

Legislative Analysis



REPEAT DRUG OFFENSES: ALLOW PAROLE ELIGIBILITY

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Senate Bills 72, 73, and 220 as reported w/o amendment

Sponsor: Sen. Steven Bieda

House Committee: Law and Justice

Senate Committee: Judiciary

(Enacted as Public Acts 265, 266, and 267 of 2017)

Complete to 12-11-17

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BRIEF SUMMARY: Senate Bill 73 would abolish the mandatory life sentence without parole imposed for a second or subsequent conviction for the manufacture, delivery, possession with intent to manufacture or deliver, or simple possession of certain amounts of a Schedule 1 or 2 narcotic or cocaine. Senate Bill 72 would create a mechanism by which a person convicted and sentenced under those laws could be eligible for parole after serving 5 years for that sentence. Senate Bill 220 would amend the sentencing guidelines.

Tie-bars: Senate Bills 72 and 73 are tie-barred to each other, and Senate Bill 220 is tie-barred to Senate Bill 73. A bill that is tie-barred to another cannot become law unless the bill to which it is tie-barred is also enacted.

Effective date: Each of the bills would take effect 90 days after its enactment.

FISCAL IMPACT: The bill could decrease costs to the state, as further explained in *Fiscal Information* below.

THE APPARENT PROBLEM:

At one time, Michigan had some of the most severe drug laws in the nation. In 1978, in an attempt to capture and punish drug kingpins, Michigan enacted what became known as the “650-lifer law.” The law—which mandated a life sentence without the possibility of parole for drug offenses such as the illegal manufacture and delivery of Schedule 1 and 2 drugs (opiates) and cocaine involving 650 grams or more—filled prisons with low-level drug pushers and users. Twenty years later, legislation eliminated the life without parole penalty, replaced it with a sentence of life with any term of years but with a 20-year mandatory minimum, and created a mechanism by which persons sentenced under the mandatory life provisions could become eligible for parole. Within a few years, a bill package enacted in the 2001-2002 legislative session eliminated most of the mandatory minimum sentences enacted in the 1998 reforms and changed the weight designations of the substances upon which the penalties are based (for example, the harshest penalty was reserved for unlawful activity involving 1,000 grams or more, rather than 650 grams or more).

In all of these drug reforms, however, the penalty requiring a mandatory life sentence without parole eligibility imposed for a second or subsequent conviction of certain drug-related crimes seems to have been overlooked and remains in force. Perhaps even more egregiously, the penalty applies only to amounts of opiates and cocaine in the two mid-

ranges (50 grams to 449 grams and 450 grams to 999 grams), but not the highest range (1,000 grams or more).

Apparently, only four prisoners convicted under this law are still incarcerated. The family of one of these prisoners has taken his plight public. According to information provided by his family, John Sellors is currently serving a double life sentence without the possibility of parole imposed for a second offense that involved 51 grams of cocaine. He has served over 17 years already, and several commutation requests have been denied. His family says that he is a changed man who is remorseful for his past conduct and that his life while incarcerated bears witness. Currently, he works 40 hours a week for the Michigan Braille Transcribing Fund, a nonprofit organization in one of the state's prisons, transcribing high-tech graphics for textbooks for the blind. Reportedly, he has been promised full-time employment if released.

Legislation has been offered to amend the provision of law that still allows certain repeat drug offenders to face mandatory life in prison, to be consistent with the reforms made in the late 1990s and early 2000s and to allow these prisoners a chance to be considered by the parole board.

THE CONTENT OF THE BILLS:

Senate Bill 73 would amend the Public Health Code. Currently, a second or subsequent conviction for a violation of any of the following offenses requires a court to sentence a person to life without eligibility for probation, suspension of the sentence, or parole:

- Manufacturing, creating, or delivering (or possessing with the intent to do the same) a mixture containing a Schedule 1 or 2 narcotic or cocaine in an amount of 450 grams or more but less than 1,000 grams or 50 grams or more but less than 450 grams. [Section 7401(2)(a)(ii) and Section 7401(2)(a)(iii), respectively]
- Knowingly or intentionally possessing a mixture containing a Schedule 1 or 2 narcotic or cocaine in an amount of 450 grams or more but less than 1,000 grams or 50 grams or more but less than 450 grams. [Section 7403(2)(a)(ii) and Section 7403(2)(a)(iii), respectively]
- Conspiracy to commit one of the violations described above.

The bill would delete this penalty provision.

The Public Health Code currently provides a general penalty for repeat drug offenses for which a specific violation is not specified—a person convicted of a second or subsequent offense may be imprisoned for not more than twice the term of imprisonment otherwise authorized and/or fined not more than twice the amount otherwise authorized. Under the bill, this penalty would be applied to a person who committed a second or subsequent violation of the crimes described above.

MCL 333.7413

Senate Bill 72 would add a new provision to the Corrections Code. Under the bill, a prisoner who had been convicted of an offense described above and sentenced to life without parole under Section 7413 of the Public Health Code (the provision proposed to be eliminated by Senate Bill 73) would be eligible for parole after serving 5 years of each sentence imposed for that violation.

Proposed MCL 791.234

Senate Bill 220 would amend the sentencing guidelines portion of the Code of Criminal Procedure to make a technical change to a Public Health Code citation necessitated by the changes proposed by Senate Bill 73.

MCL 777.18

HOUSE COMMITTEE ACTION:

The House committee reported the Senate-passed versions of the bills.

FISCAL INFORMATION:

Depending on the number of individuals convicted, but receiving reduced prison sentences, according to provisions of the bills, the state could see reduced costs. Senate Bills 72 and 73 would have no fiscal impact on local units of government. A reduction in the length of prison sentences would result in reduced costs related to incarceration. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. Senate Bill 220 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

At one time, when a first conviction of manufacturing, delivering, or possessing large amounts of heroin, other opiates, or cocaine resulted in a mandatory life sentence without parole, it made sense to also put away for life a person who had multiple convictions for using or trafficking moderate amounts of the same drugs. However, when drug reforms eventually allowed parole consideration for those large-amount drug offenses, the life sentence for repeat convictions for manufacturing, delivering, and possessing the lower amounts seems to have been overlooked.

Enactment of the bill package will do several things. First, it recognizes the body of research regarding the addictive nature of opiates and cocaine. Second, it recognizes the potential for rehabilitation for addicts and offenders in general. Third, and most importantly, it makes overdue adjustments to a penalty that is overly harsh and more suited to violent crimes such as kidnapping, murder, and rape.

Repeat offenders convicted in the future for these crimes will still be punished, but a judge will have discretion to fit the penalty to the crime—not be forced to slap a one-size-fits-all sentence on every situation. For the four inmates who would be impacted by the bills, enactment would provide hope that they may yet prove to be productive members of society.

What the bills will not do is automatically release any of those four inmates. The bills would only allow the parole board to review their cases and consider them for parole. Their conduct while in prison, rehabilitation, support network if released, danger to society, and other factors required in all parole considerations would have to be taken into account.

Against:

No arguments opposing the bills were offered.

POSITIONS:

The following organizations indicated support for the bills (11-7-17):

Citizens Alliance on Prisons and Public Spending (CAPPS)
Criminal Defense Attorneys of Michigan
The American Civil Liberties Union (ACLU) of Michigan
Prosecuting Attorneys Association of Michigan (PAAM)
FAMM (Families Against Mandatory Minimums)
Americans for Tax Reform
Freedom Works
American Conservative Union Foundation
Prison Fellowship
U.S. Justice Action Network
Right on Crime
Reason Foundation

The Michigan Department of Corrections indicated a neutral position on the bills.
(11-7-17)

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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.