

MINIMUM PRISON SENTENCES FOR FOURTH HABITUAL OFFENDERS

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 1109 (Substitute H-2)

Sponsor: Sen. Rick Jones

Committee: Judiciary

Complete to 8-14-12

A SUMMARY OF SENATE BILL 1109 (Substitute H-2)

The bill would amend section 13 of the Code of Criminal Procedure to require a minimum sentence of 25 years in prison for certain fourth habitual offenders convicted of a fourth felony that is a "serious crime" or a conspiracy to commit a "serious crime" and where one or more of the prior felony convictions are "listed prior felonies", as those terms are defined in the bill.

Specifically, the 25-year minimum sentence would apply to persons whose cases meet all of the following criteria:

- a) The person has been convicted of any combination of 3 or more felonies or attempts to commit felonies, whether the convictions occurred in this state, or would have been for felonies or attempts to commit felonies in this state if obtained in this state.
- b) At least one of the prior felony convictions are "listed prior felonies". "Listed prior felonies" are defined in the bill as a violation or attempt violation of any of the statutes listed in the table below entitled "Listed Prior Felonies".
- c) The person is convicted of a subsequent fourth felony in this state that is a "serious crime" or conspiracy to commit a "serious crime". "Serious crime" is defined in the bill as an offense against a person in violation of the statutes listed in the table below entitled "List of Serious Crime Offenses".
- d) The prosecuting attorney seeks an enhanced sentence under MCL 769.13 charging the person as a fourth habitual offender and successfully addresses any challenge to the accuracy and validity of the prior convictions used as the basis for the enhanced sentence.

Under current law, section 13 of the Code provides guidance as to the maximum sentence available to fourth habitual offenders - allowing a maximum of up to life imprisonment for a subsequent fourth felony conviction that is punishable upon first conviction by imprisonment for a maximum term of 5 years or more; and a maximum of up to 15 years imprisonment for a subsequent fourth felony conviction that is punishable upon first conviction by imprisonment for a maximum term of less than 5 years.

Minimum prison terms for fourth habitual offenders under current law are governed by the provisions of section 21 of the Code (MCL 777.21) which provides that the upper limit of the recommended minimum sentence range under State Sentencing Guidelines be

doubled for those receiving an enhanced sentence as fourth habitual offenders. The bill would essentially establish a new mandatory minimum for the subset of fourth habitual offenders whose subsequent fourth conviction meets the "serious crime" definition and who have at least one "listed prior felony" conviction.

List of Serious Crime Offenses	
MCL	Crime
750.83	Assault with intent to commit murder
750.84	Assault with intent to do great bodily harm
750.86	Assault with intent to maim
750.88	Unarmed assault with intent to rob and steal
750.89	Armed assault with intent to rob and steal
750.317	2nd degree murder
750.321	Manslaughter
750.349	Kidnapping
750.349A	Prisoner taking person as hostage
750.350	Kidnapping; child under 15
750.397	Mayhem
750.520B	1st degree criminal sexual conduct
750.520C	2nd degree criminal sexual conduct
750.520D	3rd degree criminal sexual conduct
750.520G(1)	Assault with intent to commit criminal sexual conduct involving penetration
750.529	Armed robbery
750.529A	Carjacking

