanction other than imprisonment in a state prison or reformatory that could lawfully be imposed. Intermediate sanctions would include probation, drug treatment, mental health counseling, jail, work-release or school-release from jail, participation in a community corrections program, community service, restitution, fines, house arrest, electronic monitoring, and probation with special alternative incarceration ("boot camp"). The bill would add to the list of specifically-allowed conditions of probation the intermediate sanctions that are not already mentioned.

Presentence investigation reports. In addition to the information now required, a presentence investigation report for sentencing under the bill's guidelines would have to include: a specific statement on the applicability of intermediate sanctions; guidelines computations and the recommended sentence; the defendant's prior criminal record, including all misdemeanor and felony convictions, probation violations, and juvenile adjudications for acts that would have been crimes if committed by an adult; and available diagnostic opinions not otherwise exempted from disclosure.

Habitual offenders. The bill would require the sentencing commission to develop separate sentence ranges for habitual offenders; habitual offender ranges could include as an aggravating factor that the accused had engaged in a pattern of proven or admitted criminal behavior. In addition, the bill would delete language calling for written approval from the sentencing judge before parole of a habitual offender sentenced under the fourth-felony habitual offender statute.

MCL 769.8 et al.