

## REVISE PENALTIES FOR CERTAIN NARCOTIC DRUGS

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

**House Bill 4255 as introduced**  
**Sponsor: Rep. Sarah Lightner**

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

**House Bill 4256 as introduced**  
**Sponsor: Rep. Ann Bollin**

**Committee: Judiciary**  
**Complete to 3-19-25**

### SUMMARY:

House Bills 4255 and 4256 would do all of the following:

- Increase maximum terms of imprisonment, establish mandatory minimum terms of imprisonment, and raise felony classifications in the sentencing guidelines for controlled substance violations involving the manufacture or delivery, or possession with intent to manufacture or deliver, of heroin, fentanyl, carfentanil, or their derivatives. In addition, a mandatory or optional fine could be imposed only in addition to, and not instead of, imprisonment.
- Establish a penalty (imprisonment for 10 to 40 years) for a violation that involves a person over 18 delivering, or possessing with intent to deliver, heroin, fentanyl, carfentanil, or their derivatives to a minor.
- Prohibit a person who knows that a product contains heroin, fentanyl, carfentanil, or their derivatives from selling the product or offering it for sale without representing that it contains the applicable substance. A violation would be a felony with a mandatory determinate sentence of 10 years to run consecutively to, and before, any term of imprisonment otherwise imposed for the sale or offer.

**House Bill 4255** would amend the Public Health Code to revise penalty provisions that now apply to violations involving the unlawful manufacture or delivery, or possession with intent to manufacture or deliver, of cocaine or a Schedule 1 or 2 controlled substance that is a ***narcotic drug***. The bill would primarily establish new penalties for violations involving heroin, fentanyl, carfentanil, or their derivatives. (Heroin and fentanyl are both Schedule 1 narcotic drugs, and carfentanil is a Schedule 2 narcotic drug.) The bill would retain current penalties for violations involving cocaine or a Schedule 1 or 2 narcotic drug other than heroin, fentanyl, carfentanil, or their derivatives.

***Narcotic drug*** means opium and ***opiate***; any salt, compound, derivative, or preparation of opium or opiate; or any salt, compound, isomer, or derivative (or preparation of a salt, compound, isomer, or derivative) that is chemically equivalent or identical with opium, opiate, or any salt, compound, derivative, or preparation of opium or opiate. However, ***narcotic drug*** does not include the isoquinoline alkaloids of opium.<sup>1</sup>

<sup>1</sup> <http://legislature.mi.gov/documents/mcl/pdf/mcl-333-7107.pdf>. ***Narcotic drug*** as defined in the code includes substances produced directly or indirectly by extraction from substances of vegetable origin, those produced independently by means of chemical synthesis, and those produced by a combination of extraction and chemical synthesis. In addition to heroin, fentanyl, and carfentanil, ***narcotic drugs*** listed on Schedules 1 and 2 include codeine,

***Opiate*** means a substance with an addiction-forming or addiction-sustaining liability similar to morphine or that can be converted into a drug with an addiction-forming or addiction-sustaining liability.<sup>2</sup>

**Currently**, a violation involving the manufacture or delivery, or possession with intent to manufacture or deliver, of cocaine or a Schedule 1 or 2 ***narcotic drug***, or any mixture containing those substances, is a felony punishable as follows:

- For 1,000 grams or more: imprisonment for life or any term of years or a fine of up to \$1.0 million, or both.
- For at least 450 grams but less than 1,000 grams: imprisonment for up to 30 years or a fine of up to \$500,000, or both.
- For at least 50 grams but less than 450 grams: imprisonment for up to 20 years or a fine of up to \$250,000, or both.
- For less than 50 grams: imprisonment for up to 20 years or a fine of up to \$25,000, or both.

However, an individual who is at least 18 years old who delivers cocaine or a Schedule 1 or 2 narcotic drug to someone under 18 who is also at least three years younger than that individual may be punished by imprisonment for at least one year, up to 40 years, or a fine of up to \$25,000, or both.

