Legislative Analysis

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

MINIMUM PRISON SENTENCES FOR FOURTH HABITUAL OFFENDERS (VO-4)

Senate Bill 1109 (Substitute H-2)
Sponsor: Sen. Rick Jones
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (9-11-12)

BRIEF SUMMARY: The bill would require a minimum sentence of 25 years in prison for certain habitual offenders convicted of a fourth felony that is a "serious crime" (or conspiracy to commit a "serious crime") and who had as one or more of their prior felony convictions, a conviction for a "listed prior felony" as those terms are defined in the bill.

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. These costs are discussed in more detail later in the analysis, beginning on Page 4.

THE APPARENT PROBLEM:

Michigan law allows a court to enhance the sentence for repeat offenders, also referred to as habitual offenders. For example, if a person is convicted of a fourth (or fifth, sixth, etc.) felony offense, the court may impose a maximum sentence of life or any term of years if that fourth conviction had been for an offense punishable by a maximum term of imprisonment of at least five years. If the maximum term was for less than five years, the court may impose a maximum sentence for the fourth offense of not more than 15 years.

An enhanced sentence under the repeat offender law is not automatic. A prosecutor must provide written notice of intent to seek an enhanced sentence. In addition, whether a defendant is sentenced to prison and for how long is influenced by other factors as outlined in the sentencing guidelines, such as the nature of the prior felonies.

To some, this system is inadequate. According to information provided by the Office of Attorney General, a case in point is the story of Terry Bowling, 49, who, despite having a long list of convictions, including 9 misdemeanors and six felony convictions, was still on the street. Mr. Bowling was recently convicted of second-degree murder, among other crimes, for his role in a home evasion and shooting death of Livonia police officer Larry Nehasil. Other examples provided by the attorney general included murders committed by persons having three or more prior felony convictions, some of who were on parole at the time of the murders.

As a result, some believe that the law should be amended to require a court to impose a mandatory minimum sentence of 25 years upon certain repeat offenders. By so doing, proponents say, the worst offenders, for whom the punishment of prison, the rehabilitation and support offered through programming and the Michigan Prisoner Re-entry Initiative (MPRI), and the structure and supervision of parole or probation have been ineffective, can be identified and removed from society before they do more harm. Had the changes proposed by Senate Bill 1109 been in effect at the time of the fourth felony conviction for Terry Bowling, according to supporters, Officer Nehasil would still be alive today, as would the victims of the other cases profiled in the committee testimony.

Under the proposal, the mandatory minimum sentence would only apply to an offender convicted of a felony involving certain serious crimes (rape, manslaughter, armed robbery, and other assaultive crimes) and then only if the offender had three or more prior felony convictions, where at least one of those convictions had been for a "listed prior felony" (rape, arson, certain weapon violations, first or second degree child abuse, and other assaultive crimes, among others). By narrowly targeting only those showing a trend towards violent acts, it is believed that public safety will be increased without overburdening the corrections system.

THE CONTENT OF THE BILL:

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. The bill would take effect October 1, 2012.

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 three 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 attempted 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.

Thus, 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 years of age
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 (CSC 1st or 3rd)
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	Intentional discharge of firearm at dwelling
750.72	Arson of dwelling house	750.234C	Intentional discharge of

			firearm at emergency or law enforcement vehicle.
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 without 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 years of age
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 years of age
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 with 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 four years			

HOUSE COMMITTEE ACTION:

The committee substitute differs from the Senate-passed version by applying the 25-year mandatory minimum sentence for a fourth felony conviction of a serious crime only to a person whose previous felony convictions included one or more convictions for a "listed offense," and defined that term as detailed above.

FISCAL INFORMATION:

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 been able to provide a revised number regarding 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 of data by the Attorney General's Office indicates that only 25 offenders during calendar year 2011 were actually charged and convicted as fourth habitual offenders with the prosecuting attorney taking the extra step to file for the enhanced fourth habitual offender sentence and where the offender was convicted (either after trial or through a plea) as a fourth habitual offender.

