

DRUG SENTENCING REVISIONS



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FISCAL ANALYSIS

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HOUSE BILL 5394 as enrolled
HOUSE BILL 5395 as enrolled
HOUSE BILL 6510 as enrolled

ENROLLED ANALYSIS - 2/19/03
Analyst(s): Marilyn Peterson

Sponsor: Rep. Bill McConico
House Committee: Criminal Justice
Senate Committee: Judiciary

SUMMARY

The bills constitute a package of legislation that would revise sentencing for two major groups of controlled substances offenses: manufacture or delivery of narcotics or cocaine (MCL 333.7401), and possession of narcotics or cocaine (MCL 333.7403). In general, the bills would:

- Eliminate "mandatory" minimum terms of imprisonment, and provide for parole eligibility for offenders sentenced prior to the bills' effective date (HB 5394 and HB 6510).
- Increase the threshold amounts by which various offenses are distinguished (HB 5394).
- Allow, rather than require, consecutive sentencing for affected drug offenders (HB 5394).
- Provide for fines to be imposed as all or part of a sentence (HB 5394).
- Eliminate lifetime probation as a sentencing option, and provide for those who have served at least five years on lifetime probation to be released from probation (HBs 5394 and 5395).
- Change sentencing guidelines scoring to increase the number of points scored for certain offense variables, which, for affected offenders, would tend to increase the length of the minimum sentences recommended by sentencing guidelines and tend to increase the number of prison sentences (HB 5395).

In addition, HB 6510 would amend the Corrections Code to increase the statutory prisoner population caps at Scott Correctional Facility (from 860 to 880) and Western Wayne Correctional Facility (from 775 to 925), and to delete language that requires Scott to be used to house female prisoners only.

Overall, the bills would have an indeterminate fiscal impact on the state and local units of government, depending on how they affected prosecutorial charging practices, the numbers of prisoners released on parole, the size of the parole and probation caseload, the numbers of offenders committed to prison, and the length of time served by newly-sentenced offenders. In the short term at least, state costs deriving from additional bed space needs likely would be more than offset by savings realized through increased movement of prisoners to parole, elimination of mandatory consecutive sentencing, elimination of lifetime probation, and higher threshold amounts for the various offenses.

Additional details follow.

Guidelines scoring. Data provided by the Department of Corrections (MDOC) suggest that the proposed changes in offense variable scoring could gradually increase bed space needs by roughly 100 beds after the fifth year of implementation.

Consecutive sentencing. According to the MDOC, elimination of mandatory consecutive sentencing for newly-

sentenced offenders could gradually reduce prison bed space needs by up to 286 beds in five years, and up to 465 beds in 40 years, although this impact would be offset to the extent that consecutive sentencing continued to be utilized as a sentencing option.

Threshold amounts of substances. There are no data that indicate the actual amounts of substances involved in connection with various convictions; the actual amount involved can vary considerably from the charged amount. Thus, there are no data to indicate how the changes in the threshold amounts of controlled substances might affect the numbers of convictions obtained under each applicable section of law.

Lifetime probation. The MDOC has estimated the total number of offenders on lifetime probation to be 4,000 to 4,500. Although data suggest that use of lifetime probation has been increasing in recent years, it is not clear how many of the offenders currently on lifetime probation have served at least five years, how many of the probation violators coming to prison are lifetime probationers who have been on probation for more than five years.

Parole eligibility; savings. The MDOC has estimated that about 300 to 600 prisoners would be newly-eligible for parole under the bills, and thus could be released during the first few months after the bills took effect. (After that, comparatively small numbers of prisoners annually would be rendered eligible for parole, as their time served accumulated to the threshold levels specified in HB 6510.)

Near-term savings to the state for each prisoner paroled under the bills would depend on the security level prior to parole and the cost of parole supervision; annual GF/GP funding costs for minimum security prisons and camps are reported to be \$21,762, while GF/GP funding for parole and probation supervision is \$1,753 annually. Thus, assuming that those paroled under the bills were in minimum security placement prior to parole, savings to the state would be about \$20,000 GF/GP annually for each paroled prisoner. Assuming that 450 prisoners were paroled prior to October 1, 2003, and that those prisoners otherwise would have remained in prison through the next year, the parole eligibility features of the legislation could save the state about \$9.0 million in FY 2003-04. Ultimately, any FY 2003-04 savings would depend not only on the numbers and placements of prisoners paroled under the bills, but also on the impact that scoring changes and other sentencing revisions had on the numbers of drug offenders coming to prison.

Facility population restrictions. By easing restrictions on the use of Scott and Western Wayne correctional facilities (both of which currently house female prisoners), HB 6510 could enable more efficient use of existing bed space, and forestall the need to construct additional beds for females.