**The bill** would retain the above penalties for violations involving cocaine or a Schedule 1 or 2 narcotic drug that is not heroin, fentanyl, carfentanil, or their derivatives. The bill would essentially carve out heroin, fentanyl, carfentanil, and their derivatives into a new group with increased maximum terms of imprisonment, new mandatory minimums, and a requirement that fines be in addition to, and not instead of, imprisonment. Under the bill, a violation involving the manufacture or delivery, or possession with intent to manufacture or deliver, of heroin, fentanyl, carfentanil, or their derivatives, or a mixture containing any of those substances or derivatives, would be a felony punishable as follows:

- For 1,000 grams or more: imprisonment for at least 30 years, up to life without eligibility for parole, *and* a mandatory fine of up to \$2.0 million.
- For at least 450 grams but less than 1,000 grams: imprisonment for at least 15 years, up to 40 years, and an optional fine of up to \$500,000.
- For at least 50 grams but less than 450 grams: imprisonment for at least 10 years, up to 25 years, and an optional fine of up to \$250,000.
- For less than 50 grams: imprisonment for at least five years, up to 20 years, and an optional fine of up to \$25,000.

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hydrocodone (e.g., Vicodin®), hydromorphone (e.g., Dilaudid®), laudanum, meperidine (e.g., Demerol®), methadone, morphine, nicomorphine, opium, oxycodone (e.g., OxyContin®, Percocet®), oxymorphone (e.g., Opana®), and tapentadol.

Substances included on Schedule 1 or 2 that are *not* narcotic drugs (and whose violations and penalties are found in other areas of the Public Health Code) include those classified as hallucinogens, such as ecstasy (MDMA), LSD, marijuana, mescaline, peyote, and psilocybin; depressants, such as amobarbital (e.g., Amytal®), GHB, methaqualone (e.g., Quaalude®), pentobarbital (e.g., Nembutal®), phencyclidine (PCP), and secobarbital (e.g., Seconal®); or stimulants, such as amphetamine, dextroamphetamine, methamphetamine, methcathinone, and products containing stimulants such as Dexedrine®, Adderall®, or Ritalin®.

<sup>2</sup> <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-333-7108.pdf> In addition, the code states that ***opiate*** does not include, unless specifically designated as controlled under section 7212, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan (dextromethorphan) and its salts—but it does include its racemic and levorotatory forms.

However, an individual who is at least 18 years old who delivers, or possesses with intent to deliver, heroin, fentanyl, carfentanil, or their derivatives to someone under 18 would have to be punished instead by imprisonment for at least 10 years, up to 40 years.

**Table 1** provides a comparison of the penalties described above in current law and the bill.

**Table 1. Penalties under Current Law and House Bill 4255**

	<b>Current Law</b> Cocaine or a Schedule 1 or 2 controlled substance that is a narcotic drug	<b>HB 4255 (Group A)</b> Heroin, fentanyl, carfentanil, or a derivative of such a substance	<b>HB 4255 (Group B)</b> Cocaine or a Schedule 1 or 2 controlled substance that is a narcotic drug not included in Group A
1,000 grams or more	Life maximum imprisonment and/or \$1.0 million maximum fine	At least 30 years minimum and up to life without parole maximum imprisonment and mandatory \$2.0 million maximum fine **	Life maximum imprisonment and/or \$1.0 million maximum fine
At least 450 but less than 1,000 grams	30 years maximum imprisonment and/or \$500,000 maximum fine	At least 15 years minimum and up to 40 years maximum imprisonment and optional \$500,000 maximum fine **	30 years maximum imprisonment and/or \$500,000 maximum fine
At least 50 but less than 450 grams	20 years maximum imprisonment and/or \$250,000 maximum fine	At least 10 years minimum and up to 25 years maximum imprisonment and optional \$250,000 maximum fine **	20 years maximum imprisonment and/or \$250,000 maximum fine
Less than 50 grams	20 years maximum imprisonment and/or \$25,000 maximum fine *	At least five years minimum and up to 20 years maximum imprisonment and optional \$25,000 maximum fine **	20 years maximum imprisonment and/or \$25,000 maximum fine *

\* For delivery by someone 18 or older to someone three years younger who is under 18, a minimum of one year imprisonment, up to 40 years, and/or a \$25,000 fine.