Listed Prior Felonies			
MCL	Crime	MCL	Crime
257.602A(4)	2nd degree fleeing and eluding (injury)	750.227B	Carrying firearm while committing felony (if second or subsequent offense only)
257.602A(5)	1st degree fleeing and eluding (death)	750.234A	Intentional discharge of firearm, vehicle
257.625(4)	Impaired driving causing death	750.234B	Intent. discharge of firearm at dwelling
750.72	Arson of dwelling house	750.234C	Intent. discharge of firearm at law enf.
750.82	Felonious assault	750.317	2nd degree murder
750.83	Assault with intent to commit murder	750.321	Manslaughter
750.84	Assault, intent to do great bodily harm	750.329	Death; firearm pointed, but w/o malice
750.85	Torture	750.349	Kidnapping
750.86	Assault with intent to maim	750.349A	Prisoner taking person as hostage
750.87	Assault, intent to commit felony	750.350	Kidnapping; child under 15
750.88	Unarmed assault, intent to rob and steal	750.397	Mayhem
750.89	Armed assault, intent to rob and steal	750.411H(2)(B)	Felony stalking, victim under 18
750.91	Attempted murder	750.411I	Aggravated stalking
750.110A(2)	1st degree home invasion	750.479(A)(4)	Resisting/obstructing, serious impairment
750.110A(3)	2nd degree home invasion	750.479(A)(5)	Resisting/obstructing, causing death
750.136B(2)	1st degree child abuse	750.520B	1st degree criminal sexual conduct
750.136B(3)	2nd degree child abuse	750.520C	2nd degree criminal sexual conduct
750.145N(1)	1st degree vulnerable adult abuse	750.520D	3rd degree criminal sexual conduct
750.145N(2)	2nd degree vulnerable adult abuse	750.520G	Assault w/ intent to commit CSC
750.157B	Solicitation to commit murder	750.529	Armed robbery
750.197C	Assault of employee during escape	750.529A	Carjacking
750.226	Carrying firearm/weapon, unlawful intent	750.530	Unarmed robbery
750.227	Carrying concealed weapon	752.542A	Rioting at state correctional facility
Public Health Code, Article 7 (Controlled Substances) - Any violation punishable by imprisonment for more than 4 years			

FISCAL IMPACT:

The bill would likely result in increased minimum prison sentences and thus increased state costs related to the corrections systems due to both (a) the direct effect of the 25-year mandatory minimum sentence for relevant fourth habitual offenders charged and convicted under this new provision, and (b) the indirect effect on plea bargaining outcomes given the leverage provided to prosecutors in cases where the fourth habitual offender charge for a "serious crime" (and thus the mandatory minimum) is an option.

Compiling an estimate of this potential cost, however, is very difficult as the actual impact depends upon how prosecutors eventually use this new sentencing latitude, which can't be known at this time. Below is a review of relevant data compiled by the Department of Corrections and by the Attorney General Criminal Justice Bureau during Senate deliberations on the bill. The data help provide a framework for the potential long-term impact of the bill on the need for additional prison bed space. The House Fiscal Agency then used a simple model to try to estimate potential long-term impacts under different assumptions regarding the annual utilization of the 25-year minimum enhanced sentence allowed for under the bill.

Available Data

A Michigan Department of Corrections analysis indicates that in calendar year 2011, a total of 516 offenders were convicted of "serious crime" felonies as defined in the bill and also had at least three other prior felony convictions. Under the Senate-passed version of SB 1109, these 516 offenders would have been subject to the 25-year minimum sentence if the Senate bill's provisions would have been effective at the time and the prosecuting attorney in charge of their cases had elected to file for the enhanced sentence. Under current law, of those 516 offenders, 47 (9%) were sentenced to non-prison sanctions, 381 (74%) were sentenced to prison with a minimum term of less than 25 years, 77 (15%) were sentenced to prison with a minimum term of 25 years or more, and 11 (2%) were sentenced to imprisonment for life. The average non-life minimum prison term among these offenders was 13.2 years.

The number of offenders potentially subject to the 25-year minimum sentence contained within the (H-2) substitute to SB 1099 would be significantly smaller than 516 since the House version contains the added provision that at least one of the prior felony convictions must be among the "listed prior felonies" contained in the bill. As of the date of the publication of this analysis, the MDOC had not yet completed an analysis to determine the number of potential offenders subject to the provisions of the House version of the bill.

In addition to the MDOC data, however, a separate analysis by the Criminal Justice Bureau within the Attorney General's Office indicates that only 41 of the 516 offenders identified in the MDOC analysis were actually charged as habitual offenders with the prosecuting attorney taking the extra step to file for the enhanced fourth habitual offender sentence. This indicates that, under current law, the enhanced maximum sentence provisions were utilized in just under 8% of the cases for which they could have been

applied. The Bureau also reported the average minimum sentence for the 41 offenders as 13 years.

Potential Impacts Under Various Sentencing Assumptions

Given the limited information on the number of convicted offenders who might be eligible for the bill's 25-year mandatory minimum and the uncertainty as to how often the mandatory minimum might actually be sought by prosecutors, providing an accurate analysis of added prison bed needs and their resulting costs is very difficult. However, the House Fiscal Agency believes it's likely that the eventual use of the mandatory minimum for fourth habitual offenders with at least one "prior listed felony" conviction will more closely mirror the 41 offenders to which the current law habitual offender provisions were applied in 2011, than it will the total number of offenders to which those provisions legally could have been applied.

