



Senate Fiscal Agency
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House Bill 4173 (Substitute H-5 as passed by the House)
Sponsor: Representative Abraham Aiyash
House Committee: Criminal Justice
Senate Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 12-3-24

CONTENT

The bill would amend the Code of Criminal Procedure to do the following:

- **Create the Michigan Sentencing Commission in the Legislative Council and prescribe its membership.**
- **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 but the chairperson from receiving a salary.**
- **Allow the Commission to establish subcommittees that could consist of individuals who were not Commission members.**

The bill is tie-barred to House Bill 4384, which would amend the Code of Criminal Procedure to prescribe the responsibilities of the Commission.

Commission Creation

The bill would create the Commission in the Legislative Council. A quorum would consist of a majority of the members of the Commission, and 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.
- The Attorney General or the Attorney General's designee.
- 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 six names, with three submitted by the Michigan Association of Chiefs of Police and three 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 was an attorney in good standing, 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 who was previously incarcerated.
- One individual who worked in the mental or behavioral health field.
- The Director of the Michigan Department of Corrections (MDOC), or the Director's designee.

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 for a term of four years. This individual would have to have a professional background in criminal law. The chairperson would serve as a nonvoting member of the Commission.

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 Speaker of the House also would have to appoint the attorney in good standing or an individual who was a member of a nongovernmental nonprofit serving victims. The House Minority Leader would have to appoint the members that the Speaker of the House did not choose.

Before January 1, 2024, the Senate Majority Leader would have to appoint either an individual who worked in the mental or behavioral health field or an individual who was previously incarcerated. The Senate Majority Leader also would have to appoint either the member representing law enforcement or the member representing prosecuting attorneys. The Senate Minority Leader would have to appoint the members that the Majority Leader did not choose.

If an appointment were not made by January 1, 2024, the chairperson would have to appoint those members. If a vacancy occurred for one of those members it would have to be filled in the same manner as the original appointment within 30 days of the vacancy occurring. If the vacancy were not filled within 30 days, the chairperson would have to fill the vacancy.

The representative of the State's criminal defense attorneys, the representative of victim service providers, the individual who had been formerly incarcerated, and the individual working in the mental or behavioral health field 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

Generally, members would serve four-year terms except for the members of the House and Senate who would serve two-year terms. The first members of the Commission would serve different terms, the circuit court judge, the law enforcement representative, and the

prosecuting attorney representative would all serve four-year terms. The first members serving as the attorney in good standing, the nongovernmental nonprofit representative, the previously incarcerated individual, and the individual working in the mental or behavioral health field would serve a three-year term. Finally, the first members serving as the Attorney General or the Attorney General's designee and the MDOC Director would serve two-year terms.

Except as provided above, 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 could not receive a salary for the subcommittee member's service on a subcommittee.

Proposed MCL 769.34a

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a companion bill to Senate Bill 376.

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

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.*

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 House Bill 4173 (H-5) and House Bill 4384 (H-2), 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 was housed within the Legislative Council.⁸ The 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 took effect on September 30, 2019.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Legislative Council. The bill would create the Commission within the Council, and the Council would have to provide office space, staffing, and necessary equipment. Commission members would not receive a salary but would be eligible for reimbursement for necessary expenses incurred in the performance of their duties. The Governor would appoint a director as a non-voting member of the Commission.

The bill does not specify how the Commission would determine a salary for the director or if a salary would be paid. The Council could hire any additional staff it deemed necessary. Based on Fiscal Year 2024-25 data, the current estimated average annual cost for 1.0 full-time equivalents for a classified State employee is \$138,900 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) would likely be less than \$50,000 annually.

Fiscal Analyst: Joe Carrasco, Jr.

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>.

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.