

# Legislative Analysis



## TRAVELING FROM ANOTHER STATE OR COUNTRY WITH INTENT TO DELIVER NARCOTICS

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House Bill 4889 (Substitute H-2)  
Sponsor: Rep. Edward McBroom  
Committee: Criminal Justice

*(Enrolled as PA 203 of 2013)*

### First Analysis (10-17-13)

**BRIEF SUMMARY:** The bill would provide an enhanced penalty for a person convicted of an aggravated controlled substance offense if the person travelled from another state or country to Michigan while in the possession of narcotics, cocaine, or other Schedule 1 and 2 controlled substances with the intent to deliver those substances within the state.

**FISCAL IMPACT:** There could be increased costs for state and local correctional systems as discussed in greater detail later in the analysis.

### **THE APPARENT PROBLEM:**

According to committee testimony on the proposed legislation and various media reports over the past couple years, drug use—especially of heroin and prescription opiate pain killers—is on the rise in Michigan once again. Some counties in the state are seeing dramatic increases in crimes associated with drug addictions, such as home invasions, robberies, and weapons offenses. Drug overdoses and drug abuse-related suicides are said to be skyrocketing as well. Increases in drug and drug-related crimes overburden law enforcement agencies. Incarcerating offenders and treating their health and dental needs are straining, if not busting, local and county budgets.

Some believe that the increase in drug use and related events is due in part to dealers bringing drugs across state borders. They cite Toledo and Chicago as conduits for drugs coming across the southern border. Wisconsin is said to be the source of many drugs coming into Menominee County in the western portion of the Upper Peninsula. Law enforcement agencies in that county say that with today's highway system, drug dealers can make a round trip to Milwaukee, Chicago, and other large cities to pick up shipments of drugs in eight hours or less - a typical workday. Border crossings with Canada open up several other portals by which smugglers can bring large quantities of illegal drugs into the state.

Some say that what makes Michigan attractive as a destination for out-of-state or out-of-country drugs is that the state's current system of determining sentences for drug distribution results in lighter sentences and shorter periods of incarceration than in other states or countries. Law enforcement officers on the Menominee/Marinette (Wisconsin) border apparently have allowed persons distributing drugs to cross back into Wisconsin for Wisconsin officers to pick them up simply because they are likely to receive a stiffer sentence under that state's laws than here. It has been suggested that Michigan's

sentencing guidelines be revised so to act as a deterrent for those thinking of bringing illegal drugs into the state with the intent to sell or otherwise distribute them.

### ***THE CONTENT OF THE BILL:***

House Bill 4889 would amend Chapter XVII of the Code of Criminal Procedure, entitled "Sentencing Guidelines," to revise the points scored for Offense Variable 15 (aggravated controlled substance offenses) to require 50 points to be scored if the offense involved traveling from another state or country to Michigan while in the possession of any mixture containing a controlled substance classified in Schedule 1 or 2 of the Public Health Code with the intent to deliver that mixture. Schedules 1 and 2 include narcotic drugs, hallucinogens, cocaine, methamphetamines, and various so-called "party drugs" or "designer drugs" such as GHB (the date rape drug), CAT, ecstasy, and bath salts. The result would be to increase penalties for these offenses.

MCL 777.45

### ***FISCAL INFORMATION:***

There could be increased costs for state and local correctional systems. Information is not available on the number of persons that would incur the additional points. The additional points would not change the maximum sentence, but depending on an offender's prior record and other elements of the crime for which points are scored, the bill could impact where a particular offender falls on the sentencing grid. As a result, some offenders who now would be eligible for probation may incur incarceration in a county jail, some who now would be sent to a county jail would go to prison instead, and any going to prison may have to serve a longer minimum sentence before being eligible for parole.

The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year.

### ***ARGUMENTS:***

#### ***For:***

Michigan has, with only a few exceptions, an indeterminate sentencing structure. Simply put, each felony crime is scored, or given points, for certain elements of the crime. Those points are then mapped out on a grid that relates to the severity of the crime (crime classification, such as Class A felony). Plotting an offender's points on the appropriate grid then gives the judge a range for the sentence, like 0 to 17 months or 5 to 23 months. Points on the lower end fall in what are considered to be community sanctions. For those offenders, a term of probation or parole may be ordered, perhaps even a short jail stay. Placement in a straddle cell means that the judge can order the person to serve time in

either a county jail or in prison. If a person's score places him or her in a prison cell, the score will give a range of months appropriate for that offender to be served in a state prison.

The way the bill would work is that it would require a court to score an extra 50 points if the offender had brought the drugs used in the commission of the crime across state borders with the intent to sell or distribute those drugs within the state. It wouldn't matter if the person was a Michigan resident or lived elsewhere. The additional 50 points may make a difference in an offender's score. For some, it may mean that they could be sentenced to prison instead of county jail. For others, it may ensure a prison sentence. At the very least, it will increase most offenders' minimum sentences - meaning that whatever sentence they receive, they will be under the jurisdiction of the Department of Corrections longer.

Those in law enforcement believe that longer minimum sentences can serve several purposes. For one, it will make Michigan less attractive to out-of-town dealers or residents who travel outside the state to pick up drugs and bring them back into the state. Examples of cases in Menominee County reveal that a drug offender prosecuted in Wisconsin for distribution within Michigan received five years in prison but could have received only community sanctions here.

Secondly, increasing minimum sentences will get dealers off the streets longer when they are caught and prosecuted. Many drug dealers are also addicts. It takes time to kick addictions. If jail or prison sentences, or even terms of probation were longer, more offenders may be able to participate in substance abuse programs within the local or state correctional facilities or in community programming and hopefully kick their addictions.

***Against:***

Some feel that it is inappropriate to use the sentencing guidelines as a tool for prosecutors to lock people up for longer periods. The purpose of the sentencing guidelines is to reduce sentencing disparities that were rampant around the state prior to the guidelines taking effect. Judges can always depart from them—either with more lenient or harsher penalties—based on the specific factors of a crime. Besides, trafficking drugs across state lines is a federal crime and therefore subject to harsher federal penalties.

***POSITIONS:***

The Chief of Police for the City of Menominee and the Menominee County Sheriff testified in support of the bill. (9-18-13)

The Department of State Police indicated support for the bill. (9-18-13)

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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.