It is not possible to generate a reliable fiscal estimate without better information on the three key questions at hand:

- 1) How often will prosecutors choose to file for the enhanced 25-year mandatory minimum sentence when offenders meet the criteria outlined in the bill?
- 2) How will the potential for the 25-year minimum enhanced sentence affect plea bargaining outcomes for offenders not actually charged using the enhanced sentence?
- 3) How many offenders will actually be eligible for the 25-year minimum sentence under the "listed prior felonies" provisions of the (H-2) substitute?

The House Fiscal Agency attempted to gauge the potential direct impact of the 25-year mandatory minimum sentence by creating a simple prison bed model based on some of the available the information. The model assumes that offenders sentenced to the 25-year mandatory minimum under the bill would have otherwise served a minimum sentence distributed around a 13-year average minimum sentence. It also assumes that prisoners are released at their earliest release date and that 30% of prisoners released are returned to prison over the following three years, as is consistent with recent trends. The model is then used to compare the difference in prison bed needs under the current law assumptions (average 13-year sentence) with those needs assuming the offenders were sentence to the 25-year minimum. The annual number of offenders included in the analysis is varied to reflect different assumptions as to how many offenders will annually be sentenced under the new mandatory minimum provision. Given that the current enhanced law sentencing provisions were employed 41 times in calendar year 2011, the model is evaluated assuming the new mandatory minimum provision is utilized annually on average in a range around this level - 10 times, 40 times, and 70 times per year.

The results of the analysis are outlined in the table below. If the number of offenders receiving the new mandatory minimum is limited to around 10 per year, the extended minimum sentence would require 55 extra prison beds 20 years after implementation at an estimated marginal cost of around \$1.2 million. The impact would increase to 96 beds by the 25th year with an estimated marginal cost of \$2.1 million. Conversely, heavier usage of the mandatory minimum, with it being applied to 70 offenders per year

on average, increases that impact significantly. By Year 20, the MDOC would have an additional 382 prisoners in the system with added costs of \$8.4 million. That would grow to 672 beds and \$14.8 million by Year 25. The analysis demonstrates the significant swing in total costs and prison bed needs that would result from changing utilization of the new sentencing option. Again, limited data are available to evaluate how the mandatory minimum would actually be employed, so the potential for far greater costs certainly exists if utilization exceeds the levels assumed here.

Results of HFA Impact Analysis - Added Beds and Costs in Future Years with Changes in Assumptions Regarding Application of 25-Year Minimum Sentence						
	Assumed Average Annual Number of Offenders Sentenced Under 25-Year Minimum					
Years after implementation	10 per year		40 per year		70 per year	
	Added Beds	Added Cost	Added Beds	Added Cost	Added Beds	Added Cost
Year 10	5	\$110,000	18	\$396,000	32	\$704,000
Year 20	55	\$1,210,000	219	\$4,818,000	382	\$8,404,000
Year 25	96	\$2,112,000	384	\$8,448,000	672	\$14,784,000

This analysis, however, only deals with the direct impact of the application of the minimum sentence. As noted earlier, there is the potential that, even where there 25-year minimum is not directly employed, it could have an impact on the outcomes of plea deals reached between prosecutors and defendants. A defendant facing a potential 25-year minimum may be more willing to plead guilty to a lesser offense, even if that offense carries a significant minimum prison sentence in and of itself. To the extent that the new minimum sentence provision allows prosecutors the leverage to negotiate plea bargains for more serious offenses with longer minimum sentence provisions as a condition for not pursuing the enhanced mandatory minimum sentence, this could have a separate indirect impact on the length of prison sentences, and thus further increase bed needs and related prison costs.

Finally, it should be noted the bill also the potential to impact other state and local costs outside the state corrections system. To the extent that the bill leads to greater crime avoidance, state and local law enforcement and judicial systems would see reduced workloads and potentially lower costs over time. Likewise, parole caseloads would decrease to some degree, as would state and local costs related to parole violation sanctions.

Fiscal Analyst: Bob Schneider

■ 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.