

# Legislative Analysis

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## SENTENCING COMMISSION

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### House Bill 4964

**Sponsor: Rep. Paul Condino**

**Committee: Judiciary**

**Complete to 7-24-07**

## A SUMMARY OF HOUSE BILL 4964 AS INTRODUCED 6-21-07

### Background Information

Public Act 445 of 1994 created a 19-member sentencing commission within the Legislative Council to develop sentencing guidelines as well as assemble and disseminate information on state and local felony sentencing practices and prison and jail utilization; conduct research on the impact of the commission-developed sentencing guidelines; compile data and make projections on populations and capacities of state and local correctional facilities and how sentencing guidelines affected 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 courts. Further, the commission was to recommend modifications to the enacted guidelines, though modifications were not to be implemented more often than every two years.

The majority of the commission's recommendations contained in a report published on December 27, 1997 and submitted to the Legislature were enacted into law as Public Act 317 of 1998 (enrolled House Bill 5419). The last time the Sentencing Commission met was in November of 1997, and as members' terms expired, no new appointments were made. Sections 32 and 33 of Chapter IX of the Code of Criminal Procedure, the underlying statutory provisions for the Sentencing Commission, were repealed by Public Act 31 of 2002 (enrolled House Bill 5392).

### House Bill 4964

The bill would add Sections 32 and 33 to Chapter IX of the Code of Criminal Procedure, entitled "Judgment and Sentence," to create a sentencing commission, specify commission membership, and prescribe commission powers and duties. The new provisions would be similar to the ones repealed by Public Act 31 of 2002.

Sentencing commission. A 19-member commission would be created in the Legislative Council, which would provide office space and staffing. The commission would consist of: four senators (two members from each caucus); four representatives (two members from each caucus); two judges; and two individuals representing the general public; as well as representatives of prosecuting attorneys, criminal defense attorneys, law enforcement, the Department of Corrections, advocates of alternatives to incarceration, crime victims, and the Department of Management and Budget. Legislative members

would be appointed by their respective caucus leader by January 1, 2008. Other members would be appointed by that same date by agreement between caucus leaders and the governor. One of the two members representing the general public would be appointed as chairperson by the governor.

Terms would be four years, except for some shorter initial terms to establish staggered terms. Vacancies would be filled in the same manner as the original appointment. 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. The commission would be required to:

- Collect, analyze and disseminate information regarding state and local sentencing practices for felonies and the use of prisons and jail. The state court administrator would continue to collect data regarding sentencing practices and would provide necessary data to the commission.
- Conduct ongoing research regarding the impact of the sentencing guidelines set forth in the sentencing guidelines portion of the code, Chapter XVII.
- Collect, analyze, and compile data and make projections regarding the populations and capacities of state and local correctional facilities and how sentencing guidelines affect them.
- In cooperation with the state court administrator, compile data and make projections on the effect of sentencing guidelines on the caseload, docket flow, and case backlog in Michigan.
- Develop modifications to the sentencing guidelines as prescribed in the bill.

Guidelines modifications. The commission could recommend modifications to the sentencing guidelines set forth in Chapter XVII of the code; however, any modifications would have to accomplish all of the following:

- \*\* Provide for protection of the public.
- \*\* Consider offenses involving violence against a person as more severe than other offenses.
- \*\* Be proportionate to the seriousness of the offense and the offender's prior criminal record.
- \*\* Reduce sentencing disparities based on factors other than offense and offender characteristics, ensuring offenders with such similar characteristics receive substantially similar sentences.
- \*\* Specify circumstances under which a term of imprisonment would be proper and for which an intermediate sanction would be proper.

\*\* Establish sentence ranges for imprisonment within the minimum and maximum sentences legally allowed for the offenses to which the ranges apply.

\*\* Maintain separate sentence ranges for convictions under the habitual offender provisions and allow, as an aggravating factor, that the accused had engaged in a pattern of proven or admitted criminal behavior.

\*\* Establish sentence ranges considered appropriate by the commission.

Modifications would also have to include recommended intermediate sanctions for each case in which the upper limit of the recommended minimum sentence range was 18 months or less.

The commission would have to consider, in developing the modifications, the likelihood that the capacity of state and local correctional facilities would be exceeded. Sentencing guidelines modifications would have to be submitted to the legislature and accompanied by a prison impact report that included the projected impact on total capacity of state correctional facilities.

If legislation to enact sentencing guidelines modifications based on commission recommendations were not enacted within 60 days of the introduction of a bill to enact such modifications, the commission would have to revise the modifications and resubmit them to the Secretary of the Senate and Clerk of the House within 90 days. This schedule would be repeated until the modifications were enacted into law.

MCL 769.32 and 769.33

#### **FISCAL IMPACT:**

The costs to the state are indeterminate at this time. Costs would depend on the number of staff hired, whether staff members are temporary or permanent, the level of benefits paid for staff, computer hardware and software, equipment, travel, rent, and other operating expenses. It should be noted, HB 4348, the FY 2008 appropriations bill for the Department of Corrections, contains a \$500,000 appropriation for this purpose.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.