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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bills 356 through 359

Sponsor: Senator Jack Welborn (Senate Bills 356 and 358)

Senator Christopher D. Dingell (Senate Bills 357 and 359)

Committee: Criminal Justice and Urban Affairs

Date Completed: 5-9-89

SUMMARY OF SENATE BILLS 356 through 359 as introduced 4-20-89:

The bills would amend various acts to designate certain violent or drug-related felonies as "heinous crimes" if the commission of those offenses caused "serious injury" to the victim; to provide for the sentencing of persons convicted of heinous crimes either to life in prison without parole or as required under current law; and to provide for the periodic review of the record of persons imprisoned for life without parole for a heinous crime conviction.

"Serious injury" would mean "great bodily harm that creates a substantial risk of death or serious permanent disfigurement, or that seriously and permanently impairs the health or function of the body, or that causes substantial impairment of any bodily part".

Senate Bill 356

The bill would amend the Michigan Penal Code to specify that various felonies, which are punishable by life in prison or any term of years, would be considered heinous crimes, punishable by life imprisonment without eligibility for parole or as required under current law, if the commission of the crimes caused serious injury to the victim. Felonies subject to such designation would include all of the following:

- Armed assault, or armed assault that results in the theft of money or other property (MCL 750.89 or 750.529).
- Attempted murder by poisoning, drowning, strangling, or any means that does not constitute the crime of assault with intent to murder (MCL 750.91).
- Solicitation to murder (MCL 750.157b).
- Placing gun powder or any other explosive substance in, upon, under, against, or near a building or object "with intent to destroy, throw down, or injure the whole or any part of a building or object" (MCL 750.328).
- Forcibly or secretly confining or imprisoning a person within this State against his or her will, forcibly sending a person out of this State, or forcibly seizing, confining, inveigling, or kidnapping a person with the intent to extort money or any other valuable thing (MCL 750.349). (The bill would add intent to extort a political objective to this offense.)
- The taking of a hostage by a prisoner by means of threats, coercion, intimidation, or physical force (MCL 750.349a). (The bill specifies that a sentence imposed for such a violation would have to be served as a consecutive sentence.)

The bill also would designate as a heinous crime, subject to imprisonment for life without parole, the second degree murder of a peace officer or Department of Corrections or jail employee who was acting in the line of duty. In addition, a person who committed criminal sexual conduct in the first degree and either overcame the victim through physical force or physical violence or caused personal injury to the victim, and knew or had reason to know that the victim was mentally incapable or incapacitated or physically helpless, would be guilty of a heinous crime, punishable by life in prison without parole.

MCL 750.89 et al.

Senate Bill 357

The bill would amend the Code of Criminal Procedure to outline a procedure for determining whether a person convicted of a crime punishable as a heinous crime would be sentenced to life in prison without parole or as otherwise provided by law.

On the motion of the prosecuting attorney, the court would have to conduct a separate sentencing proceeding to make that determination. A proceeding would have to be conducted by the trial judge and before the trial jury as soon as practical after the conviction. If the trial jury were not available, however, the judge could impanel a special jury. If the trial jury were waived, or the defendant pled guilty, the sentencing proceeding would have to be conducted before a special jury impaneled for the proceeding unless the defendant waived the recommending jury. In the hearing, evidence could be presented "as to any matter...relevant to the nature of the crime" or to the defendant's character. Relevant evidence would include any evidence that related to the bill's "aggravating circumstances" or "mitigating circumstances".

Aggravating circumstances would include any of the following:

- The crime was committed while the offender was imprisoned.
- The defendant previously was convicted of a violent felony.
- The defendant knowingly created a great risk of death to others.
- The crime was committed to avoid or prevent an arrest or to effect an escape from custody.
- The crime was committed for financial gain.
- The crime was committed to disrupt or hinder the exercise of a governmental function or the enforcement of a law.
- The crime was unusually heinous, atrocious, or cruel.

Mitigating circumstances would include any of the following:

- The defendant had no significant history of criminal activity.
- The crime was committed by the defendant while under the influences of extreme mental or emotional disturbance.
- The victim participated in the defendant's conduct, or consented to the crime.
- The defendant was an accomplice to the crime and his or her participation was relatively minor.
- The defendant acted under extreme duress, or under the substantial domination of another person.
- The age of the defendant at the time of a murder.

After hearing all the evidence, the jury would have to deliberate and offer an advisory opinion to the court. The opinion would have to contain a statement as to whether sufficient aggravating circumstances existed to justify a life sentence without parole; whether sufficient mitigating circumstances existed to outweigh the aggravating circumstances; and whether the defendant should be sentenced to life without parole.

The court, after weighing the aggravating and mitigating circumstances, would have to sentence the defendant regardless of whether a majority of the jury recommended a life sentence without parole. If the court imposed such a sentence, it would have to set forth in writing the finding upon which the sentence was based. The sentence would have to be supported by findings of fact that were based on the aggravating and mitigating circumstances specified in the bill, the records of the trial and the sentencing proceeding, and a finding that sufficient aggravating circumstances existed to support a sentence of life without parole and that the mitigating circumstances did not outweigh the aggravating circumstances.

Proposed MCL 769.1e

Senate Bill 358

The bill would amend the Public Health Code to specify that various felonies would be considered heinous crimes, punishable by life imprisonment without eligibility for parole or as required under current law, if the commission of the crimes caused serious injury to the victim. Felonies subject to such designation would include all of the following:

- The manufacture, delivery, or possession with intent to manufacture or deliver of a controlled substance; or the dispensation, prescription, or administering of a controlled substance by a licensed medical practitioner "for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant".
- The creation, delivery, or possession with intent to deliver of a "counterfeit substance or a controlled substance analogue intended for human consumption".
- A second offense under the Code's drug-related crimes Part.
- The recruiting, inducing, soliciting, or coercing of a minor, less than 17 years of age, by a person at least 17 years of age, to commit or attempt any act that would be a felony under the Code's drug-related crimes Part if committed by an adult.