Under the Senate-passed bill without the "listed prior felony" requirement that is now part of the House bill, the Attorney General's office reports that 38 offenders were actually charged and convicted as fourth habitual offenders. This suggests that, under current law, the enhanced maximum sentence provisions within the Senate bill were utilized in just under 8% of the 516 cases for which they could have been applied. The

Attorney General's office also reported the average minimum sentence for the 38 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 25 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 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 instead sentenced 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 25 times in calendar year 2011 for offenders covered by the House substitute, the model is evaluated assuming the new mandatory minimum provision is utilized annually on average in a range that varies 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 has 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 agencies and the court system 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.

ARGUMENTS:

For:

When a person commits a crime, there is a cost to society far in excess of incarceration. This would include costs to the victims, to the greater criminal justice system, and the loss of productivity for both victims and offenders. For example, the total tangible per-offense costs (in 2008 dollars) for household burglary is $6,170; robbery $21,398; rape $41,247; and an astounding almost $1.3 million for murder (according to information submitted by the Office of Attorney General). In the case of dangerous, repeat offenders, the costs to victims and state and local government can be huge. [The "total tangible per-offense cost" includes the cost both to a crime victim and to the criminal justice system, as well as the crime career loss (productivity loss associated with a perpetrator of a given crime who was later incarcerated).]

Whether they are called repeat offenders, habitual offenders, or career criminals, there are some who are not deterred by the threat of a prison sentence, who are resistant to rehabilitation despite participating in programming or treatment when incarcerated or paroled, and who thus progress through the years from relatively minor offenses to violent crimes involving rape, serious injury to others, and murder. These individuals must be taken off the streets in order to protect the public, and law enforcement must have a tool by which to do so.

Senate Bill 1109 provides such a tool. It is narrowly crafted to apply only to the worst of the worst, those who have been in and out of the criminal justice system for years, who exhibit violent tendencies, and who therefore pose a high risk of danger to public safety. The bill accomplishes this by creating a mandatory minimum sentence of 25 years in prison for certain repeat offenders—referred to as VO-4 offenders. The bill would only apply to a person who had 1) just been convicted of a fourth or subsequent felony; 2) the fourth or subsequent felony is a listed serious crime (e.g., various assaultive crimes, rape, carjacking, among others), and 3) at least one of the prior felony convictions was a listed prior felony as described in the bill (e.g., crimes such as torture, arson of a home, child and vulnerable adult abuse that resulted in serious mental or physical harm to a child, manslaughter and second-degree murder, and certain weapons violations, among others). In addition, the mandatory minimum is not automatic—a prosecutor would have to specifically request, in writing, that the mandatory minimum sentence be applied.

Proponents say that the bill is not expected to be widely used. In fact, they say, based on some estimates, there may only be about 40 or fewer individuals statewide to whom the bill could apply in any given year. However, when comparing costs of incarceration to the total tangible crime costs, it is clear that costs to society may be reduced if the new mandatory minimum kept these dangerous offenders incarcerated long enough to break the cycle of crime or to prevent them from escalating to murder. Indeed, the Office of Attorney General underscored this point in testimony when highlighting the cases of four repeat violent offenders. Had the bill's provisions been in effect when these four offenders were each convicted of a fourth felony, five people may still be alive today, including Officer Nehasil.

For:

Senate Bill 1109 may improve public safety and reduce costs of adjudicating some cases. Sometimes, a prosecutor may not have strong enough evidence to ensure a conviction at trial. Or, a witness may back out or appear to be unreliable. In other cases, a trial would prove to be overly burdensome to the victim, especially when the victim is a very young child or reliving the crime at trial would cause undue physical or emotional duress. In such situations, the best solution may be to seek an appropriate plea agreement. The perpetrator may not spend as much time behind bars as some would like, but at least some justice is obtained on behalf of the victim or victims. Getting an offender to confess to a crime as part of a plea agreement also saves taxpayers dollars over the costs of conducting a trial and frees law enforcement officers and agencies to concentrate on preventing crime.

