

Legislative Analysis



1ST OFFENSE FELONY FIREARM REVISIONS

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House Bill 4419 (Proposed Substitute H-3)
Sponsor: Rep. Kurt Heise

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4420 (Proposed Substitute H-3)
Sponsor: Rep. Sherry Gay-Dagnogo

Committee: Criminal Justice
Complete to 6-8-15

BRIEF SUMMARY:

House Bill 4419 revises the penalty for a first offense of felony firearm, to change the current mandatory sentence of two years into an indeterminate sentence of no more than three years, allow the sentence to be served at the same time as the sentence for the underlying felony offense, and allow parole or probation eligibility while the person serves the sentence for felony firearm.

House Bill 4420 places the three-year maximum term of imprisonment for a first conviction of felony firearm in the sentencing guidelines.

The bills would take effect 90 days after enactment.

BACKGROUND:

A person may be convicted of felony firearm when carrying or possessing a firearm or pneumatic gun, such as an airsoft gun, at the same time that the person commits or attempts to commit a crime designated as a felony. A conviction for felony firearm is in addition to the conviction for the underlying felony offense. For example, some felons are not allowed to possess a firearm; a person could therefore be charged with and convicted of felony firearm and felon in possession of a firearm (a felony).

A first offense of felony firearm carries a *mandatory* sentence of two-years in prison; this must be served before the person serves any other term of imprisonment for the underlying felony. In addition, the person is not eligible for probation or parole during this mandatory two-year sentence, and the sentence may not be suspended. A second offense of felony firearm carries a mandatory prison term of five years, and a third or subsequent conviction carries a mandatory term of imprisonment of ten years, in addition to any other term of imprisonment for an underlying felony.

DETAILED SUMMARY:

House Bill 4419 amends the Michigan Penal Code to revise the penalties for a first offense of felony firearm; the penalties for subsequent, or repeat, convictions of felony firearm

would remain the same (MCL 750.227b). Felony firearm means carrying or possessing a firearm in the commission or attempted commission of a felony. It also includes carrying or possessing a pneumatic gun (e.g., an airsoft gun) and using that pneumatic gun in furtherance of committing or attempting to commit a felony. The bill makes three significant changes.

****** First, the bill establishes an *indeterminate* sentence of no more than three years of imprisonment, rather than a *mandatory* sentence of two years.

******Second, the bill *allows* the sentence for felony firearm to be served concurrently (meaning at the same time) with the sentence imposed for the underlying felony offense rather than *requiring* the sentences to be served consecutively (meaning one after the other, with the felony firearm sentence being served first). A court could still order the sentences to be served consecutively.

******Third, the bill allows a person to be eligible for parole or probation during the term imposed for a conviction of felony firearm. The bill also deletes a provision specifying that a term of imprisonment imposed under the felony firearm statute cannot be suspended.

House Bill 4420 amends the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.16m). The bill specifies that felony firearm—first offense is a Class F felony against the public safety with a maximum term of imprisonment of three years. The bill is tie-barred to House Bill 4419.

FISCAL IMPACT:

Based on current sentencing guidelines, and current practice in the judicial system in applying sentencing guidelines, it is difficult to determine the fiscal impact of House Bill 4419 to the state or to local units of government. Under the bill, some first time offenders could be sentenced to prison for terms longer than the current mandatory term of two years. This would result in a cost increase to the Department of Corrections/end up costing the state. If less than the current two-year mandatory sentence for felony firearm was imposed, and concurrent, rather than consecutive, sentences ordered, some first time offenders could be sentenced to shorter prison terms, and others sentenced to community sanctions versus any time in prison. Shorter prison terms and community sanctions would result in a savings to the state, but could result in costs to local units of government.

The average cost of prison incarceration in a state facility is roughly \$34,800 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,760 per supervised offender per year. The costs of local incarceration in a county jail and local probation supervision vary by jurisdiction.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.