\*\* For delivery or possession with intent to deliver by someone 18 or older to someone under 18, a mandatory term of imprisonment for at least 10 years, up to 40 years.

In addition, the bill would prohibit a person who knows that a product contains heroin, fentanyl, carfentanil, or a derivative of such a substance from selling or offering to sell that product<sup>3</sup> in violation of Article 7 (Controlled Substances) of the code without representing that the product contains heroin, fentanyl, carfentanil, or such a derivative, as applicable. This prohibition would not apply to a product approved by the U.S. Food and Drug Administration (FDA).

A person who violates the above prohibition would be guilty of a felony and would have to be punished by imprisonment for 10 years. That term of imprisonment would be in addition to the sentence imposed for the sale or offer of the sale of the product and would have to be served consecutively with and preceding any term of imprisonment imposed for the conviction of the crime for the sale or offer of the sale. The term of imprisonment could not be suspended. The person subject to the mandated sentence would not be eligible for parole or probation during the 10 years of the mandatory term imposed under these provisions.

MCL 333.7401, 333.7410, and 333.7417 and proposed MCL 333.7410b and 333.7417a

**House Bill 4256** would amend the sentencing guidelines in the Code of Criminal Procedure to reflect the penalty groups and maximum terms of imprisonment proposed by House Bill 4255 (mandatory minimums are not included in the guidelines). The bill would also raise the felony classification of certain crimes involving heroin, fentanyl, carfentanil, or their derivatives and make a technical fix to reflect changes made to the Public Health Code by 2001 PA 236. Under the bill, a violation involving the manufacture or delivery, or possession with intent to manufacture or deliver, of heroin, fentanyl, carfentanil, or their derivatives, or a mixture containing any of those substances or derivatives, would be a controlled substance felony with the maximum terms of imprisonment described above and the following felony classes:

- 1,000 grams or more: Class A (current classification).
- At least 450 grams but less than 1,000 grams: Class A (current classification).
- At least 50 grams but less than 450 grams: Class A (currently Class B).
- Less than 50 grams: Class B (currently Class D).

The bill provides that delivery by someone 18 or older of heroin, fentanyl, carfentanil, or a derivative to someone under 18 is a Class A controlled substance felony with a statutory maximum 40 years' imprisonment.<sup>4</sup>

The bill does not include sentencing guidelines provisions relating to selling or offering to sell a product known to contain heroin, fentanyl, carfentanil, or a derivative without representing the product as containing such a substance, which is a new offense created by House Bill 4255.

MCL 777.13m

Each bill would take effect 90 days after being enacted. House Bill 4256 cannot take effect unless House Bill 4255 is also enacted.

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<sup>3</sup> Presumably, selling or offering to sell would be conditionally defined subsets of delivering or possessing with intent to deliver. The bill does not define the term *product*.

<sup>4</sup> As written, this provision in HB 4255 is not a separate offense but instead is a sentencing provision that provides the penalty for a violation of section 7410 (delivery/possession with intent) that meets the specified criteria.

## BACKGROUND:

### Drug classifications

A controlled substance is placed in *Schedule 1* if it has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

A *Schedule 2* controlled substance also has high potential for abuse, and its abuse may lead to severe psychic or physical dependence, but it has currently accepted medical use in treatment in the United States, including medical use with severe restrictions.