According to testimony presented by county prosecutors, Senate Bill 1109 may prove useful in encouraging plea agreements in appropriate situations. Even the threat of a possible 25-year mandatory minimum sentence if convicted at trial may induce some

VO-4 offenders to plead to a lower offense, and may even enable prosecutors to offer deals that are a little "less sweet" (i.e., more prison time than what is offered now).

The point is, the bill recognizes how pleas operate. For instance, unarmed robbery is included as a listed prior felony. This recognizes that the offense is often plead down from assault with intent to rob and steal or even armed robbery. Victims are often severely beaten in such cases. Some offenses are more predictive of violence than others, and so are appropriate to be included in the list of offenses for which a prior conviction could subject an offender to the mandatory 25-year minimum sentence on a subsequent conviction.

Supporters believe that the current version is narrow enough to identify and provide appropriate punishment for those habitual offenders who pose the greatest threat to public safety.

Against:

The bill is touted as applying to career criminals, those offenders who despite multiple incarcerations and chances to reform, continue to victimize innocent citizens whenever released from prison. However, a 2008 court case changed the way prior convictions are counted when determining if an offender is eligible for an enhanced sentence under the habitual offender statutes. Because of this change, the bill would have a broader application than proponents say.

For over 80 years, Michigan's habitual offender laws were interpreted to apply to separate *incidents* that resulted in a felony conviction or convictions so to impose a tougher sentence for an offender who exhibited a continuing pattern of criminal behavior. Since it is common for prosecutors to charge, and juries to convict, an offender of multiple crimes arising from a single criminal act, counting the times an offender was sent to prison was deemed to reflect legislative intent more accurately than counting the number of convictions that sent the offender to prison each time.

This was changed in 2008 when the Michigan Supreme Court ruled that the wording of the habitual offender statutes did not specifically say that multiple convictions arising from a single criminal incident were to be counted as one felony conviction for the purpose of applying the habitual offender sentences. [*People* v *Gardner*, 482 Mich 41; 753 NW2d 78 (2008)] Thus, the court overruled the longstanding interpretation and opened the door for prosecutors and courts to count every single felony conviction, regardless of how many criminal incidents those convictions represented, when determining if an offender could be sentenced as a habitual offender. This means that a person having only one period of incarceration, but who had three or more convictions arising from that one incident (with one of those being a listed prior felony) could be sentenced under the bill as a VO-4 offender if the current conviction was for a serious felony.

If the bill's intent is to target only those offenders who show a pattern of being impervious to reform, then the language in the habitual offender statutes should be amended such to return to the historical interpretation.

Response:

Gardner did change the way previous convictions are counted when determining the appropriateness of requesting sentencing under the habitual offender statutes; so, the bill could result in an offender being sentenced as a VO-4 offender on a second or third criminal incident, not just on a fourth or subsequent incident. However, it must be emphasized that Senate Bill 1109 would only apply the mandatory minimum sentence to those with priors that showed a proclivity to violence, and for whom the current conviction is for a serious crime involving violence. This is a necessary tool for prosecutors to have available when prosecuting an individual who poses a serious threat to public safety.

Rebuttal:

A major problem with mandatory minimum sentence requirements is that the facts of the case cannot be determined solely by looking at the type of charge that resulted in a conviction. That is why judicial discretion, along with the sentencing guidelines, is the best approach in determining an appropriate sentence.

For instance, according to information provided by an advocacy organization, the following scenario demonstrates how the bill could be applied and underscores the weaknesses of Senate Bill 1109:

In 1995 a homeless man breaks into a train station in January to sleep and stay warm. He steals some soap from the restroom. When police arrive the next morning, he pushes past them and flees. He is convicted of breaking and entering and resisting and obstructing a police officer. In 2004, he breaks into a garage to sleep and steals copper wire from an old air conditioner. The garage is attached to a seasonal home with no current residents. He is convicted of second degree home invasion (a "listed prior felony"). In 2012, he gets into a fist fight with another man at a homeless shelter. He punches the man and steals his hat. He is convicted of unarmed assault with intent to rob (a "serious crime").

