

Legislative Analysis



ALLOW PROBATION FOR MOST DRUG OFFENSES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5299 as introduced
Sponsor: Rep. David LaGrand
Committee: Judiciary
Revised 5-21-20

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

SUMMARY:

House Bill 5299 would amend the Code of Criminal Procedure to allow a court to order probation for certain controlled substance offenses for which probation is currently prohibited.

Currently, a defendant found to be guilty, or who pleads guilty, to a felony, misdemeanor, or local ordinance violation may be placed on probation if the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law. However, prosecution for certain crimes resulting in a guilty verdict or plea are not eligible for probation, including a prosecution of a *major controlled substance offense*.

Major controlled substance offense is currently defined as a violation of section 7401(2)(a) of the Public Health Code and/or a violation of section 7403(2)(a)(i) to (iv) of the Public Health Code. Both sections establish penalties related to controlled substances classified in Schedule 1 or 2 as a narcotic drug or any derivative or preparation that is chemically equivalent to or identical with any of those substances (such as hydrocodone and oxycodone). Section 7401 pertains to the unlawful manufacture or possession with intent to deliver any amount of the substances, and section 7403 pertains to the unlawful possession of the substances in an amount of 25 grams or more.

The bill would delete the reference to *major controlled substance offenses*. The bill would instead specifically prohibit eligibility for probation for those found guilty upon verdict or plea of a violation of section 7401(2)(a)(i) to (iii), section 7401(2)(g), or section 7401(2)(h)(i) to (iii) of the Public Health Code, the latter two of which would be added by HB 5137.

The bill would therefore allow a court, after conviction, to place a defendant on probation for offenses involving possession for personal use of a controlled substance classified in Schedule 1 or 2 as a narcotic and also offenses involving the manufacture or possession with intent to deliver those substances in amounts of less than 50 grams (with the exception of heroin, fentanyl, or carfentanil).

The bill would prohibit eligibility for probation for offenses involving 50 grams or more of Schedule 1 or 2 controlled substances that are narcotics and also any amount of heroin, fentanyl, or carfentanil or a mixture or mixture of any derivative of those substances.

The bill is tie-barred to House Bill 5137 and would take effect 90 days after being enacted. A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

MCL 771.1

FISCAL IMPACT:

House Bill 5299 would have an indeterminate fiscal impact on the state and on local units of government. Under provisions of the bill, specific offenses that currently are ineligible for probation would become eligible for probation. This would result in offenders spending less time in jails and/or prisons, which would result in a savings to the state and/or local units of government. An increase in the number of offenders sentenced to terms of probation would mean an increase in probation supervision costs. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,800 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.