



**House
Legislative
Analysis
Section**

SENTENCING GUIDELINES

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House Bill 4114
Sponsor: Rep. Perry Bullard
Committee: Judiciary

Complete to 5-19-89

A SUMMARY OF HOUSE BILL 4114 AS INTRODUCED 2-7-89

The bill would amend the Code of Criminal Procedure to ratify existing felony sentencing guidelines issued by the Michigan Supreme Court, specify criteria for any guideline amendments, identify the supreme court as the body to make guideline amendments, and establish an advisory committee to study sentencing issues and make recommendations on guidelines. A court could depart from a guideline sentence only if it had a substantial and compelling reason to do so; the court's reasons would have to be stated on the record. The bill would provide for prosecutorial and defense appeals on sentences that did not follow guidelines. The bill would take effect April 1, 1990. A more detailed explanation follows.

Guidelines; amendments. Generally, all sentences for a felony committed on or after the bill's effective date would have to follow the sentencing guidelines in effect on the date the felony was committed (departures from the guidelines would be allowed for "substantial and compelling" reasons). A term of incarceration would not preclude the imposition of fines, restitution, or costs. The sentencing guidelines promulgated by the Michigan Supreme Court administrative order 1988-4 would be "ratified and approved." The bill would state that the supreme court would be granted the authority to amend the guidelines.

Any amendments would have to do the following: reduce sentencing variations based on factors other than offense and offender characteristics, and assure that offenders with similar offense and offender characteristics received substantially similar sentences; be proportionate to the seriousness of the offense and the offender's prior criminal record (generally, an offense involving violence against a person would be more severe than other offenses); provide for protection of the public; and, specify the various circumstances under which incarcerative and nonincarcerative sanctions were proper. In addition, new guidelines would have to be within the minimum and maximum allowed by law, and could not cause the rated design capacity of state and local correctional facilities to be exceeded.

Advisory committee. A ten-member sentencing advisory committee, to be appointed by the governor, would be established within the state court administrative office. The committee would consist of three judges (including at least one circuit court judge and one recorder's court judge), plus representatives of prosecuting attorneys, the criminal defense bar, the Department of Corrections, the law enforcement community, programs that promote alternatives to incarceration, prisoner advocates, and the general public. The member representing the general public would be the chairperson. The governor could remove a member for cause, which would have to be explained in writing to the committee and the member. Terms would be four years. Members would not receive salaries, but would be reimbursed for expenses. Committee business would be subject to the Open Meetings Act and the Freedom of Information Act.

The committee would assemble and disseminate information on state and local felony sentencing practices and prison and jail utilization; conduct research on sentencing guidelines developed by the committee; compile data and make projections on populations and capacities of state and local correctional facilities; in cooperation with the state court administrator, compile data and make projections on the effect of sentencing guidelines on case loads, docket flow, and case backlogs in Michigan.

The committee could recommend guidelines and modifications to guidelines. In doing so, the committee would have to consider sentencing and release practices, prison and jail capacity and population, court docket management, prosecutorial charging discretion, and the protection of the public.

Departures from guidelines. A court could depart from the guidelines if it had a substantial and compelling reason for doing so. Its reason(s) would have to be stated on the record. The following factors would be explicitly disallowed as purposes for departing from guidelines: gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed legal counsel, and religion.

Release from prison. If the court imposed a prison term, it would state on the record the earliest time the defendant would be eligible for release under corrections department policies.

Appeals. Immediately upon sentencing, the court would advise the defendant of the right to appeal a sentence that departed from the appropriate guideline sentence. The prosecution could appeal a sentence that was less than the guideline sentence. Appeals would be to the court of appeals, which would remand the sentence back to the sentencing judge or another trial court if it found that the judge did not have a substantial and compelling reason for departing from guidelines. Upon remand, the trial court could only lower a sentence appealed by the defense, and increase a sentence appealed by the prosecution. An appeal would not act as a stay on the execution of the sentence.

Community corrections. If a recommended minimum sentence under the guidelines was 12 months or less, and the court was imposing a term of incarceration, the court would have to place the defendant in a community corrections program established under the Community Corrections Act, providing such community placement was available.

MCL 769.24 et al.