Under current habitual offender sentencing for a fourth offense, the man would be subject to a 12-48 month minimum sentence, with a maximum sentence of life or any term of years. However, under the bill, the man would have to serve a mandatory 25-year minimum sentence. Even though a prosecutor has discretion to request the habitual offender enhancement, reportedly some prosecutors make the requests routinely as a matter of office policy. Therefore, the bill has the potential to apply to many more offenders than may be represented by data from the bill's supporters.

Against:

Some feel that the bill is a solution looking for a problem. Current law already allows judges to impose sentence enhancements for habitual offenders. When warranted by the facts of a case, the enhancements can result in a 25-year minimum sentence or even life. In addition, no evidence has been offered to support a need to take judicial discretion away from judges, nor is there evidence showing that mandatory minimums are effective deterrents to crime. According to the advocacy organization CAPPS, elimination of the mandatory minimums for drug offenses did not increase the number of drug offenses, but did reduce state corrections costs by helping to reduce the prison population. Further, even by conservative estimates, the bill would increase annual corrections costs at a time when decreasing prison funding is a top priority.

Against:

If the intent of the legislation is to reduce costs to society and increase public safety, some people believe a more cost effective approach would be to increase access to effective alcohol and drug abuse programs and treatment.

For example, the bill does not take into account the sheer number of felonies committed by offenders while under the influence of alcohol or drugs or committed to support drug habits. According to data compiled by the Bureau of Justice Statistics, in 2004, 17% of state prisoners "said they committed their current offense to obtain money for drugs". Of those prisoners, 30 percent were convicted of property crimes, 26 percent for drug offenses, and 10 percent for violent crimes. In addition, 26 percent of the victims of violent crimes in 2007 reported they believed their attackers to be using drugs or alcohol.

Perhaps more telling are data from the ADAM II 2011 Annual Report (Arrestee Drug Abuse Monitoring Program II), which compiles drug use data on arrestees from 10 sentinel sites across the country. Over 80 percent of all arrestees in 9 of the 10 sites had prior arrests. Over 60 percent of the arrestees at the test sites in 2011 tested positive for at least one drug in their system at the time of the arrest. Yet, an astounding 78 percent of ADAM arrestees have never sought treatment for drug or alcohol abuse. Also of importance is that in six of the ten sites, fewer than half of the arrestees were employed either full- or part-time and less than half in seven of the sites were covered under any type of health insurance (many health plans cover substance abuse treatment, albeit often at a reduced benefit level as compared to physical health services).

Other research studies through the years have also associated substance abuse addictions to the commission of violent and property crimes, with considerable costs to the public. According to a study conducted by the Pacific Institute for Research and Evaluation, in 1999 alone, an estimated 5.4 million violent crimes and 8 million property crimes involving alcohol and/or drugs cost society over $6.5 billion in medical and mental health care and another almost $65 billion in other tangible expenses, in 1999 dollars. If pain, suffering, and lost quality of life were added in, the authors say that alcohol or other drug involved or attributable crime costs rise to at least $205 billion. The authors also conclude that "effective efforts to reduce the abuse of alcohol and illicit drugs should reduce costs associated with crime. ["Costs of alcohol and drug-involved crime, Prevention Science, 2006 Dec; 7(4):333-42]

Indeed, testimony was given that Terry Bowling, the repeat offender who killed Officer Nehasil, was breaking into a home that fateful day to support his $300 a day drug habit. Where supporters of the bill maintain that Officer Nehasil would be alive today had Senate Bill 1109's provisions been in place at the time Bowling was sentenced for his last crime, it could also be said based on the above data that the officer may be alive if Bowling had had access to effective substance abuse treatment, employment, and insurance.

Therefore, perhaps a more comprehensive approach is needed, one that would include fixing weaknesses within the Michigan Prisoner Reentry Program pertaining to supervision of parolees, employment, substance abuse programs, and housing; increasing access to health insurance and substance abuse treatment programs before people enter the criminal justice system (as the Affordable Health Care Act will provide beginning in 2014); and fully implementing DOC policy that would effectively screen prisoners upon

admission to prison and then ensure each one received appropriate and needed programs closer to admission rather than on the back end (right before parole eligibility) to give prisoners more time to make, and demonstrate, the necessary life changes that will increase success when released. This approach could also increase public safety, reduce recidivism, reduce the cost of crime, and reduce - rather than increase - prison spending.

