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House Bill 5137 (Substitute H-5 as passed by the House)
House Bill 5138 (Substitute H-5 as passed by the House)
House Bill 5299 (Substitute H-1 as passed by the House)

Sponsor: Representative Julie Alexander (H.B. 5137)
Representative Joe Tate (H.B. 5138)
Representative David LaGrand (H.B. 5299)

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

Date Completed: 10-21-20

CONTENT

House Bill 5137 (H-5) would amend the Public Health Code to do the following:

- **Revise the terms of imprisonment for felony violations involving the manufacture, creation, delivery, or possession with intent to manufacture, create, or deliver certain Schedule 1 or 2 controlled substances.**
- **Prescribe felony penalties for violations involving the manufacture, creation, delivery, or possession with intent to manufacture, create, or deliver heroin, fentanyl, carfentanil, and certain opiates.**

House Bill 5138 (H-5) would amend the sentencing guidelines in the Code of Criminal Procedure to revise the statutory maximum sentences for the delivery or manufacture of certain Schedule 1 or 2 controlled substances and to include the new felonies prescribed in House Bill 5137 (H-5).

House Bill 5299 (H-1) would amend the Code of Criminal Procedure to allow a court to order probation for certain offenses described in House Bill 5137 (H-5).

House Bills 5137 and 5138 are tie-barred and House Bill 5299 is tie-barred to House Bill 5137. Each bill would take effect 90 days after its enactment.

House Bill 5137 (H-5)

The Public Health Code prohibits a person from manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver certain controlled substances. Penalties for a violation vary, depending on the substance and the amount of the substance.

A violation involving a Schedule 1 or 2 controlled substance that is a narcotic drug or drug described in Section 7214(a)(iv) is a felony punishable as follows, based on the amount of the drug involved:

- 1,000 or more grams, imprisonment for life or a maximum fine of \$1.0 million, or both.
- 450 or more but less than 1,000 grams, up to 30 years' imprisonment or a maximum fine of \$500,000, or both.

- 50 or more but less than 450 grams, up to 20 years' imprisonment or a maximum fine of \$250,000, or both.
- Less than 50 grams, up to 20 years' imprisonment or a maximum fine of \$25,000, or both.

(Under Section 7214(a)(iv), coca leaves and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, except that the substances do not include decocainized coca leaves or extraction of coca leaves which extractions do not contain cocaine or ecgonine are Schedule 2 controlled substances.)

The bill would modify the penalties as follows:

- 1,000 or more grams, up to 30 years' imprisonment or a maximum fine of \$1.0 million, or both.
- 450 or more but less than 1,000 grams, up to 20 years' imprisonment or a maximum fine of \$500,000, or both.
- 50 or more but less than 450 grams, up to 20 years' imprisonment or a maximum fine of \$250,000, or both.
- Less than 50 grams, up to 10 years' imprisonment or a maximum fine of \$25,000, or both.

The Code also specifies that a violation involving any other controlled substance classified in Schedules 1, 2, or 3, except marihuana or a substance listed in Section 7212(1)(d) (which applies to synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis and synthetic substances, derivatives, and their isomers with similar chemical structure or pharmacological activity, or both) is a felony punishable by up to seven years' imprisonment or a maximum fine of \$10,000, or both.

Under the bill, the penalties for the controlled substances violations described above would not apply to the Schedule 1 or 2 controlled substances described below.

A violation involving heroin, fentanyl, or carfentanil, any derivative of heroin, fentanyl, or carfentanil, a mixture of heroin, fentanyl, or carfentanil, or a mixture of any derivative of heroin, fentanyl, or carfentanil would be a felony punishable as follows, based on the amount of the drug involved:

- 1,000 or more grams, imprisonment for life or a maximum fine of \$1.0 million, or both.
- 450 or more but less than 1,000 grams, up to 30 years' imprisonment or a maximum fine of \$500,000, or both.
- 50 or more but less than 450 grams, up to 20 years' imprisonment or a maximum fine of \$250,000, or both.
- Less than 50 grams, up to 20 years' imprisonment or a maximum fine of \$25,000, or both.

