

ALLOW PERSON CONVICTED OF FIRST DEGREE MURDER TO BE HELD IN STATE PRISON BEFORE SENTENCING

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Senate Bill 406 (S-1) as reported from House committee

Sponsor: Sen. Tom Barrett

House Committee: Judiciary

Senate Committee: Judiciary and Public Safety

Complete to 6-30-22

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

(Enacted as Public Act 149 of 2022)

BRIEF SUMMARY: Senate Bill 406 would require a person convicted of first degree murder to be committed to the jurisdiction of the Department of Corrections before sentencing under certain circumstances.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state and local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

A person who is convicted of first-degree murder is subject to a mandatory sentence of imprisonment for life without parole. However, the person does not immediately go to prison. Instead, the person is held in the county jail until sentencing and then continues to wait in jail after sentencing for paperwork to be finalized before being transported to the jurisdiction of the Department of Corrections. Sheriffs contend that these individuals pose greater risks to local jails, which may not be equipped to manage individuals who are given life sentences and may act violently. Legislation has been offered to allow individuals convicted of first degree murder to be housed in prisons, rather than jails, after conviction and before sentencing, to avoid any unnecessary dangers.

THE CONTENT OF THE BILL:

Senate Bill 406 would amend the Michigan Penal Code to require that a person convicted of first degree murder be committed to the jurisdiction of the Department of Corrections before sentencing under certain circumstances.

Under the bill, immediately following a conviction of first degree murder, a court would have to enter an order committing the convicted person to the jurisdiction of the Department of Corrections for incarceration in a state correctional facility while awaiting sentencing. The order would have to be entered using a form created by the State Court Administrative Office (SCAO) for that purpose. However, the order would become effective only if both of the following apply:

- The sheriff agrees to transport the convicted person for final sentencing from the Department of Corrections facility to the county and back again.
- The convicted person was at least 18 years old at the time the offense was committed.

A court would have to hold the sentencing hearing no more than 45 days after a person is committed to the Department of Corrections.

MCL 750.316

HOUSE COMMITTEE ACTION:

The House Judiciary committee reported the Senate-passed version of the bill without amendment.

BACKGROUND INFORMATION:

First-degree murder

Section 316 of the Michigan Penal Code defines first degree murder as any of the following:

- Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.
- Murder committed in the perpetration of, or attempt to perpetrate, arson, criminal sexual conduct in the first, second, or third degree, child abuse in the first degree, a major controlled substance offense, robbery, carjacking, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, kidnapping, vulnerable adult abuse in the first or second degree, torture, aggravated stalking, or unlawful imprisonment.
- Murder of a peace officer or corrections officer committed while he or she is lawfully engaged in the performance of any of his or her duties as a peace officer or corrections officer, knowing that he or she is a peace officer or corrections officer engaged in the performance of his or her duty as a peace officer or corrections officer.

Other bills

Senate Bill 406 (S-1) as passed by the Senate is identical to HB 4719 (S-1) as reported from the Senate Committee on Judiciary and Public Safety. The bill differs from HB 4719 (H-1) as passed by the House¹ in that SB 406 extends the time by which a sentencing hearing post-conviction would have to be held from 30 days to 45 days. In addition, SB 406 would require the court to enter the order requiring the immediate transport using a form created by SCAO and would condition the order's effectiveness on whether the sheriff "agrees to" (rather than "will") provide the prisoner's transport.

FISCAL INFORMATION:

Senate Bill 406 would have an indeterminate fiscal impact on the state and on local units of government. Provisions of the bill would result in a shift of costs from local county jails to the state correctional system. Individuals convicted of first degree murder would no longer be detained in county jails while waiting to be sentenced to prison, if the county sheriff agrees to transport a convicted individual from a county court to a correctional facility, then back to the court for final sentencing, and from the county court back to the state correctional facility after sentencing, and if convicted individuals were at least 18 years of age at the time offenses were committed.

Counties would realize a savings from no longer having to detain these offenders while they await sentencing, but would incur additional costs for having to transport these offenders to and from state correctional facilities/county courts for final sentencing. Savings to county jails for not housing these offenders is indeterminate, as costs of incarceration in county jails and

¹ <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4719-F74C9E1E.pdf>

how those costs are financed vary by jurisdiction. Costs to counties for transportation would depend on a number of factors, including the number of occurrences, travel distances, fuel prices, etc.

The Department of Corrections would incur costs for having to house these offenders sooner. In fiscal year 2021, the average cost of prison incarceration in a state facility was roughly \$44,400 per prisoner, a figure that includes various fixed administrative and operational costs. Those costs are financed with state general fund/general purpose revenue.

Also, under the bill, SCAO would be required to create a form to be used to commit convicted individuals, without imposing a sentence, to the jurisdiction of the Department of Corrections. Costs would be incurred by SCAO for creation and distribution of the form to courts, although it is anticipated that those costs would be negligible and be able to be covered by existing appropriations.

ARGUMENTS:

For:

Supporters of the bill argue that individuals who are given a life sentence pose great risks to local jails. These individuals can act out and become violent toward themselves or others for various reasons, and having the more stable environment of a prison, which is equipped to house individuals for a long period of time, would be best for the safety of both the individual and officers. Further, although the bill requires a court to order the prisoner to be transported immediately to a state prison upon conviction, a sheriff would have discretion to decide whether to keep that prisoner in jail until the sentencing date or immediately transport the prisoner to a prison.

Against:

Critics of the proposal raised concerns over the increased transportation to and from court that would occur. Individuals are currently housed in local jails to be closer to, or sometimes even in, the courthouse where their hearings take place. Prisons are often located hours away, which would require more transportation coordination and could present the danger of individuals acting out while on the road.

POSITIONS:

The Michigan's Sheriffs' Association indicated support for the bill. (6-21-22)

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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.