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BILL ANALYSIS



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Senate Bill 1109 (as introduced 5-2-12)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 5-10-12

CONTENT

The bill would amend the Code of Criminal Procedure to require a sentence of at least 25 years' imprisonment if the offender had been convicted of three or more felonies and subsequently were convicted of a "serious crime".

The Code provides for enhanced sentencing for a person who commits a felony in Michigan and who has previously been convicted of a felony or an attempt to commit a felony in this or another state. If a person has been convicted of any combination of three or more felonies or attempts to commit felonies in this or another state, and commits a subsequent felony in Michigan, the person must be punished as follows:

- If the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term of five years or more, or for life, the court may sentence the person to imprisonment for life or for a lesser term.
- If the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term that is less than five years, the court may sentence the person to imprisonment for a maximum term of not more than 15 years.
- If the subsequent felony is a major controlled substances offense, the person must be punished as provided under Part 74 of the Public Health Code.

Under the bill, in addition to those enhanced sentencing provisions, if the subsequent felony were punishable upon a first conviction by imprisonment for a serious crime or a conspiracy to commit a serious crime, the court would have to sentence the person to imprisonment for not less than 25 years.

"Serious crime" would mean any of the following offenses against a person:

- Assault with intent to commit murder.
- Assault with intent to do great bodily harm less than murder.
- Assault with intent to maim.
- Armed or unarmed assault with intent to rob and steal.
- Second-degree murder.
- Manslaughter.
- Kidnapping.
- Hostage-taking by a prisoner.
- Kidnapping a child under the age of 14.
- Mayhem.

- First-, second-, or third-degree criminal sexual conduct (CSC), or assault with intent to commit first- or third-degree CSC.
- Use or possession of a dangerous weapon, or use of force or violence, assault, or putting a person in fear, in the course of committing felony larceny of money or other property.
- Carjacking.

MCL 769.12

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate, but likely significant fiscal impact on State government. In 2011, 2,810 offenders received court dispositions for the serious felonies enumerated in the bill. Of those offenders, 516 (18.4%) had at least three prior felony dispositions. Of those 516 offenders:

- 9% were sentenced to sanctions other than prison.
- 74% were sentenced to prison for a minimum term shorter than 25 years.
- 15% were sentenced to prison for a minimum term longer than 25 years.
- 2% were sentenced to life in prison.

Therefore, in 83% of the cases, the proposed minimum sentence of 25 years potentially could be applicable and could result in the need for additional bed space in the State prison system at some point over the 25-year period that the policy would be phased in (relative to bed space needs based on the status quo). It is possible that the need for additional bed space would be met by forgone closures instead of new or reopened facilities. If reopening facilities, building new facilities, or making improvements to existing facilities were necessary to accommodate bed space needs, there could be an indeterminate increase in capital costs.

According to the Attorney General Criminal Justice Bureau, only 41 (8%) of the 516 offenders who were convicted of one of the enumerated felonies in 2011 and also had a prior record containing at least three felonies of any variety were *actually charged as* habitual offenders under Section 12, Chapter IX of the Code of Criminal Procedure (the section the bill would amend). Also according to the Bureau, these 41 offenders were given an average minimum sentence of 13 years. Extrapolating from this average, the main fiscal impact would not be felt until after the 13th year. For the 14th year the State would see annual increased costs shown below:

41 offenders x \$34,000 average per capita cost = \$1.394 million in year 14

In each of 11 years thereafter, the costs would continue to increase by \$1.394 million per year until reaching stability after the 25th year, as follows:

- Year 15: \$1.394 million + \$1.394 million = \$2.788 million
- Year 20: \$1.394 million x 7 years = \$9.758 million
- Year 25 and thereafter: \$1.394 million x 12 years = \$16.728 million

According to the Prosecuting Attorneys Coordinating Counsel, the prosecutors have full discretion whether to charge the offender as a habitual offender. Therefore, simply because an offender with three prior felonies was convicted of a felony enumerated in this bill, the 25-year minimum sentence would not automatically apply. Instead, it would apply only in cases in which the prosecutor decided to add the habitual-offender enhancement described in Section 12, Chapter IX of the Code of Criminal Procedure.

