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House Bills 5394, 5395, and 6510 (as enrolled)  
Sponsor: Representative Bill McConico  
House Committee: Criminal Justice  
Senate Committee: Judiciary

**PUBLIC ACTS 665, 666, & 670 of 2002**

Date Completed: 1-15-03

**CONTENT**

**House Bills 5394, 5395, and 6510 amend the Public Health Code, the Code of Criminal Procedure, and the Corrections Code, respectively, to do all of the following:**

- **Eliminate mandatory minimum sentences for manufacturing, creating, delivering, possessing, or possessing with intent to manufacture, create, or deliver a Schedule 1 or 2 narcotic or cocaine, and revise the amount of drugs involved in those violations.**
- **Eliminate the sentence of probation for life and otherwise revise the sentences for the violations.**
- **Allow, rather than require, consecutive sentencing for the violations and another felony.**
- **Delete provisions prohibiting probation, suspension of sentence, and parole for the violations.**
- **Allow a person sentenced to lifetime probation before the bills' effective date, who served at least five years of that probationary period, to be discharged from probation.**

- **Revise the sentencing guidelines descriptions of drug violations.**
- **Require the scoring of sentencing guidelines points for certain offense variables.**
- **Allow the parole of people who were convicted before the bills' effective date of a violation involving less than 650 grams of a Schedule 1 or 2 narcotic or cocaine.**
- **Increase the maximum number of prisoners allowed at the Scott Correctional Facility and the Western Wayne Correctional Facility.**

The bills were tie-barred and will take effect on March 1, 2003.

**House Bill 5394**

The bill revises the penalties for manufacturing, creating, delivering, possessing, or possessing with intent to manufacture, create, or deliver ("possessing with intent") a Schedule 1 or 2 narcotic or cocaine, as shown in Table 1.

Table 1

Current Violation	Current Penalty	New Violation	New Penalty
650 grams or more	Life, or at least 20 years	1,000 grams or more	Life or any term of years and/or a max. fine of \$1 million
225-649 grams	20-30 years	450-999 grams	Up to 30 years and/or a max. fine of \$500,000
50-224 grams	10-20 years	50-449 grams	Up to 20 years and/or a max. fine of \$250,000
Less than 50 grams (manufacture, creation, delivery, or possession with intent)	1-20 years and a max. fine of \$25,000; or probation for life	Less than 50 grams (manufacture, creation, delivery, or possession with intent)	Up to 20 years and/or a max. fine of \$25,000

Table 1 (cont.)

Current Violation	Current Penalty	New Violation	New Penalty
25-49 grams (possession)	1-4 years and a max. fine of \$25,000; or probation for life	25-49 grams (possession)	Up to 4 years and/or a max. fine of \$25,000
Note: The penalty for possession of less than 25 grams remains up to 4 years' imprisonment and/or a maximum fine of \$25,000.			

Under the Public Health Code, a violation described in [Table 1](#) (except for possession of less than 25 grams) must be imposed to run consecutively to any term of imprisonment imposed for the commission of another felony. Under the bill, consecutive sentences are optional rather than mandatory.

The bill deletes provisions under which a person subject to a mandatory term of imprisonment for any of those violations is not eligible for probation, suspension of sentence, or parole during the mandatory term and may not receive a reduction in the mandatory term by any type of sentence credit reduction. The bill also deletes a provision allowing the sentencing court to depart from the mandatory minimum terms of imprisonment, under certain circumstances, for violations involving less than 650 grams. (The Code allows departure if there are substantial and compelling reasons, or for a juvenile tried and sentenced as an adult if the juvenile has not been convicted of a felony or an assaultive crime either previously or arising from the same transaction as the drug violation.)

Under the bill, if an individual has been sentenced before the bill's effective date to lifetime probation for manufacturing, creating, delivering, or possessing with intent less than 50 grams, or for possessing at least 25, but less than 50 grams, and the individual has served five or more years of that probationary period, the person's probation officer may recommend to the court that it discharge him or her from probation. If an individual's probation officer does not recommend discharge, the individual, with notice to the prosecutor, may petition the court for resentencing. The court then may discharge the individual from probation. An individual may file more than one motion seeking resentencing.

**House Bill 5395**

The bill removes from the Code of Criminal Procedure references to the sentence of probation for life that is eliminated under

House Bill 5394. The Code provides that the probationary period of a person placed on probation for life may not be reduced except by a revocation that results in imprisonment. Instead, House Bill 5395 specifies that the probationary period of a person sentenced to probation for life before the bill's effective date may not be reduced except by a revocation that results in imprisonment or as otherwise provided by law.

The bill also revises the sentencing guidelines descriptions for delivery, manufacture, or possession of a Schedule 1 or 2 narcotic or cocaine, by including the drug amount ranges specified in House Bill 5394.