Under current law, these offenses are subject to various lengths of incarceration and fine amounts.

MCL 333.7401 et al.

Senate Bill 359

The bill would amend Public Act 232 of 1953, the Department of Corrections law, to make certain administrative provisions for prisoners sentenced to life for heinous crimes.

The Act provides that a person sentenced to life or a term of years who has served at least 10 calendar years, is subject to the parole board's jurisdiction and can be released on parole. Excluded from this provision are those sentenced to life for first degree murder or to a minimum term of imprisonment for a major controlled substance offense. The bill would include within that exclusion prisoners sentenced to life for a heinous crime. The Act also requires that a prisoner serving a life sentence for first degree murder be interviewed by one member of the parole board after the prisoner has served four calendar years and biennially thereafter until the prisoner "is granted a reprieve, commutation, or pardon by the governor, or is deceased". The bill would add to that requirement the interview of prisoners serving a life sentence for a heinous crime.

MCL 791.234 and 791.244

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 356

The bill would result in an average lifetime total GF/GP expenditure increase of \$642,337 per prisoner beginning in FY 1993-94. Based on the Department of Corrections 1987 data presented in the table below, the State would not begin to incur the increased prison operation expenses from this bill for a period of 4.2 years.

This fiscal analysis is based on the following key assumptions:

- Average age of new prison commitments in 1987 was 25 years.
- Average life span of the prisoner population is 65 years.
- Average annual cost per prisoner is \$19,200 and no adjustment is made for inflation in future years.
- Capital Outlay considerations are not incorporated into the analysis.

<u>Felony Offense</u>	<u>MCL</u>	<u>Average Term</u>	<u>No.</u>	<u>Lifetime Additional Cost Per Prisoner</u>
Armed Assault to Rob	750.89	5.8	110	\$656,640
Armed Robbery	750.529	6.5	648	643,200
Attempted Murder	750.91	NA	0	0
Solicitation to Murder	750.157b	4.2	3	687,306
Bombing a Bldg. or Object	750.328	NA	0	0
Forcibly Confining a Person	750.349a	NA	0	0
Kidnapping	750.349	<u>13.4</u>	<u>21</u>	<u>510,720</u>
Weighted Average TOTAL:		6.6	782	\$642,337

Based on Department data for 1987.
Average Term is years served.

Based on the number of commitments and the distribution of felons by MCL class for 1987, the average length of sentence received would increase by 33.4 years, representing an increase of 406% from the current average of 6.6 years. The table highlights that the average lifetime additional cost per felon would be \$642,337 over the 33.4-year period. The additional costs range from \$510,720 for kidnapping to \$687,360 for solicitation to murder.

Senate Bill 357

The bill would have an indeterminate impact on State and local units of government.

Additional costs to the courts would depend on the number of times a trial judge impaneled a special jury to recommend a penalty for the convicted individual. The current per-diem rate for jurors is \$15. Assuming 12 jurors per trial, the cost to the State would be at least \$180 per day per trial.

Senate Bill 358

The bill would result in an average lifetime total GF/GP expenditure increase of \$691,968 per prisoner beginning in FY 1991-92. Based on the Department's 1987 data, the State would not begin to incur increased prison operating expenses from this bill for a period of 3.0 years.

This fiscal analysis is based on the same assumptions used for Senate Bill 356.

<u>Felony Offense</u>	<u>MCL^{b)}</u>	<u>Average Term</u>	<u>No.</u>	<u>Lifetime Additional Cost Per Prisoner</u>
Manufacture, Delivery or Possession with intent to Manufacture or Deliver Controlled Substance	333.7401	40	4 ^{a)}	0 ^{c)}
Creation, Delivery or Possession of Counterfeit Substance . . .	333.7402	3.0	2	710,400
Second Offense Under the Code's Drug-Related Crimes				
Article	333.7413	<u>4.6</u>	<u>3</u>	<u>679,680</u>
WEIGHTED AVERAGE TOTAL: .		20.0	9	\$ 691,968

- a) 635 commitments are presented in the Department's statistics book for MCL 333.7401; however, the Department reports that only four were committed for MCL 333.7401.
- b) A fourth MCL class is contained in Senate Bill 358, coercing a minor (333.7416); however, this MCL class did not become law until enactment of PA 17 of 1988.
- c) There would be no additional lifetime cost per prisoner for MCL 333.7401 because the current sentence is life without parole.

The table highlights that the average length of sentence received in 1987 for the three MCL classes was 20 years, which is heavily weighted by MCL 333.7401. Based on the provisions of Senate Bill 358, the average sentence served would increase by 20 years. The table highlights that the average lifetime additional cost per prisoner would be \$691,968 over the 20-year period.

Based on the worst case assumption, that 100% of the nine commitments in 1987 were convicted of heinous crimes, the total additional cost to the State would be \$3,459,840.

Senate Bill 359

The bill would have no fiscal impact on the State in FY 1989 - FY 1993 and an indeterminate expenditure increase thereafter. The indeterminate increase would be the result of requiring the parole board to interview prisoners sentenced for heinous crimes after the prisoner had served four calendar years and biennially thereafter until the prisoner "is granted a reprieve, commutation, or pardon by the governor, or is deceased".

Fiscal Analyst: B. Burghardt (S.B. 356, 358, 359)
F. Sanchez (S.B. 357)

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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.

SFA BILL ANALYSIS

Senate Bill 357

Analysis Summary

See SB 356

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See SB 356

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See SB 356