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BILL ANALYSIS

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Senate Bill 376 and 377 (as introduced 6-7-23)
Sponsor: Senator Stephanie Chang (S.B. 376)
Senator Ed McBroom (S.B. 377)
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 6-8-23

INTRODUCTION

Taken together, the bills would create the Michigan Sentencing Commission. They would prescribe the Commission's membership and responsibilities. The Commission would be responsible for researching, analyzing, and reporting information regarding sentencing and release policies. In addition, the Commission would be responsible for recommending modifications to sentencing guidelines based on specified criteria and reporting its recommendations to the Legislature. The Commission would be housed in the Legislative Council, which would have to staff and provide administrative support to the Commission.

Senate Bill 376 is tie-barred to House Bill 4384, which is a companion bill to Senate Bill 377. Senate Bill 377 is tie-barred to House Bill 4173, which is a companion bill to Senate Bill 376.

BRIEF FISCAL IMPACT

Senate Bill 376 would have an indeterminate fiscal impact on the Legislative Council by creating the Commission within the Legislative Council. Except for the chairperson, commission members would not receive a salary but would be eligible for reimbursement for necessary expenses incurred in the performance of their duties as Commission members. The Governor would have to appoint (with advice and consent of the Senate) a chairperson for the Commission but the bill remains silent on the salary for the chairperson

Senate Bill 377 could indirectly affect the costs for the State and local units of government. Depending on decisions and changes made by the Commission, costs could increase or decrease, depending on the changes made to sentencing.

Proposed MCL 769.34a (S.B. 376)
Proposed MCL 769.34b (S.B. 377)

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CONTENT

Senate Bill 376 would amend the Code of Criminal Procedure to do the following:

- **Create the Commission in the Legislative Council.**
- **Prescribe the membership of the Commission, including voting and nonvoting members.**
- **Prescribe the method by which members would be appointed, who would appoint them, and the deadline for appointments.**
- **Require the Governor to appoint the Commission's chairperson with the advice and consent of the Senate.**
- **Set term limits for members.**
- **Prohibit all Commission members, except for the chairperson, from receiving a salary.**
- **Allow the Commission to establish subcommittees that could consist of individuals who were not Commission members.**

Senate Bill 377 would amend the Code of Criminal Procedure to prescribe the responsibilities of the Commission, including the following:

- **Collecting, preparing, analyzing, and disseminating information on sentencing and release policies.**
- **Researching and reporting on sentencing guidelines and efforts to reduce the likelihood that a convicted individual would reoffend.**
- **Considering sentencing guidelines in relation to the offense, the victim input, the offender's blameworthiness, the likelihood of recidivism, the elimination of inequities, and the guidelines' efficacy, among other criteria.**
- **Developing and recommending modifications to sentencing guidelines based on the Commission's considerations.**
- **Reporting certain recommendations to the Legislature.**

Senate Bill 376

The bill would create the Commission in the Legislative Council. A quorum would consist of a majority of the members of the commission. All commission business would have to be conducted by not less than a quorum.

The Council would have to provide the Commission with suitable office space, staff, and necessary equipment. The Commission's business would have to be conducted at public meetings held in compliance with the Open Meetings Act. A writing prepared, owned, used, in the possession of, or retained by the Commission in the performance of an official function would be subject to the Freedom of Information Act.

Membership

The Commission would have to consist of the following members:

- One member from each caucus of the Senate, appointed by the leader of each caucus.
- One member from each caucus of the House of Representatives, appointed by the leader of each caucus.
- One individual who was a circuit court judge serving in a county with a population of less than 800,000, appointed from a list of three names submitted by the Michigan Judges Association.

- One individual who was a circuit court judge serving in a county with a population of more than 800,000, appointed from a list of three names submitted by the Michigan Judges Association.
- One individual who represented law enforcement, appointed from a list of three names not all of whom were affiliated with the same political party, submitted by the Michigan Sheriffs' Association.
- One individual who represented the prosecuting attorneys of the State, appointed from a list of three names not all of whom were affiliated with the same political party, submitted by the Prosecuting Attorneys Association of Michigan.
- One individual who represented criminal defense attorneys, appointed from a list of three names not all of whom were affiliated with the same political party, submitted by the Criminal Defense Attorneys of Michigan.
- One individual who was a member of a nongovernmental nonprofit that served victims and represented victim service providers.
- One individual appointed from a list of three names submitted by the Director of the Michigan Department of Corrections (MDOC).