In addition, House Bill 5395 requires a sentencing court to score 10 points for offense variable 13 (continuing pattern of criminal behavior) for manufacturing, creating, delivering, possessing with intent, or possessing 50 grams or more of a Schedule 1 or 2 narcotic or cocaine.

Under the bill, a sentencing court must score points for offense variable 15 (aggravated controlled substance offenses) for an offense involving manufacturing, creating, delivering, or possessing with intent a Schedule 1 or 2 narcotic or cocaine, as shown in [Table 2](#).

Table 2

An offense involving 1,000 or more grams	100 points
An offense involving 450 grams or more, but less than 1,000 grams	75 points
An offense involving 50 grams or more, but less than 450 grams	50 points
An offense involving 50 grams or more that was committed in a minor's abode, settled home, or domicile, regardless of whether the minor was present	10 points

Those scoring requirements replace current requirements that 20 points be scored for an offense involving the sale, delivery, or possession with intent to sell or deliver 225 grams or more of a Schedule 1 or 2 controlled substance, and that 15 points be scored for an offense involving the sale, delivery, or possession with intent to sell or deliver 50 or more grams but less than 225.

The bill retains a requirement that 25 points be scored for an offense involving the sale or delivery of a controlled substance, other than marijuana, by an offender who is at least 18 years old to a minor who is three or more years younger than the offender; that 10 points be scored for an offense involving the sale, delivery, or possession with intent to sell or deliver 45 kilograms or more of marijuana or 200 or more marijuana plants; and that five points be scored for an offense involving the delivery or possession with intent to deliver marijuana or any other controlled substance or a counterfeit controlled substance or possession of controlled substances or counterfeit controlled substances having a value or under circumstances that indicate trafficking.

### **House Bill 6510**

The bill provides for parole eligibility for people who were convicted, before the bill's effective date, of manufacturing, creating, delivering, possessing with intent, or possessing less than 650 grams of a Schedule 1 or 2 narcotic or cocaine.

Under the bill, a person convicted of a violation involving at least 225 but less than 650 grams is eligible for parole after serving the minimum of each sentence imposed for that violation, or 10 years of each sentence imposed, whichever is less. A person convicted of a violation involving at least 50, but less than 225 grams, is eligible for parole after serving the minimum of each sentence imposed for that violation, or five years of each sentence, whichever is less.

A person convicted of manufacturing, creating, delivering, or possessing with intent less than 50 grams, or of possessing at least 25 but less than 50 grams, and sentenced to a term of imprisonment that is consecutive to a term imposed for any other violation involving manufacture, delivery, or possession with intent of any quantity, or possession involving

25 grams or more, is eligible for parole after serving one-half of the minimum sentence imposed for each of the other violations. This provision does not apply, however, if the sentence was imposed for a conviction for a new offense committed while the individual is on probation or parole.

The bill requires the parole board to give notice to the prosecuting attorney of the county where the individual was convicted before granting parole under these provisions.

The bill also increases the maximum number of prisoners allowed at the Scott Correctional Facility and the Western Wayne Correctional Facility. Currently, the Code states that the maximum number of prisoners at the Scott Correctional Facility is 860 and the maximum at the Western Wayne Correctional Facility is 775. The bill increases those numbers to 880 for Scott and 925 for Western Wayne. The bill states that if a new housing unit is constructed within the security perimeter of either facility, the capacity limit listed in the bill for that facility is increased by the designated capacity of the new housing unit.

MCL 333.7401 & 333.7403 (H.B. 5394)  
769.34 et al. (H.B. 5395)  
791.220e & 791.234 (H.B. 6510)

### **BACKGROUND**

#### Public Acts 147 and 368 of 1978

Before 1978, delivery and possession with intent to deliver any amount of a Schedule 1 or 2 narcotic drug were punishable by up to 20 years' imprisonment and/or a maximum fine of \$25,000. Possession of any quantity was punishable by up to four years' imprisonment and/or a maximum fine of \$2,000. Public Act 147 of 1978 amended the former Controlled Substances Act to impose mandatory minimum sentences for the manufacture, delivery, possession with intent, or possession of a mixture containing a Schedule 1 or 2 narcotic or cocaine. Later that year, these provisions were incorporated into the recodified Public Health Code by Public Act 368 of 1978. The 1978 laws required a sentence of life imprisonment for a violation involving 650 grams or more of any mixture containing a Schedule 1 or 2 narcotic or cocaine; imprisonment for at least 20 but not more than 30 years for a violation involving 225 grams or more, but less than

650; either imprisonment for at least 10 years but not more than 20, or probation for life, for a violation involving at least 50, but less than 225 grams; imprisonment for up to 20 years and/or a maximum fine of \$25,000, for manufacturing, delivering, or possessing with intent to deliver less than 50 grams; and imprisonment for up to four years and/or a maximum fine of \$2,000, for possessing less than 50 grams.