If the prosecutor did decide to add this enhancement and won a conviction, it is then that this bill would have an impact by mandating that the judge provide for a sentence of not

less than 25 years' imprisonment. Under current law, if the prosecutor adds the sentence enhancement in Section 12, the judge may issue a sentence of up to life (depending on the offense), but the judge also may provide for a minimum sentence of much less than 25 years. If this bill were enacted, it is not known whether prosecutors would be more or less likely to pursue the habitual-offender enhancement. Currently, they add the enhancement to 8% of eligible cases (but it is likely that they consider adding the enhancement, but later remove it from consideration as part of a plea bargain, which is how most convictions are achieved).

The Michigan Department of Corrections (MDOC) Office of Research and Planning, using the 516 fourth-time offenders who could potentially be affected by the bill as a basis, provided estimates for the number of additional beds that could be required under the bill. These bed estimates were then used to calculate potential fiscal impact estimates using an average annual cost per prisoner of \$34,000, as shown in Table 1. These numbers should be viewed as an upper limit to the cost of the bill, because this would be the case if the prosecutors chose to add the habitual-offender enhancement in every eligible case.

Table 1

	Additional Beds Needed	Potential GF/GP Fiscal Impact (Annual)
1 year from enactment	47	\$1.6 Million
5 years from enactment	487	\$16.6 Million
10 years from enactment	1,637	\$55.7 Million
15 years from enactment	3,289	\$111.8 Million
20 years from enactment	5,253	\$178.6 Million
25 years from enactment	7,374	\$250.7 Million

The impact of the bill would grow over time until stabilizing after 25 years. The impact in the first year would be small because the bill would affect only the 9% of offenders who would not have otherwise been sentenced to prison. Over the next 24 years, the other 74% of habitual offenders included under the bill would be affected by longer stays than they otherwise would have been mandated to serve. For example, if under the status quo an offender were sentenced to a 20-year minimum sentence, the fiscal impact of the sentence enhancement would not be reflected until the 21st year.

The estimates provided above are contingent on a number of important assumptions. First, they assume that 2011 was a typical year, in terms of the number of fourth-time offenders and their sentencing outcomes. According to the MDOC Office of Research and Planning, 2011 was 20% below the peak for number of felony dispositions.

Second, the estimates assume stable crime and arrest rates, as well as uniform charging and plea bargaining practices. People are dynamic in the ways they react to policy change, so the second assumption is unlikely to be realistic. When faced with a 25-year mandatory minimum, fourth-time felony offenders would be likely to invest heavily in legal assistance (if they had the resources to do so) and also would have a greater propensity to accept plea bargains (which could be for lesser charges, or for the same charges but without the sentence enhancement). Increased propensity to take plea bargains would have an ambiguous effect on the fiscal impact, as it would allow offenders to avoid the 25-year minimum but could cause them to take longer sentences than they would otherwise in the absence of the proposed bill.

Third, the estimates assume that under the status quo, when the fourth-time felons get out of prison, they stay out of prison for the remainder of the 25-year period. The most recent three-year recidivism rate is 31.5%, so this assumption is also unlikely to be realistic. However, it is very difficult to estimate how long the recidivist will serve, as it could be for a

technical violation or it could be for a new sentence (for crimes of widely varying severity). This number could be reflected in a reduction in the crime rate as more habitual offenders are removed from what can sometimes be a revolving door between prison and the civilian world.

Both prosecutors and offenders would likely change their behavior in light of the proposed policy change, and as a result it is difficult to give more precise estimates of the fiscal impact. In any case, the fiscal impact would be relatively small in the first several years and then grow to stabilization after 25 years. The annual fiscal impact after stabilization could be as small as \$20.0 million, but it is possible that it could be over \$100.0 million. The key variable that would cause the costs to increase is the percentage of cases in which the prosecutor would add the sentence enhancement. The more aggressive prosecutors became in adding the enhancement, the higher the fiscal impact would likely become. Despite the back-loaded cost structure that would grow over a 25-year period, any repeal of this amendment also would take up to 25 years for its full impact to be realized.

Fiscal Analyst: Dan O'Connor

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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.