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SFA**BILL ANALYSIS**

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Senate Bill 373 (as introduced 2-23-99)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 2-24-99

CONTENT

The bill would amend the Code of Criminal Procedure to do all of the following:

- **Revise the list of sentencing guidelines offenses, including adding offenses enacted or whose penalties were revised since the list was originally compiled.**
- **Remove the six categories that are applied to the sentencing guidelines offenses and used to determine which offense variables are scored in determining recommended sentence ranges.**
- **Make various revisions to the sentencing guidelines' offense variable scoring instructions.**
- **Provide that it would not constitute a departure from sentencing guidelines if a court imposed a sentence that exceeded the recommended sentence range but was less than a statutory mandatory minimum sentence.**
- **Delete the prohibition against using a conviction for enhanced sentencing under the Code's habitual offender provisions if that conviction is used to enhance a sentence under a statute that prohibits use of the conviction for further enhancement under the habitual offender provisions.**

The bill would take effect on July 1, 1999.

Sentencing Guidelines Offenses

The bill would revise the Code's list of more than 700 offenses subject to sentencing guidelines by moving some of the offenses to proposed new sections within the list and adding some offenses that were enacted or whose penalties were revised after the list was compiled and enacted by Public Act 317 of 1998.

Additions to the list include graduated penalties that were enacted in 1998 for various larceny and property destruction offenses; new and revised penalties that were enacted in 1998 when various explosives offenses were revised and recodified; and new offenses and penalties enacted in 1998 for human cloning, unauthorized process to obstruct a public officer or employee, and various acts of assault or gross negligence against a pregnant woman that result in miscarriage or stillbirth. In the case of new graduated penalties enacted for previously existing offenses, the bill would reclassify some of the offenses as a higher level felony within the sentencing guidelines offense list, due to the 1998 enactment of longer statutory maximum sentences for those offenses.

Sentencing Guidelines Categories

The offenses in the Code's sentencing guidelines provisions are divided into six categories. Offenses are designated as crimes against a person, crimes against property, crimes involving a controlled substance, crimes against public order, crimes against public trust, or crimes against public safety. The categories are used to determine which of the 19 offense variables specified by the Code are to be considered and scored by a sentencing judge when determining a recommended minimum sentence range.

The bill would eliminate all of the categories and repeal the section of the Code that instructs judges on which offense variable to score for a given offense category. The bill would require, instead, that a sentencing judge score *all* of the offense variables for each offender.

In addition, the bill would define the term “felony against a person” as a violation or attempted violation of any of approximately 170 offenses. The bill would then use the term “felony against a person” and “crimes other than a felony against a person” in weighing some of the offense variable factors that now use the categories “crimes against a person” and “crimes against property” to score those offense variables.

Offense Variable Scoring Instructions

In addition to using the “felony against a person” standard discussed above, the bill would make other revisions to the offense variable scoring instructions.

Offense variable 5 is psychological injury to a member of a victim’s family, and includes an instruction to score no points if no serious psychological injury requiring professional treatment occurred to a homicide victim’s family. The bill would add “or no homicide occurred” to that scoring instruction.

Offense variable 11 is criminal sexual penetration, and includes an instruction not to score points for the one penetration that forms the basis of a first- or third-degree criminal sexual conduct (CSC) offense. The bill would remove third-degree CSC from that instruction.

Offense variable 12 is contemporaneous felonious criminal acts, and includes instructions to score various amounts of points for conditions under which contemporaneous felonious criminal acts involve “crimes” against a person. The bill would change that standard to a “felony” against a person

Offense variable 13 is continuing pattern of criminal behavior, and includes an instruction to score 25 points if the offense was part of a pattern of felonious criminal activity involving three or more crimes against property. The bill would change that standard to three or more crimes “other than a felony against a person” and instruct the sentencing judge to score only five points.

Offense variable 18 is operator ability affected by alcohol or drugs, and includes instructions for various amounts of points to be scored for operating a vehicle with different amounts of bodily alcohol. The bill would add operation of a vessel, aircraft, or locomotive to those scoring instructions.

Departure: Statutory Mandatory Minimum Sentence

The Code requires that, if a statute mandates a minimum sentence, the court impose a sentence in accordance with that statute, and provides that imposing a mandatory minimum sentence is not a departure from the sentencing guidelines’ recommended minimum sentence range. The bill specifies that imposing a sentence that exceeded the recommended sentence range but was less than the mandatory minimum sentence, also would not constitute a departure from the sentencing guidelines.

Use of Habitual Offender Provisions

Under the Code’s habitual offender provisions, criminal sentences may be enhanced if the offender has prior felony convictions. A prior conviction may not be used, however, if the conviction is used to enhance a sentence under a statute that prohibits use of the conviction for further enhancement under the habitual offender provisions. The bill would delete that prohibition against the use of the prior conviction under the habitual offender provisions.

MCL 769.10 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 373 would have an indeterminate fiscal impact on State and local government.

The bill would eliminate offense categories and thereby would require all offense variables to be considered in the presentence evaluation. On the sentencing grid, offense variable points are contrasted with offender variable points to determine a minimum sentence range. Under current law, of the 19 offense variables, at

most 13 (or 15 if the offense involves the operation of a vehicle, vessel, aircraft, or locomotive) offense variables are considered for each offense. There are no data to indicate if scoring all 19 offense variables for every crime would result in higher offense variable points that would increase the length of minimum sentences.

Additionally, although individual statutes prohibit the use of enhanced convictions and habitual sentencing for the same crime, the bill would remove the same exclusionary language from the Code's habitual offender provisions. Assuming that offenders with enhanced convictions could be sentenced under the Code's habitual offender provisions as well, minimum sentences for these offenders could increase by 25%, 50%, or 100% depending on the number of prior felonies.

Fiscal Analyst: K. Firestone

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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.