



**House
Legislative
Analysis
Section**

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**REVISE MANDATORY MINIMUMS
FOR DRUG SENTENCES**

**House Bill 5394 and 5395
Sponsor: Rep. Bill McConico
Committee: Criminal Justice**

Complete to 9-6-02

A SUMMARY OF HOUSE BILLS 5394 AND 5395 AS INTRODUCED 11-1-01

House Bill 5394 would amend the Public Health Code to revise the penalties for violations involving Schedule 1 and 2 narcotics and House Bill 5395 would place the revised penalties in the corresponding section of the sentencing guidelines contained in the Code of Criminal Procedure. Specifically, the bills would do the following:

House Bill 5394 would amend the Public Health Code (MCL 333.7401 and 333.7403) to remove mandatory consecutive sentences for certain drug violations, eliminate mandatory life probation for certain drug sentences, and allow for departures from mandatory minimum sentences for violations involving Schedule 1 and 2 narcotics.

Manufacture, delivery, etc. Currently, the health code prescribes mandatory minimum sentences for certain drug violations. The code makes it a crime to manufacture, create, deliver, or possess with the intent to do the same a controlled substance, a prescription form, an official prescription form, or a counterfeit prescription form. A violation involving a Schedule 1 or 2 narcotic in the amount of 650 grams or more is a felony punishable by imprisonment for life or any number of years, but with a mandatory minimum sentence of 20 years. The punishment for a violation involving between 225 grams and 649 grams is a mandatory minimum sentence of 20 years and a maximum sentence of 30 years; for a violation involving between 50 and 224 grams the punishment is a mandatory minimum sentence of 10 years and a maximum of 20 years; and a violation involving less than 50 grams of the substance is punishable by a mandatory minimum sentence of one year imprisonment and a maximum of 20 years and a possible fine of not more than \$25,000, or the offender may be placed on probation for life.

The bill would remove the punishment of life probation for an offense involving less than 50 grams of a Schedule 1 or 2 narcotic and replace it with a period of probation not to exceed five years. In addition, for each of the above offenses, the court would be allowed to depart from the minimum term of imprisonment if the court found on the record that there were substantial and compelling reasons to do so. For juveniles being sentenced under the Probate Code and those between the ages of 14 and 17 who are within the jurisdiction of the circuit court, the court could also depart from the mandatory minimum sentences if the individual had no prior convictions for a felony offense or an assaultive crime and had not been convicted of another felony or assaultive crime that arose from the same transaction as the violation involving the Schedule 1 and 2 narcotics. (Currently, the above departures from the mandatory minimum sentences are allowed only for offenses involving 225 grams to 649 grams of a Schedule 1 or 2 substance.)

House Bills 5394 and 5395 (9-6-02)

Possession. Illegal possession of a Schedule 1 or 2 narcotic drug is a felony offense. Possession of 650 grams or more of a substance is punishable by life imprisonment; for a person 14 to 17 years of age who is within the jurisdiction of the circuit court or a person sentenced under the Probate Code, a court may impose a sentence of imprisonment for any term of years but with a mandatory minimum sentence of 25 years. For possession of 225 to 649 grams, punishment is a mandatory minimum sentence of 20 years and a maximum sentence of 30 years. For possession of 50 to 224 grams, punishment is a mandatory minimum sentence of 10 years and a maximum sentence of 20 years. Possession of 25 to 49 grams results in a mandatory sentence of at least one year and a maximum sentence of four years and a possible fine of not more than \$25,000; if placed on probation, probation is for life.

Instead, the bill would adopt similar changes to the current provisions regarding departures from mandatory minimum sentences as detailed above for the manufacture, delivery, etc. of Schedule 1 and 2 narcotics. (Note: As written, the bill contains an incorrect internal reference to the subsection that contains the new language permitting the sentencing departures and instead references a definition for the term “assaultive crime”. In addition, the bill would appear to maintain the current mandatory life sentence for adults possessing 650 grams or more of a Schedule 1 or 2 narcotic because the new language referencing the sentencing departures is inserted in a sentence pertaining only to juveniles adjudicated in the circuit court or sentenced under the Probate Code.)

Consecutive terms of imprisonment. Currently, the code states that a term of imprisonment imposed for a violation of Section 7401(2)(a) (manufacture, delivery, or possession with intent to manufacture, deliver, etc. of a controlled substance) or for a violation of Section 7403(2)(a)(i-iv) (possession of a Schedule 1 or 2 narcotic) must be served consecutively with any term of imprisonment imposed for the commission of another felony. Instead, the bill would allow a sentence imposed under a violation of Section 7401(2)(a) or Section 7403(2)(a)(i-iii) to run consecutively with a term of imprisonment imposed for another violation of either of these provisions if the court found by clear and convincing evidence that the defendant was a principal administrator, leader, or organizer of at least five other individuals in each of the violations and the defendant received substantial income within a 12-month period from those violations.

In determining whether the defendant was a principal administrator, leader, or organizer, the court would have to consider the following:

- whether the defendant exercised significant decision-making authority;
- the nature of the defendant’s participation in the commission of the crime;
- whether the defendant exercised a significant degree of participation in planning or organizing the offense;
- the nature and scope of the illegal activity; and,
- whether the defendant exercised a significant degree of control and authority over others.

In addition, current law includes possession of amounts between 25 and 49 grams in regards to requiring consecutive sentences. The bill would delete this category. (Generally, by

law, when multiple terms of imprisonment are imposed for more than one conviction, the sentences are served concurrently unless statute allows or requires a term of imprisonment for a specified crime to be served consecutively to the other sentence or sentences.)

Further, if the defendant were convicted of attempting or conspiring to violate Section 7401(2)(a)(i-iii) or Section 7403(2)(a)(i-iii) (manufacture, delivery, or intent to do the same and possession, respectively, of a Schedule 1 or 2 narcotic in the amounts of 650 grams, 225 to 649 grams, or 50 to 224 grams, respectively) and also was convicted of violating these same prohibitions, or if the convictions arose out the same course of criminal conduct, a court could not impose consecutive terms of imprisonment.

House Bill 5395 would amend the Code of Criminal Procedure (MCL 769.34, 771.1, and 771.2) to specify that if the statutory minimum sentence for a violation of Section 7401(2)(a)(i-iv) or Section 7403(2)(a)(i-iv) of the Public Health Code is within the sentencing range applicable to that defendant under sentencing guidelines or exceeds that range, then the court would have to sentence the defendant within the sentencing range established under the sentencing guidelines.

Further, under several provisions of the code, if a person is placed on probation for manufacturing, delivering, etc. or possession with the intent to do the same of less than 50 grams of a Schedule 1 or 2 narcotic, he or she must be placed on probation for life. The same is true for possession of Schedule 1 or 2 narcotics in amounts of 25 grams to 49 grams. The bill would change these provisions to probation for no more than five years.

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■ 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.