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**SFA****BILL ANALYSIS**

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House Bill 4640 (as passed by the House)  
Sponsor: Representative Jennifer Faunce  
House Committee: Criminal Law and Corrections  
Senate Committee: Judiciary

Date Completed: 8-4-99

### **CONTENT**

The bill would amend the Code of Criminal Procedure to make various revisions to the Code's sentencing guidelines provisions. The bill would do all of the following:

- Provide that imposition of a sentence under a statute that required a minimum sentence would not constitute a departure under the sentencing guidelines, if the sentence imposed exceeded the guidelines' recommended minimum range but were less than the mandatory minimum sentence.
- Remove a requirement that an intermediate sanction that included a term of imprisonment, under certain circumstances, not be less than the minimum recommended sentence range.
- Revise requirements for the assessment of offense variable points and the conditions of some of the offense variables.

#### Mandatory Minimum Sentences

The Code provides that if a statute mandates a minimum sentence, the court must impose sentence pursuant to that statute. The Code also states that imposing a mandatory minimum sentence is not a departure under the sentencing guidelines provisions. The bill specifies that imposing a mandatory minimum sentence or a sentence that exceeded the sentencing guidelines' recommended sentence range, but was less than the mandatory minimum sentence, would not constitute a departure under the sentencing guidelines provisions.

#### Intermediate Sanctions

The Code requires that intermediate sanctions be imposed under certain circumstances. If the upper limit of the sentencing guidelines' recommended minimum sentence exceeds 18 months and the lower limit of the recommended minimum sentence is 12 months or less, the court must sentence the offender, absent a departure, either to imprisonment with a minimum term within the guidelines' recommended range or to an intermediate sanction that may include a term of imprisonment of not less than the minimum range or more than 12 months. The bill would remove the requirement that a term of imprisonment imposed pursuant to an intermediate sanction be not less than the minimum range.

#### Offense Variables

The Code identifies different offense variables and assigns points to be scored when the guidelines' recommended minimum sentence range is calculated, depending on how a variable applies to a particular violation. Offense variable 13 is a continuing pattern of criminal behavior, and 25 points must be assessed when the offense was part of a pattern of felonious criminal activity involving three or more crimes against property. The bill would reduce the required number of points to five. (The Code also requires the assessment of 25 points for offense variable 13 when the offense was part of a pattern of felonious criminal activity involving three or more crimes against a person, and 10 points when the offense was part of a pattern of felonious criminal activity involving a combination of three or more crimes against a person or property.)

Offense variable 16 is property obtained, damaged, lost, or destroyed. The Code requires the assessment of five points if the "property destroyed" had a value of \$1,000 or more but not more than \$20,000 and the assessment of one point if the "property destroyed" had a value of \$200 or more but not more than \$1,000. The bill would refer to "property", rather than "property destroyed".

Offense variable 18 is vehicle operator ability affected by alcohol or drugs. The Code requires the assessment of five points if the offender operated a vehicle while he or she was visibly impaired by the use of intoxicating liquor *and* a controlled substance or a combination of intoxicating liquor *or* a controlled substance. The bill would change that provision to visibly impaired by the use of intoxicating liquor *or* a controlled substance or a combination of intoxicating liquor *and* a controlled substance.

MCL 769.34 et al.

Legislative Analyst: P. Affholter

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: K. Firestone