



**Senate Fiscal Agency**  
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BILL ANALYSIS



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Senate Bill 123 (as passed by the Senate)  
 Sponsor: Senator Michael J. Bouchard  
 Committee: Judiciary

Date Completed: 5-4-95

### **RATIONALE**

The Code of Criminal Procedure contains specific sentencing provisions for repeat offenders. The Code allows enhanced penalties for a person convicted of a felony who has had previous felony convictions, and it requires consecutive sentencing for a person who commits a crime while incarcerated or during a period of escape, and for a person who commits a felony while on parole. Some people contend, however, that these provisions fail to consider the case of a convicted felon who commits another felony while serving a term of *probation* for the prior felony conviction. They believe that the Code should, at least, specifically allow consecutive sentences to be imposed for a probationer who commits another felony.

### **CONTENT**

The bill would amend the Code of Criminal Procedure to specify that, if a person were convicted and sentenced to a term of imprisonment for a felony committed while he or she was on probation for a previous felony conviction, the sentencing court could order that the term of imprisonment imposed for the subsequently committed felony be served consecutively to a term of imprisonment imposed upon revocation of the person's probation for the previous felony conviction.

The bill would retain provisions of the Code that require consecutive sentencing for a person who commits a crime while incarcerated or during a period of escape from a penal or reformatory institution, and for a person who commits a felony while on parole.

The bill would take effect 120 days after the date of enactment.

MCL 768.7a

### **BACKGROUND**

In regard to prisoners who commit a felony while on *parole*, in July 1994 the Michigan Court of Appeals ruled that the minimum term of the sentence for the subsequent crime must begin after the maximum sentence for the original crime has been completed (*People v Young*, 206 Mich App 144). This decision was based on the Code's provision that, if a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, "the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense" (MCL 768.7a(2)).

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

To treat repeat felons more harshly and deter offenders from committing subsequent violations, the Code of Criminal Procedure allows enhanced sentencing for repeat felons and requires consecutive sentences to be imposed under certain circumstances. The Code contains a loophole in this effort, however, in that there is no specific statutory authorization for a judge to impose consecutive sentences on a person who commits a felony while on probation for a previous felony and whose probation is revoked and replaced with a term of imprisonment. Generally,

sentences for multiple offenses are served concurrently, but when a prisoner or parolee commits a subsequent felony, the Code requires consecutive sentencing. The bill would authorize the same strict treatment for a person who committed a felony while serving probation for a prior felony.

### **Opposing Argument**

The bill has the potential to be very costly to the State and to contribute to the Department of Corrections' (DOC's) continuing prison crowding problem. Although the bill's authorization for consecutive sentencing for a probationer who committed a felony and had his or her probation revoked in favor of a prison term would be discretionary with the sentencing judge, if a significant number of offenders were given more prison time under the bill than they otherwise would receive under current law, the DOC's current problems would be compounded.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate impact on State and local government. To the extent that judges under the bill would impose consecutive sentences (rather than concurrent sentences) for probation violators more frequently, and that these consecutive sentences increased total sentence lengths, costs for incarceration could increase. For example, if under current law, an offender had been convicted of burglary, received a suspended two- to 10-year sentence and was placed on probation, and then commits a drug offense while on probation, the judge likely will sentence the individual to a term of imprisonment for the drug offense, for, as an example, three to five years. Under the bill, the judge could impose the three- to five-year drug sentence consecutive to the two- to 10-year sentence for the original burglary offense, making the total minimum sentence length under the bill five years rather than three as might be the case under current law.

There are too many unknown variables (such as average sentence lengths for original offenses, average sentence lengths for new offenses, number of probationers who commit new felonies while on probation, and how often judges might impose a consecutive sentence) to provide a quantifiable fiscal impact as a result of the changes proposed by the bill. As reference information, in 1993, there were approximately

1,500 new prison commitments for probation violators, and over 1,800 probation violator commitments in 1994. There are no reliable data, however, that could indicate how many of these offenders were admitted for a technical violation (failing to meet a condition(s) of probation) and how many were admitted for committing a new felony while on probation.

Fiscal Analyst: M. Hansen

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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.