Against:

Though touted as targeting career criminals, those deemed to be the "worst of the worst," critics say that the bill does not consider those whose actions are a result of an untreated or undertreated mental illness. Therefore, the bill has the potential to continue to entrap persons within the criminal justice system who would be better served in psychiatric institutions or well-supervised outpatient programs. Now that Gardner has changed the way prior convictions may be counted when considering an enhanced habitual offender sentence, even more persons with mental illnesses are likely to be captured under the habitual offender statutes. Enactment of Senate Bill 1109, along with its impact on plea agreements, would further exacerbate the situation.

According to committee testimony submitted by prison reform advocates, Charlie Lane is an example of a person likely to be captured under the bill's mandate. Charlie, a high school valedictorian, graduate of the U.S. Naval Academy, ex-Marine, and Gulf War veteran, was discharged from military service shortly after he began exhibiting symptoms of mental illness. Without proper treatment and medication, and experiencing episodes of mania and hallucinations, Charlie committed at least six felonies, including assault, and was in and out of prison and various hospitals. While incarcerated in 2006, he chewed off the ends of some of his fingers and tried to remove one eyeball, which eventually had to be surgically removed. After a near-death illness, Charlie was eventually released on parole and moved to a psychiatric hospital where, with better diagnosis and changes to medication, he began to improve. Now, Charlie is stable, living on his own and operating a sheep ranch, and speaks to police departments and mental health workers on the issue of mental illness and treatment of the incarcerated. According to a 2010 article in the Livingston Daily Newspaper, Charlie "believes that, had he been properly diagnosed and treated in the beginning, he may not have committed his crimes."

The prison system is filled with "Charlies," men and women who, while in the throes of mental illness, commit crimes that give the appearance of being "revolving door," "career," or "hardened" criminals. With proper diagnosis and care, the "cycle" can be stopped, they can be rehabilitated, and public safety improved. In fact, these people are then enabled to become contributing members of society rather than an economic drain.

Michigan already has good civil commitment laws on the books that allow a competent adult to petition a court to order inpatient or outpatient treatment (or a combination), as well as ordering treatment for persons who have a history of resisting treatment (Kevin's Law). In general, these laws apply only to those showing an imminent danger to themselves or others.

However, expanding the use of mental health courts where participants must comply with medication and treatment orders, among other restrictions and encouraging (if not requiring) courts and mental health programs to apply all legal options to potential cases

may be a better use of limited resources. By identifying and diverting individuals to more successful treatment earlier on, many crimes would not be committed, many victims would not be victims, and the "cost of crime" to victims and society would be reduced.

Response:

It is important to remember that the use of this sentencing tool against habitual offenders is at the discretion of the prosecutor. Prosecutors can take into account the life circumstances of those they prosecute for committing crimes. It is also important to remember that the bill is intended to address those who have committed very serious crimes.

POSITIONS:

Representatives of the following organizations or agencies testified and/or submitted testimony in support of, or indicated support for, the H-2 Substitute:

Office of Attorney General
Michigan Sheriffs' Association
Prosecuting Attorneys Association of Michigan
Michigan Association of Chiefs of Police
Office of the Prosecuting Attorney, Cass County
Prosecuting Attorney for Genesee County
Ionia County Office of the Sheriff
Police Officers Association of Michigan
Michigan Fraternal Order of Police
Oakland County Sheriff's Office
Barry County Prosecutor's Office

The Department of Corrections is neutral on the bill.

A representative of Citizens for Prison Reform testified in opposition to the bill.

CAPPS (Citizens Alliance on Prisons & Public Spending) opposes the bill.

The Criminal Defense Attorneys of Michigan (CDAM) indicated opposition to the mandatory minimum provision.

The ACLU of Michigan indicated opposition to the bill.

The State Bar of Michigan has published a position opposing mandatory minimum sentences.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Bob Schneider