In addition, the Commission would have to include the following nonvoting members:

- The Attorney General or the Attorney General's nominee.
- One individual who was previously incarcerated.
- One individual who worked in the mental or behavioral health field.

Before January 1, 2024, the Governor would have to appoint, with the advice and consent of the Senate, one member to the Commission who would have to serve as chairperson. This individual would have to have a professional background in criminal law. The chairperson would serve as a nonvoting member of the commission.

Additionally, before January 1, 2024, the Speaker of the House would have to appoint either the circuit court judge serving in a county with a population of less than 800,000 or the circuit court judge serving in a county with a population of more than 800,000. The House Minority Leader would appoint the other circuit court judge.

The Senate Majority Leader would have to appoint either the member who would represent law enforcement or the member who would represent the State's prosecuting attorneys. Additionally, the Senate Majority Leader, working with the Speaker of the House, would appoint either the member who would represent the State's criminal defense attorneys or the member who would represent victim service providers. In both cases, the Senate Minority Leader would appoint the other member. The Speaker of the House and the Senate Majority Leader also would have to work together to appoint the member who was previously incarcerated, the member who worked in the mental or behavioral health field, and the member representing the MDOC.

If the Speaker of the House of Representatives and the Senate Majority Leader were unable to agree on an appointment, the chairperson of the Commission would have to appoint a member of the Commission from among the individual who were the expressed choices of the Speaker of the House of Representatives and the Senate Majority Leader. If neither the Speaker nor the Senate majority leader expressed a choice within 30 days of a vacancy on the Commission, the chairperson would have to appoint the Commission member.

The representative of the State's criminal defense attorneys, the representative of victim service providers, the individual who had been formerly incarcerated, the individual working in the mental or behavioral health field, and the representative of the MDOC would have to attest whether they were affiliated with one of the two political parties with the largest

representation in the Legislature. If so, they would have to identify the major party with which they were affiliated. At least one of the appointments to the Commission would have to be from a different affiliation than the other appointments.

Term limits

The chairperson and other members of the Commission would be appointed for a term of four years; however, the first members of the Commission would serve different terms. The four representatives of the Legislature, two each from the Senate and the House, would serve for two years. Of the other 10 members, three would serve for two years, four would serve for three years, and three would serve for four years.

A vacancy on the Commission caused by the expiration of a term or a resignation or death would have to be filled in the same manner as the original appointment. A member appointed to fill a vacancy caused by a resignation or death would have to be appointed for the balance of the unexpired term.

Commission and Subcommittee Compensation

Except for the chairperson, a Commission member could not receive a salary for being a Commission member but would have to be reimbursed for the member's reasonable, actual, and necessary expenses incurred in the performance of the member's duties as a Commission member.

The Commission could establish subcommittees that could consist of individuals who were not members of the Commission, including experts in matters of interest to the Commission. A subcommittee member, who was not a member of the Commission, would not be allowed to vote on any recommendations made by the Commission. A subcommittee member would not receive a salary for the subcommittee member's service on a subcommittee.

Senate Bill 377

The bill would require the Commission to do the following:

- Collect, prepare, analyze, and disseminate information regarding State and local sentencing and release policies.
- Conduct ongoing research regarding the effectiveness of the sentencing guidelines in achieving modifications to the sentencing guidelines.
- In cooperation with the MDOC, collect, analyze, and compile data and make projections regarding the populations and capacities of State correctional facilities, the impact of the sentence guidelines, and the effectiveness of the efforts to reduce recidivism.
- Consider the suitability and impact of offense variable scoring regarding victims and victims' families and victim input and advice regarding sentences.

A measurement of recidivism would have to include, as applicable, an analysis of resentence rates and return-to-prison rates and yearly intervals for the first four years after exiting a prison or jail and after entering probation.

Additionally, the Commission would have to develop recommended modifications to the sentencing guidelines. Any modifications to the sentencing guidelines would have to accomplish the following:

- Provide for the protection of the public.

