

Legislative Analysis



SENTENCING GUIDELINES REVISIONS

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House Bill 4525 (Substitute H-2)

Sponsor: Rep. Joseph Graves

Committee: Criminal Justice

(Enrolled as PA 124 of 2013)

First Analysis (6-10-13)

BRIEF SUMMARY: The bill would elevate the crime classes for certain arson offenses (thus imposing potentially stiffer sentences) and include in the sentencing guidelines the maximum term of imprisonment for several other kinds of offenses.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

Whenever a bill is enacted that creates a new crime or that increases the maximum sentence for an existing crime, the maximum term of imprisonment must be placed within the sentencing guidelines that are found in the Code of Criminal Procedure. This is typically done in a companion bill. Sometimes, especially when the volume of bills moving through the legislative process is high, the companion bill is overlooked. Last year, Public Acts 183 and 256 were enacted without the needed companion bills. (See **Background Information** for a brief explanation of the legislation.)

In addition, Public Acts 531-534 revised the arson statutes, including revising the penalty structure. Apparently, to reflect the inherent seriousness of arson crimes, the legislation was intended to elevate the crime category for certain arson offenses to higher categories. This typically results in longer prison stays by increasing the minimum sentence that must be served before a prisoner is eligible for parole. However, the legislation as enrolled did not do that. Legislation has been offered to address the above concerns.

THE CONTENT OF THE BILL:

House Bill 4525 would amend the sentencing guidelines within the Code of Criminal Procedure (MCL 777.13m et al).

Michigan has an indeterminate sentencing structure for felony offenses, meaning that the upper limit of punishment for a conviction of a particular felony is set by statute. The sentencing guidelines are used to determine an appropriate minimum sentence and the sentence is then expressed as a range, for example, two to four years. The sentencing guidelines assign each felony offense to a crime class.

There are eight crime classes, with Class A representing the more serious crimes and Class H usually resulting in a jail term or other intermediate sanction. The crime class for an offense determines which sentence grid applies when scoring the offense (certain

variables, or elements, of an offense are given points, and by placing the total points scored in the appropriate sentence grid, a range for an appropriate term of imprisonment can be determined). Therefore, using a Class A grid to score an offense will generally result in a longer minimum term of imprisonment.

The bill would change the crime classes for the following felony offenses:

- First degree arson would be changed from a Class B felony to a Class A.
- Second degree arson would be changed from a Class D felony to a Class B.
- Third degree arson would be changed from a Class E felony to a Class D.
- Organized retail crime act violation would be changed from a Class G to a Class E felony.

Added would be the crime of fourth degree arson, a Class E felony against property with a five year maximum term of imprisonment. A reference to arson of insured property would be deleted as that crime no longer exists under the revised arson statute.

House Bill 4525 would also add two new felony maximums to the sentencing guidelines to reflect the crimes created by 2012 legislation. The bill would specify that it would be a Class F felony involving a controlled substance to sell or offer to sell a named product producing the same or similar effect as a scheduled ingredient with a maximum term of imprisonment of four years. Furnishing a cell phone or other wireless device to a prisoner in jail would be a Class E felony against the public safety with a five-year maximum term of imprisonment.

BACKGROUND INFORMATION:

Public Act 183 of 2012 prohibited a person who knows that a named product contains or previously contained an ingredient that was designated as a Schedule 1 controlled substance from selling or offering to sell any other product while representing that it contains an ingredient that produces the same or a substantially similar physiological or psychological effect as the scheduled ingredient; a violation is a felony with a maximum term of imprisonment of four years.

Public Act 256 of 2012 made it a five-year felony to sell, give, or furnish or aid in the selling, giving, or furnishing of a cell phone or other wireless communication device to a prisoner in a jail or a building appurtenant to a jail or on grounds used for jail purposes.)

ARGUMENTS:

For:

The bill is considered to be technical in nature. It would place the maximum term of imprisonment for two new crimes created in legislation last year into the corresponding section of the sentencing guidelines, a task that was overlooked last year.

The bill would also elevate the crime categories for three arson offenses and one retail crime. In regards to the arson offenses, reportedly this was intended last year but failed to be included in the versions that were eventually ordered enrolled. According to prosecutors, the elevated crime classification is needed to provide a greater deterrence. Arson is inherently dangerous to people and to property. Yet, the crime classes for these offenses were below other crimes carrying the same maximum term of imprisonment. Therefore, raising the crime categories more adequately fits the punishment to the crime and will hopefully add a greater deterrence and, if not deterred, keep dangerous people in prison longer.

Against:

The sentencing guidelines do not require all crimes carrying the same maximum term to be assigned to the same crime class. A higher crime classification typically results in a longer prison term. For some crimes this is appropriate. However, for others, it is appropriate to have a higher maximum term of imprisonment available for truly heinous offenses and yet assign the crime to a lower crime class so that judges have the flexibility to impose probation or a minimal prison sentence if such a sentence were more proportional to the actual elements of the crime. Unless there is a compelling rationale to elevate these crimes to a higher class, they should not be raised.

POSITIONS:

A representative of the Prosecuting Attorneys Coordinating Committee and Prosecuting Attorneys Association of Michigan (PACC/PAAM) testified in support of the bill. (6-5-13)

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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.