

Legislative Analysis



FLEEING AND ELUDING: REVISE SENTENCING GUIDELINES

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Senate Bill 388 as passed by the Senate
Sponsor: Sen. John J. Gleason
House Committee: Judiciary
Senate Committee: Judiciary

(Enacted as Public Act 323 of 2012)

Complete to 9-26-12

A SUMMARY OF SENATE BILL 388 AS REPORTED BY COMMITTEE 9-20-12

The bill would amend the Code of Criminal Procedure (MCL 777.16x) to revise the felony class for first- and second-degree fleeing and eluding in the sentencing guidelines.

Currently, first-degree fleeing and eluding is a Class C felony against a person and is punishable by a statutory maximum sentence of 15 years' imprisonment. Under the bill, that violation would be a Class B felony. Second-degree fleeing and eluding is currently a Class D felony against a person and is punishable by a statutory maximum sentence of 10 years' imprisonment. Under the bill, that violation would be a Class C felony.

The bill would take effect on January 1, 2013.

(A fleeing and eluding violation is first-degree fleeing and eluding if it results in the death of another person. A violation is second-degree fleeing and eluding if it results in serious impairment of a body function of an individual; the violator has one or more prior convictions for first-, second-, or third-degree fleeing and eluding, attempted first-, second-, or third-degree fleeing and eluding, or fleeing and eluding under a current or former state law prohibiting substantially similar conduct; or the violator has any combination of two or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former state law prohibiting substantially similar conduct.)

FISCAL IMPACT:

The bill could increase state corrections costs to the extent that it results in increased lengths of stay in state prison for offenders convicted of first- or second-degree fleeing and eluding.

Currently, first-degree fleeing and eluding is a Class C felony with a 15-year maximum term and minimum sentence ranges under Michigan sentencing guidelines that vary from 0-11 months up to 62-114 months for non-habitual offenders, depending on the offender's prior record and offense variable scores under the guidelines. Based on the same guideline scoring, some offenders would fall into intermediate sanction cells which would dictate non-prison sanctions such as probation or county jail sentences. Others

would fall into so-called straddle cells, where the court would have discretion between prison and non-prison sanctions. Those offenders with higher offense and prior record scores could fall into prison cells, where a prison sentence is required under the guidelines. The table below reviews Department of Corrections data reports for this offense covering the period from 2008 through 2010. Only 2 offenders were convicted of first-degree fleeing and eluding during this period, and both were sentenced to prison. In only one case was the fleeing and eluding charge the dominant offense in terms of minimum prison sentence. That sentence was to three years in prison.

Felony Dispositions and Prisoner Commitments for First-Degree Fleeing and Eluding MCL 750.479a(5)							
Calendar Year	Felony Dispositions					Prison Commitments	
	Total	Prison	Jail	Probation	Other	Commitments	Avg Min
2008	2	2	0	0	0	1	3.0 years
2009	0	0	0	0	0	0	N/A
2010	0	0	0	0	0	0	N/A

Note: Figures include offenders convicted of violations and attempted violations of these statutes. Prison commitments include only those offenders whose longest minimum prison term resulted from the listed offense. Offenders with longer minimum terms that resulted from a separate offense of offenses are not included.

Second-degree fleeing and eluding is currently a Class D felony with a 10-year maximum term and minimum sentence ranges under Michigan sentencing guidelines that vary from 0-6 months up to 43-76 months for non-habitual offenders, again based on the offender's prior record and offense variable scores. As a Class D felony, more offenders would fall into intermediate sanction and straddle cells than would under the Class C felony of first-degree fleeing and eluding, while fewer would fall into prison cells. The table below shows this impact. From 2008 through 2010, 38 offenders were convicted of second-degree fleeing and eluding, with 25 offenders (66% of the total) sentenced to prison and the other 13 sentenced to either jail or probation. The fleeing and eluding charge was the dominant offense in terms of minimum prison sentence for 18 offenders, who received an average minimum term of around 3.2 years overall.

Felony Dispositions and Prisoner Commitments for Second-Degree Fleeing and Eluding MCL 750.479a(4)							
Calendar Year	Felony Dispositions					Prison Commitments	
	Total	Prison	Jail	Probation	Other	Commitments	Avg Min
2008	17	11	3	3	0	8	2.8 years
2009	15	10	4	1	0	7	3.7 years
2010	6	4	1	1	0	3	2.8 years

Note: Figures include offenders convicted of violations and attempted violations of these statutes. Prison commitments include only those offenders whose longest minimum prison term resulted from the listed offense. Offenders with longer minimum terms that resulted from a separate offense of offenses are not included.

By reclassifying first-degree and second-degree fleeing and eluding to higher felony classes, the bill would have the potential to increase annual prison commitments and the average prison length of stay for offenders convicted of first- and second-degree fleeing and eluding in two ways:

First, it would increase the probability that a given offender would end up in a prison cell or straddle cell on the relevant sentencing guidelines grid. As an example, assume an offender is convicted of second-degree fleeing and eluding and has scores in Prior Record Variable Level C (10-24 points) and Offense Variable Level III (25-34 points) under sentencing guidelines criteria for crimes against a person. Under current law, second-degree fleeing and eluding is a Class D felony, and this offender would fall into a straddle cell which gives the court the discretion to impose either a prison sentence or an intermediate sanction such as a jail sentence or probation term. Under the bill, however, second-degree fleeing and eluding becomes a Class C felony. With the same Prior Record Variable and Offense Variable scores, the offender now moves into a prison cell which mandates a prison sentence unless the court decides to depart from guideline recommendations. As a greater proportion of offenders move from straddle cells to prison cells (and likewise from intermediate sanction cells to straddle cells), the proportion of offenders sentenced to prison would likely rise.

Second, the bill would increase the minimum sentence ranges for a relevant offender. Again, using the hypothetical offender above, this offender would have a minimum sentence range of between 5 and 23 months under current law where the second-degree offense is a Class D felony. The bill's provision to move second-degree fleeing and eluding to a Class C felony increases that minimum sentence range to between 19 and 38 months. So, offenders who are sentenced to prison would likely face longer minimum terms on average.

The actual impact of the bill is difficult to predict. If recent trends continue with roughly 13 persons convicted of first- or second-degree fleeing and eluding each year, the House Fiscal Agency estimates that prison bed needs could rise by between 15 and 25 beds annually in the long run due to both the increase in prison commitments and greater sentence lengths noted above. This would increase state corrections costs by between \$300,000 and \$600,000 annually in current dollars. The impact on local jail costs would be indeterminate as local jails would both lose offenders who would be sentenced instead to prison, but also might see new offenders who would otherwise have served only a probation sentence.

These cost estimates also assume no change in the dynamics of plea bargaining agreements. Theoretically, the bill could have little to no impact if the bill's changes are simply accounted for through modifications to plea deals. For example, if offenders who currently plea to first-degree fleeing and eluding (Class C now/Class B under the bill) end up pleading to second-degree fleeing and eluding in the future (Class D now/Class C under the bill), the end result will not change before and after the bill.

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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.