A violation involving a Schedule 1 or 2 opiate, or derivative of an opiate, other than one involving heroin, fentanyl, or carfentanil as described above would be a felony punishable as follows, based on the amount of drug involved:

- 1,000 or more grams, imprisonment for life or a maximum fine of \$1.0 million, or both.
- 450 or more but less than 1,000 grams, up to 30 years' imprisonment or a maximum fine of \$500,000, or both.
- 50 or more but less than 450 grams, up to 20 years' imprisonment or a maximum fine of \$250,000, or both.
- Less than 50 grams, up to 10 years' imprisonment or a maximum fine of \$25,000, or both.

A term of imprisonment for a violation under the bill could be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony.

House Bill 5138 (H-5)

Under the Code of Criminal Procedure, violations for the delivery or manufacture of certain Schedule 1 or 2 controlled substances are listed in the sentencing guidelines as shown in Table 1.

Table 1

Offense	Felony Class & Category	Statutory Max. Sentence
Delivery or manufacture of 1,000 or more grams.	A - controlled substance	Life
Delivery or manufacture of 450 or more but less than 1,000 grams.	A - controlled substance	30 years
Delivery or manufacture of 50 or more but less than 450 grams.	B - controlled substance	20 years
Delivery or manufacture of less than 50 grams.	D - controlled substance	20 years

Instead, under the bill, the specified violations for the delivery or manufacture of certain Schedule 1 or 2 controlled substances would be listed in the sentencing guidelines as shown in Table 2.

Table 2

Offense	Felony Class & Category	Statutory Max. Sentence
Delivery or manufacture of 1,000 or more grams.	B - controlled substance	30 years
Delivery or manufacture of 450 or more but less than 1,000 grams.	B - controlled substance	20 years
Delivery or manufacture of 50 or more but less than 450 grams.	C - controlled substance	20 years
Delivery or manufacture of less than 50 grams.	D - controlled substance	10 years

Violations for the delivery or manufacture of heroin, fentanyl, or carfentanil or mixture of heroin, fentanyl, or carfentanil would be listed in the sentencing guidelines as shown in Table 3.

Table 3

Offense	Felony Class & Category	Statutory Max. Sentence
Delivery or manufacture of 1,000 or more grams.	A - controlled substance	Life
Delivery or manufacture of 450 or more but less than 1,000 grams.	A - controlled substance	30 years
Delivery or manufacture of 50 or more but less than 450 grams.	A - controlled substance	20 years
Delivery or manufacture of less than 50 grams.	B - controlled substance	20 years

Violations for the delivery or manufacture of certain opiates would be listed in the sentencing guidelines as shown in Table 4.

Table 4

Offense	Felony Class & Category	Statutory Max. Sentence
Delivery or manufacture of 1,000 or more grams.	A - controlled substance	Life
Delivery or manufacture of 450 or more but less than 1,000 grams.	A - controlled substance	30 years
Delivery or manufacture of 50 or more but less than 450 grams.	B - controlled substance	20 years
Delivery or manufacture of less than 50 grams.	D - controlled substance	10 years

House Bill 5299 (H-1)

Under the Code of Criminal Procedure, in all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, criminal sexual conduct in the first- or third-degree, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and 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, the court may place the defendant on probation under the charge and supervision of a probation officer.

("Major controlled substance offense" means either or both of the following:

- A violation of Section 7401(2)(a) of the Public Health Code.
- A violation of Section 7403(2)(a)(i) to (iv) of the Public Health Code.
- Conspiracy to commit an offense described above.)

Instead of "major controlled substance offense", the bill would refer to Sections 7401(2)(i) to (iii) 7401(2)(g) or 7401(2)(h)(i) to (iii) of the Public Health Code, which House Bill 5137 (H-5) would amend or add.

MCL 333.7401 (H.B. 5137)
777.13m (H.B. 5138)
771.1 (H.B. 5299)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 5137 (H-5)

The bill could have a positive fiscal impact on the State and local government. The net effect of the proposed changes would be to reduce the maximum length of sentence for certain controlled substance felonies not involving heroin, fentanyl, or carfentanil. Shorter sentences would reduce costs for correctional facilities. For any reduction, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year.

House Bill 5138 (H-5)

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the changes to the guidelines under the bill would not be compulsory for the sentencing

judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

House Bill 5299 (H-1)

The bill could have a positive fiscal impact on the State and local government. Diverting more defendants to probation that otherwise would have been sentenced to jail or prison would reduce demands on jails and correctional facilities, while increasing demands on community supervision. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any decrease in prison intakes, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year.

Fiscal Analyst: Ryan Bergan
Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.