



Senate Fiscal Agency
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Senate Bill 377 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Ed McBroom

Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 3-20-24

RATIONALE

According to testimony before the Senate Committee on Civil Rights, Judiciary, & Public Safety, some people have concern that prevailing attitudes toward crime and rehabilitation at the time individual sentences are established can influence their severity, rendering the sentencing guidelines inconsistent. Reportedly, the only guidance a legislator has for new sentencing guidelines is information from the Legislative Services Bureau concerning the history of similar sentences in other states. Commissions are a long respected and long utilized process that help guide legislators in decision making concerning new sentences. Accordingly, it has been suggested that a new commission that reviews Michigan's sentencing guidelines be formed to provide legislators with guidance on new sentences and to improve sentencing guidelines' consistency and proportion to offenses.

CONTENT

The bill would amend the Code of Criminal Procedure to prescribe the responsibilities of the Michigan Sentencing 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.**

The bill is tie-barred to Senate Bill 376, which would create the Commission and prescribe its membership.

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.

Proposed MCL 769.34b

BACKGROUND

Sentencing guidelines are a system of recommended sentences based on offense and offender characteristics. Before 1984, sentencing in Michigan law was traditionally left to the discretion of the trial court bench;¹ however, in 1979, a report entitled "Sentencing in Michigan" by the Michigan Felony Sentencing Project confirmed significant inconsistencies in Michigan sentences and suggested that disparities existed along racial lines.² Concerns over these disparities led to the development of judicially-imposed guidelines under the Michigan Supreme Court in 1984 intended to reduce or eliminate variations based on factors other than the facts of the crime and the prior record of the offender.³ These guidelines were not policy directed but were a statistical reflection of the actual sentences imposed by the trial bench.⁴ The guidelines were updated in 1988 with additional sentencing data, but were generally criticized for failing to sufficiently restrict sentencing departures, especially those based on race and other factors.⁵ These judicially-imposed guidelines were used from 1984 until 1998 when Public Act (PA) 317 of 1998 created a statutory set of sentencing guidelines that was more comprehensive and reflected policy decisions made by a 19-member commission housed within the Legislative Council.⁶ This set of sentencing guidelines is still used today and, although many individual sentences have been updated or added, many remain the same sentences created by PA 317 of 1998.

The Sentencing Commission whose recommendations were codified into PA 317 of 1998 was created by PA 445 of 1994. Generally, the Commission was tasked with duties similar to those proposed by Senate Bill 376 and Senate Bill 377, including assembling and disseminating information on State and local felony sentencing practices and prison and jail utilization.⁷ The Sentencing Commission remained active after the passage of PA 317 of 1998 and was abolished on April 1, 2002 with the passage of PA 31 of 2002. Later, in 2014, PA 465 created a new sentencing commission called the Criminal Justice Policy Commission (CJPC), which

¹ Deming, Shiela Robertson, State Bar of Michigan, Michigan Bar Journal, *Michigan's Sentencing Guidelines*.

² Zalman, Marvin et al., Michigan Felony Sentencing Project, *Sentencing in Michigan*, July 1979.

³ House Fiscal Agency, *Second Analysis of Public Act 31 of 2002*, November 2002. Available on the Michigan Legislature website: <http://www.legislature.mi.gov>.

⁴ Deming, Shiela Robertson, State Bar of Michigan, Michigan Bar Journal, *Michigan's Sentencing Guidelines*.

⁵ *Id.*

⁶ Senate Fiscal Agency, *Enrolled Analysis of Public Act 317 of 1998*, October 1998. Available on the Michigan Legislature website: <http://www.legislature.mi.gov>.

⁷ House Legislative Analysis Section, *Committee Summary Analysis of Public Act 445 of 1994*, June 1993. Available on the Michigan Legislature website: <http://www.legislature.mi.gov>.

was housed within the Legislative Council.⁸ This 17-member CJPC was formed with a similar mandate to the previous Commission that advocated for improving the effectiveness of sentencing guidelines and reducing recidivism.⁹ Public Act 465 of 2014 was written with a sunset that disbanded the CJPC four years after the effective date of the Act. The sunset expired on September 30, 2019, and no sentencing guidelines commission has existed since.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Many of the sentences in Michigan's sentencing guidelines have not changed since their enactments in 1998. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, new policy goals based on updated psychological and scientific evidence have been established since 1998, and many of the sentences may now be inappropriate. Establishing a sentencing commission would help inform decisions on current and future sentencing guidelines and determine more appropriate sentences.

Supporting Argument

Establishing a commission to review sentencing guidelines would give crime victims the ability to articulate their needs during the policymaking process. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, victims can inform legislation better than individuals who desire specific outcomes. The commission would have a member representing victims' rights which would help inform victims' needs from sentencing guidelines and better balance outcomes of sentencing guidelines in the future.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

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.

Fiscal Analyst: Joe Carrasco, Jr.

⁸ Senate Fiscal Agency, *Summary of House-Passed Bill in Committee of Public Act 465 of 2014*, December 2014. Available on the Michigan Legislature website: <http://www.legislature.mi.gov>.

⁹ Michigan Legislative Council, *Criminal Justice Policy Commission*, 2022.

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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.