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SFA**BILL ANALYSIS**

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Senate Bill 825 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

CONTENT

The bill would add Chapter IXA to the Code of Criminal Procedure to provide for sentencing guidelines. The bill would classify over 700 crimes in the Michigan Compiled Laws into nine different classes of descending severity. (According to the Sentencing Commission's report, Class M2 is for second-degree murder; and Classes A through H include crimes for which the following maximum sentences may be appropriate: Class A--life imprisonment; Class B--20 years' imprisonment; Class C--15 years; Class D--10 years; Class E--5 years; Class F--4 years; Class G--2 years; and Class H--jail or other intermediate sanctions.) The crimes also are divided into six categories: crimes against a person; crimes against property; crimes involving a controlled substance; crimes against public order; crimes against public trust; and crimes against public safety. An attempt to commit an offense listed in Chapter IXA would be classified as Class C, if the attempted offense were in Class A or B; Class E, if the attempted offense were in Class C or D; or Class H, if the attempted offense were in Class E, F, or G.

A judge would have to determine the recommended minimum sentence range by finding the offense category and scoring only the appropriate offense variables, and all prior record variables. (The bill identifies 19 different offense variables and seven prior record variables.) The judge would have to use the appropriate sentencing grid in the bill to determine the recommended minimum sentence range.

The bill includes a grid of minimum sentence ranges for each offense class (M2 and A through H). If a statute mandated a minimum sentence, the court would have to impose sentence in accordance with that statute. Imposing a statutory mandatory minimum sentence or a sentence that exceeded the recommended sentence range, but was less than the mandatory minimum sentence, would not be considered a departure from the sentencing guidelines' minimum sentence range.

Under the Code, if the upper limit of the minimum sentence under statutory sentencing guidelines is 18 months or less, the court must impose an intermediate sanction (i.e., a sanction other than imprisonment in a State prison) unless the court finds a substantial and compelling reason to sentence the individual to the jurisdiction of the Department of Corrections. The bill specifies that an intermediate sanction could include a jail term that did not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever was less. The bill also provides that, if a drug offense involved less than 50 grams of a Schedule 1 or 2 narcotic or cocaine, and the upper limit of the recommended minimum sentence range were 18 months or less, the court would have to impose a sentence of life probation, absent a departure. In addition, the bill would provide for the imposition of an intermediate sanction, with or without imprisonment, for an attempt to commit a Class H felony punishable by imprisonment for more than one year, depending upon the sentencing guidelines' minimum sentence range.

The bill would prohibit a court from imposing a minimum sentence, including a departure from the

sentencing guidelines' minimum sentence range, that exceeded two-thirds of the statutory maximum sentence (which would codify the "Tanner Rule" established by case law).

MCL 769.8 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 825 (S-1) could provide potential State cost savings. However, Senate Bills 826 (S-2) and 827 (S-1) could result in additional State costs for the incarceration of additional prisoners within the prison system. The local government impact is indeterminate, because an impact statement on local government was not prepared by the Sentencing Commission.

Two consultants, Dr. Charles Olstrom, Michigan State University, and Dr. James Austin, National Council on Crime and Delinquency, were hired by the Sentencing Commission to evaluate the impact on the State prison population of the proposed sentencing guidelines incorporated in Senate Bill 825 (S-1) and the provisions, commonly known as truth-in-sentencing, incorporated in Senate Bills 826 (S-2) and 827 (S-1) (see [Table 1](#)). However, the estimates of the Sentencing Commission's consultants may potentially be affected by changes made during the drafting of the recommendations into legislation and amendments adopted during review by the Judiciary Committee.

The consultants have estimated, based on the assumptions adopted by the Sentencing Commission and current trends in admissions and paroles, that the *baseline* prison population will increase by 19,821 prisoners or 43.8% over the next 10 years without enactment of the proposed legislation. At the end of the 10-year period, with the sentencing guidelines enacted as recommended by the Sentencing Commission, the prison population would decrease by 700 prisoners, or 1.0%. If truth-in-sentencing provisions were extended to all crimes, however, the prison population would increase by 7,241 prisoners or 11.1% more than the baseline estimate over the 10-year period. The recommended sentencing guidelines and truth-in-sentencing together would increase the prison population by 6,541 prisoners or 10.1% over the next 10 years.

Assuming that the prison population security level mix and the average 1997 operating costs by security level remain constant for 10 years, in FY 2007, the operating costs for the baseline prison population will be an estimated \$1.6 billion or approximately \$500 million above the current-year level. The operating cost, in 10 years, with enactment of Senate Bill 825 (S-1) would decrease by about \$17 million, whereas the enactment of Senate Bills 826 (S-2) and 827 (S-1) only, would increase operating costs by about \$179 million. Overall, prison operating costs would increase by \$162 million over baseline estimates in 10 years, if all of the proposed legislation were enacted.

Operating costs do not include the cost the State would incur for prison construction. Assuming that the prison system is out of capacity at the end of 1997, and that each additional prison would house about 1,000 prisoners, to incarcerate the prison population projected by the Sentencing Commission's consultants, seven additional prisons would have to be built in addition to the 20 prisons needed to incarcerate the baseline population. In FY 1998 dollars, it is estimated that a new minimum security, pole barn-type prison facility costs about \$25 million. A maximum security facility in FY 1998 dollars, costs about \$65 million to \$75 million.

The addition of 30 crimes included in Senate Bill 825 (S-1), but not in the Sentencing Commission's recommendations, the additional criteria for screening offenders, and the change to category C sentences for attempted A and B crimes were subsequent to the projections by the Sentencing Commission's consultants. Also, basing a 10-year projection on current trends may affect the accuracy in the long run. Some of the assumptions of the Sentencing Commission should be considered, because, to the extent that any of these assumptions fails to hold true, the actual prison

population could differ from the projection.

- 1) The proposed guideline sentences were applied to new court commitments and parole violators with new sentences, omitting probationers with new sentences.
- 2) Probation admissions (both new sentences and technical violators) were held at the 1994 level, because information about these admissions is not available in the Department of Corrections database.
- 3) The Sentencing Commission assumed that the guidelines would take effect on or after January 1, 1999. However, the truth-in-sentencing provisions would immediately return about 600 prisoners incarcerated in community centers to the prison system.
- 4) Based on a survey of five courts, the consultants concluded that for crimes in categories A, B, and C, crimes with the longest maximum sentence, judges would impose a sentence lower than recommended.
- 5) The Sentencing Commission has assumed that prisoners will serve on average 113% of their minimum sentence under truth-in-sentencing.

Calendar Year	Sentencing Guidelines (SB 825)	Truth-in-Sentencing (SB 826 and 827)	Sentencing Guidelines and Truth-in-Sentencing (SB 825, 826, and 827)
1997			
1998			
1999	179	107	286
2000	(211)	189	(22)
2001	(715)	708	(7)
2002	(1,214)	1,993	779
2003	(1,233)	2,505	1,272
2004	(1,391)	3,033	1,642
2005	(1,326)	3,880	2,554
2006	(1,138)	4,618	3,480
2007	(700)	5,667	4,967

Source: Austin, James and Naro, Wendy, "Michigan Sentencing Commission Proposed Guidelines/Truth-in-Sentencing Prison Population Impact Assessment", October 16, 1997

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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.