- Consider offenses that involved violence against a person or serious and substantial pecuniary loss as more severe than other offenses.
- Be proportionate to the seriousness of the offense and the offender's prior criminal record.
- Reduce sentencing disparities based on factors other than offense characteristics and ensure that offenders with similar offense characteristics received substantially similar sentences.
- Specify the circumstances under which a term of imprisonment was proper and the circumstances under which intermediate sanctions were proper.
- Establish sentence ranges for imprisonment that the Commission considered appropriate and were permitted by law.

Report and Recommendations to the Legislature

In developing modifications to the sentencing guidelines, the Commission would have to submit to the Legislature a prison and jail impact report relating to any modifications to the sentencing guidelines. The report would have to include the projected impact on total capacity of State and local correctional facilities. Modifications to sentencing guidelines would have to include recommended intermediate sanctions for each case in which the upper limit of the recommended minimum sentence range was 18 months or less.

The Commission could recommend modifications to any law that affected sentencing or the use and length of incarceration. The Commission would be prohibited from making recommendations that would change the body of enumerated criminal offenses as defined by the Legislature. Additionally, the Commission could not make a recommendation that would retroactively change existing sentencing guidelines already imposed on an individual. Under the bill, the recommendations would have to reflect the following policies:

- To render sentences in all cases within a range of severity proportionate to the gravity of offenses, victim input, and the blameworthiness of an offender.
- When reasonably feasible, to achieve offender rehabilitation, general deterrence, incapacitation of dangerous offenders, restoration of crime victims and communities, and reintegration of offenders into the law-abiding community.
- To render sentences no more severe than necessary to achieve the applicable purposes described above.
- To preserve judicial discretion to individualize sentences within a framework of law.
- To produce sentences that were uniform in their reasoned pursuit of the purposes of the Commission.
- To eliminate inequities in sentencing and length of incarceration across population groups.
- To promote research on sentencing policy and practices, including assessments of the effectiveness of criminal sanctions as measured against their purposes.

The Commission would have to submit any recommended modifications to the sentencing guidelines or to other laws to the Senate Majority Leader, the Speaker of the House of Representatives, and the Governor.

By December of each year, the Commission would have to submit to the Legislature, the Governor, and the Michigan Supreme Court a report on the implementation of legislative policies adopted in the current legislative session affecting the criminal justice system. The report would have to include at least the following:

- Education of practitioners on changes in legislative policy, including changes in criminal statutes and an analysis of the expected impact of those changes on prison and jail populations and the average length of the sentences imposed.
- The length of probation supervision terms imposed.
- The number of noncompliance, risk, and major risk sanctions imposed on the probation population.

FISCAL IMPACT

Senate Bill 376

The bill would have an indeterminate fiscal impact on the Legislative Council by creating the Commission within the Legislative Council. Except for the chairperson, Commission members would not receive a salary but would be eligible for reimbursement for necessary expenses incurred in the performance of their duties as Commission members. The Governor would have to appoint (with advice and consent of the Senate) a chairperson for the Commission but the bill remains silent on the salary for the chairperson.

The bill would require the Legislative Council to provide the Commission with suitable office space, staff, and necessary equipment. The Commission could hire any additional staff it deemed necessary. Based on FY 2021-22 data, the current estimated average annual cost for 1.0 FTE for a classified State employee is \$137,500 gross, \$70,500 GF/GP for salary and benefits.

Finally, the cost for reimbursing Commission members for necessary expenses incurred in the performance of their duties (based on other similar commissions and committees) averages less than \$50,000 annually.

Senate Bill 377

The bill could indirectly affect the costs for the State and local units of government. Depending on decisions and changes made by the Commission, costs could increase or decrease, depending on the changes made to sentencing.

Changes to misdemeanor conviction sentences could affect county jail and local probation supervision costs, which vary by jurisdiction. These costs could increase or decrease depending on the changes made to sentencing, and are thus indeterminate. Based on 2022 data, the average cost to State government for felony probation supervision is approximately \$4,800 per probationer per year. Similarly, for the State, a change in in prison intakes could affect the cost of housing a prisoner in a State correctional facility. Currently, the per diem rates for housing a prisoner in a State correctional facility ranges from \$98 to \$192 per day, depending on the security level of the facility. Additionally, any changes to associated fine revenue would affect funding to public libraries.

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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.