



**House
Legislative
Analysis
Section**

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REVISE DRUG PENALTIES

House Bills 4902 and 4903

Sponsor: Rep. William R. Bryant, Jr.

Committee: Judiciary

Complete to 4-18-94

A SUMMARY OF HOUSE BILLS 4902 AND 4903 AS INTRODUCED 6-29-93

The bills would reduce allowable penalties for various drug offenses and provide for parole for offenses involving 650 grams or more of narcotics or cocaine. (The controlled substances portion of the Public Health Code mandates life in prison without parole for the manufacture, distribution, or possession of 650 grams or more of narcotics or cocaine. However, in its 1992 decision on People v. Bullock [440 Mich 15], the Michigan Supreme Court held that the statutory penalty of mandatory life in prison without parole for possession of 650 grams or more of any mixture containing cocaine violated the state constitution's prohibition against cruel or unusual punishment.) Neither bill could take effect unless both were enacted. A more detailed description follows.

House Bill 4902 would amend the controlled substances portion of the Public Health Code (MCL 333.7401 et al.) to generally require imprisonment for 10 to 30 years instead of mandatory life for the 650-gram drug offenses; reduce the minimum and maximum terms applicable to various other drug offenses; detail factors that a court may consider in deciding whether "substantial and compelling reasons" existed for departing from a minimum term of imprisonment and establish minimum and maximum terms to apply under sentencing departures; specify retroactive application of the drug penalty revisions; and mandate life in prison without parole for a second offense involving 225 grams or more of narcotics or cocaine, rather than the current 50 grams or more (in other words, the bill would increase the threshold amounts necessary to obtain life in prison without parole for repeat offenders).

650-gram offenses. The bill would replace current statutory penalties of life in prison without parole for the manufacture, distribution, or possession of 650 grams or more of narcotics or cocaine. New penalties would be imprisonment for at least 10 years, up to 30 years. As with other narcotics and cocaine offenses, a sentence for the drug offense would run consecutively with any term imposed for the commission of another felony; an offender would be ineligible for probation, suspension of sentence, or parole during the minimum term; and the minimum term could not be reduced by disciplinary credits or any other form of sentence reduction. However, also as with other offenses, a sentencing court could depart from the mandatory minimum term if it found substantial and compelling reasons for doing so.

Other drug offenses. Manufacture, distribution, or possession of 225 to 650 grams of narcotics or cocaine, at present punishable with 20 to 30 years in prison, would be punishable with 8 to 24 years. For amounts involving 50 to 225 grams, the current penalty is 10 to 20 years, which the bill would reduce to 6 to 18 years. For manufacture or distribution of amounts involving less than 50 grams, the minimum term would remain one year, but the allowable maximum would be reduced from 20 to 4 years. For possession of

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25 to 50 grams, penalties would remain unchanged: imprisonment for one to four years, and lifetime probation or a fine of up to \$25,000. For possession of amounts less than 25 grams, the maximum prison term would be reduced from four to two years (there is no minimum term specified), and the maximum fine reduced from \$25,000 to \$2,000.

Departures from minimum terms. Current statute allows a sentencing court to depart from a mandatory minimum term (other than where life without parole is mandated) if it finds substantial and compelling reasons for doing so. The bill would say that the court could consider one or more of the following in determining whether substantial and compelling reasons existed: the circumstances under which the violation was committed; the level of participation of the defendant in committing the violation; factors that mitigate the culpability of the defendant; the credibility, character, and rehabilitative potential of the defendant; and, factors relevant to the principle of proportionality.

If the court departed from a minimum term, it would have to impose a sentence of at least one-half the minimum term that otherwise would apply, and a maximum term equal to one-half the maximum that otherwise would apply. A person sentenced under this departure provision would not be eligible for probation, suspension of sentence, or parole during the minimum term, nor could he or she receive disciplinary credits or any other type of sentence reduction.

Retroactive application. The bill would express a legislative finding that the penalty provisions to be revised by the bill have resulted in unduly harsh punishment in many instances. The bill would state a legislative intent to permit the bill's provisions on sentencing departures to have retroactive application to individuals sentenced under existing penalty provisions. The bill also would exhort the governor to review all cases in which people were serving mandatory sentences and to grant commutations or pardons, should it be determined that the bill's departure provisions cannot constitutionally be applied retroactively. (These provisions on retroactive application would not apply to individuals sentenced to life in prison without parole as repeat drug offenders.)

Repeat offenders. At present, someone who is convicted for a second or subsequent time of manufacture, distribution, or possession of 50 grams or more of narcotics or cocaine, or conspiracy to commit these offenses, is to be punished with life in prison without parole. The bill would raise this threshold amount to 225 grams.

Manufacture and distribution charges. The bill would specify that if a person was charged with the manufacture or delivery of narcotics or cocaine, the trier of fact (that is, the jury, or, in a bench trial, the judge) could not find the person guilty of possession.

House Bill 4903 would amend the corrections code (MCL 791.234) to provide for parole of prisoners sentenced under departures from the mandatory minimum drug penalties. Such prisoners would be under the jurisdiction of the parole board and could be paroled after the expiration of the minimum term imposed under House Bill 4902's departure provisions (those provisions require a minimum term of at least one-half the length of the minimum term otherwise applicable to the violation). After the expiration of the minimum term specified in the sentence, the parole board would consider the prisoner for parole annually upon the prisoner's request.