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SENTENCING GUIDELINES AMENDMENTS

House Bill 4640 as enrolled
Public Act 227 of 1999
Third Analysis (1-14-00)

Sponsor: Rep. Jennifer Faunce
House Committee: Criminal Law and
Corrections
Senate Committee: Judiciary

THE APPARENT PROBLEM:

When House Bill 5419 (Public Act 317 of 1998) was enacted into law on September 15, 1998, it was understood that the sentencing guidelines established by the legislation would occasionally need revision to add new crimes and to reflect revisions in existing crimes. In addition, since the bill was enacted several technical or drafting errors have been identified and should be corrected. For example, the sentencing guidelines allow a judge to depart from the sentence range set forth in the guidelines provided that sentencing judge has a substantial and compelling reason for the departure and makes an explanation of those reason on the record. However, as it stands, although the sentencing guidelines make an exception to this rule for the imposition of a mandatory minimum sentence, a judge is still required to explain an upward departure from the sentencing guidelines where the ordered sentence is between the statutory minimum and the sentencing guidelines ranges. Legislation has been introduced to cure this problem and several other typographical errors.

THE CONTENT OF THE BILL:

The bill would amend the statutory sentencing guidelines provisions of the Code of Criminal Procedure to:

*clarify that it would not be considered a departure from the sentencing guidelines to impose a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence;

*under prior record variable 7 (subsequent or concurrent felony convictions), clarify that a concurrent felony conviction would not be scored

if the conviction would result in a *mandatory* consecutive sentence;

*decrease the number of points (from 25 to 5) assigned under offense variable 13 (continuing pattern of criminal behavior) for an offense that was part of a pattern of felonious criminal activity involving 3 or more crimes against property;

*under offense variable 16 (property obtained, damaged, lost, or destroyed), eliminate inconsistent descriptions of property for assessing points by removing language that limits points assigned based upon the value of the "destroyed" property, and clarify that the points would be based on the value of the property involved in the crime, even if the property was not destroyed;

*where a recommended minimum sentence has an upper range of 18 months and a lower limit of 12 months or less, an intermediate sanction that includes a term of imprisonment for no less than the minimum range and no more than 12 months, remove the requirement that the term be for no less than the minimum range;

*clarify the language regarding visible impairment from the use of intoxicating liquor or a controlled substance or a combination thereof; and

*clarify the language regarding the scoring of offense variable one (aggravated use of a weapon), to count each person who was placed in danger *of* injury or loss of life as a victim. The current language reads "placed in danger *or* loss or injury."

MCL 769.34, 777.31, 777.43, 777.46, and 777.48

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FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could have an indeterminate impact on state and local costs. The bill's corrections to the provisions on the point system could affect the number of points assigned certain variables, and thus could affect the recommended minimum sentence. (1-14-00)

ARGUMENTS:

For:

The bill makes no significant changes to the sentencing guidelines legislation as enacted. The only substantive change is the language that would provide that a sentence that is higher than the recommended sentence range and lower than the mandatory minimum is not a departure that requires an explanation by the sentencing judge. Other changes -- for example, the elimination of inconsistent language in the descriptions of crimes -- are purely technical in nature and do not affect the substance of the sentencing guidelines act.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.