*Heroin* is not given a specific definition for purposes of the Public Health Code. It is a narcotic drug that is made from morphine, a substance derived from opium poppy plants. It was first developed commercially by the Bayer Company in Germany at the end of the 1800s, in part to address the fact that many cough remedies of the day contained morphine or codeine and thus themselves were addictive and fostered user tolerance (the need for larger or more frequent doses to attain the same effect). Heroin is now a Schedule 1 controlled substance, which means that it has high potential for abuse and no accepted medical uses.

*Fentanyl* is not given a specific definition for purposes of the Public Health Code. It is a synthetic narcotic drug that was first synthesized in the 1950s by chemists at Janssen Pharmaceutical in Belgium. It is a Schedule 2 controlled substance, which means that it has high potential for abuse but some accepted medical uses—most commonly to mitigate the pain of certain patients with cancer.

*Carfentanil* is not given a specific definition for purposes of the Public Health Code. It is a fentanyl-related narcotic drug that was first synthesized by chemists at Janssen Pharmaceutical in 1974. It is a Schedule 2 controlled substance that is used by veterinarians as a tranquilizer for elephants and other large mammals. It is not approved for human use.

*Cocaine* is not given a specific definition for purposes of the Public Health Code. It is an addictive stimulant drug, made from the leaves of the coca plant, that was first isolated in a laboratory in the mid-1800s. It is a Schedule 2 controlled substance, with limited medical use as a topically applied local anesthetic.

### Felony classifications in the sentencing guidelines

Michigan uses an indeterminate sentencing structure under which the maximum term of imprisonment that may be imposed for an offense is established in law and an appropriate range of imprisonment for a particular offender is determined by scoring their prior record and various elements of the crime and using a sentencing grid based on the felony classification of the offense (Class A through Class H)<sup>5</sup> to determine an advisory sentence range appropriate for the offense and the offender. The score, and which grid must be used, can determine whether an offender is recommended to be sentenced to community sanctions, such as probation, or recommended to be imprisoned (and, if so, for how long).<sup>6</sup>

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<sup>5</sup> There is also an M2 classification (second degree murder), with a maximum sentence of life or any term of years.

<sup>6</sup> The sentencing guidelines are advisory only, and not mandatory, following the Michigan Supreme Court's decision in *People v Lockridge*, 498 Mich 358 (2015). While the sentencing court is still required to determine the applicable guidelines range and take it into account when imposing a sentence, it may reasonably depart from the recommended range. See <https://mjeducation.mi.gov/documents/sgm-files/94-sgm/file>

The length of a recommended maximum sentence is generally highest for Class A felonies (life or any term of years) and goes down as one moves through the alphabet to, say, Class C (up to 15 years) or Class E (up to five years) or Class G (up to two years). Similarly, the recommended minimum sentence of the sentencing range is highest for Class A felonies and generally decreases with each class that follows.

Classifying an offense as a Class A felony under the sentencing guidelines, instead of Class B, or as Class B instead of Class D, thus would likely increase the recommended minimum and maximum sentences for an offense. This could also increase an offender's chances of being sentenced to imprisonment for the crime. As described above, House Bill 4256 would make this change for certain offenses involving heroin, fentanyl, carfentanil, or their derivatives.

## **FISCAL IMPACT:**

**House Bill 4255** would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, for offenses for which mandatory minimums are included and maximums are expanded, costs related to state prisons would occur. Also, the bill would establish the requirement to serve an additional term of imprisonment consecutively with a preceding term under certain circumstances, which would increase costs related to state prisons and state probation supervision. In fiscal year 2024, the average cost of prison incarceration in a state facility was roughly \$46,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,500 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue collected would increase funding allocated to public and county law libraries, which are the constitutionally designated recipients of those revenues.

**House Bill 4256** is a companion bill and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include revisions made in House Bill 4255. The bill would not have a direct fiscal impact on the state or on local units of government.

Legislative Analyst: Rick Yuille  
Fiscal Analyst: Robin Risko

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■ 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.