The 1978 Acts required that a term of imprisonment for violations involving 50 grams or more be imposed to run consecutively to any term of imprisonment for the commission of another felony. They also specified that an individual subject to a mandatory term of imprisonment for a violation involving 50 grams or more was not eligible for probation, suspension of sentence, or parole during that mandatory term, except to the extent that the Acts allowed probation for life.

#### Public Acts 275 of 1987 and 47 of 1988

Public Act 275 of 1987 amended the controlled substances provisions of the Public Health Code to revise the mandatory terms of imprisonment enacted in 1978 for manufacturing, delivering, or possessing with intent to deliver a Schedule 1 or 2 narcotic or cocaine. The 1987 Act reduced from 20 to 10 years the minimum term for a violation involving at least 225, but less than 650 grams; reduced from 10 to five years, and removed the lifetime probation option, for a violation involving at least 50, but less than 225 grams; and set a one-year minimum term, or lifetime probation, for a violation involving less than 50 grams.

Under the 1987 Act, in addition to not being eligible for probation, suspension of sentence, or parole (except as permitted for lifetime probation), a person convicted of manufacture, delivery, possession with intent to deliver, or possession could not receive a reduction in the mandatory term by good time credits, disciplinary credits, or any other type of sentence reduction.

Similarly, Public Act 47 of 1988 revised the mandatory terms of imprisonment enacted in 1978 for possessing a Schedule 1 or 2 narcotic or cocaine. The 1988 Act reduced from 20 to 10 years the minimum term for a violation involving at least 225, but less than 650

grams; reduced from 10 to five years, and removed the lifetime probation option, for a violation involving at least 50, but less than 225 grams; set a one-year minimum term, or lifetime probation, for a violation involving at least 25, but less than 50 grams; and established a felony penalty of up to four years' imprisonment and/or a maximum fine of \$25,000 for a violation involving less than 25 grams.

Both Public Act 275 and Public Act 47 allowed a court to depart from the mandatory minimum terms of imprisonment, if the court found on the record that there were substantial and compelling reasons to do so.

#### Public Act 143 of 1989

Public Act 143 of 1989 amended the Public Health Code to double the mandatory minimum prison terms for manufacturing, delivering, possessing with intent to deliver, and possessing 50 grams or more of a Schedule 1 or 2 narcotic or cocaine. This, in effect, reinstated the mandatory minimum terms originally included in the 1978 recodification of the Public Health Code, and reversed the minimum sentence reductions enacted in 1987 and 1988.

#### *People v Bullock*, 440 Mich 15 (1992)

In 1992, in *People v Bullock*, the Michigan Supreme Court held that the statutory penalty of mandatory life in prison, without possibility of parole, for possession of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine constituted cruel or unusual punishment, which is barred by Article 1, Section 16 of the Michigan Constitution. As a result, the Court struck down portions of the law denying parole consideration for people sentenced to life for a possession violation involving 650 grams or more.

The U.S. Supreme Court had held in 1991 that a mandatory sentence of life without parole did not violate the U.S. Constitution, because the Eighth Amendment proscription against cruel and unusual punishment contains no guarantee of a penalty's proportionality to the crime. The Court ruled that, although severe mandatory penalties may be cruel, they are not unusual in the constitutional sense (111 S.Ct. 2680). In *Bullock*, however, the Michigan Supreme Court ruled that, since the Michigan Constitution prohibits cruel or

unusual punishment, while the Eighth Amendment to the U.S. Constitution bars punishment that is both cruel *and* unusual, the no-parole aspect of the mandatory life term for a possession offense violated the Michigan Constitution.

#### Public Acts 248 and 249 of 1996

Public Acts 248 and 249 of 1996 amended the Code of Criminal Procedure and the Public Health code, respectively, to provide for an alternative sentence for a juvenile tried and convicted as an adult of manufacturing, delivering, possessing with intent to deliver, or possessing 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine.

Under Public Act 248, for a juvenile tried and convicted without a juvenile court waiver hearing, the court was required to determine whether the public's best interests would be served by imposing a sentence of imprisonment for life without possibility of parole, by placing the juvenile on probation and committing him or her to a juvenile facility, or by imposing a sentence of at least 25 years' imprisonment. For a juvenile tried and convicted after the juvenile court waived jurisdiction, the court was required to determine whether the public's best interests would be served by imposing a sentence of imprisonment for life without possibility of parole or by imposing a sentence of at least 25 years' imprisonment.

Under Public Act 249, a juvenile could be punished by imprisonment for life or by imprisonment for any term of years, but not less than 25 years, if he or she had been convicted as an adult in a court of general criminal jurisdiction, with or without a juvenile court waiver hearing, or had been tried and convicted as an adult by the juvenile court.

In addition, Public Act 249 specified that the sentencing court could depart from the mandatory minimum term of imprisonment for a violation committed by a juvenile tried as an adult and involving less than 650 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine, if the individual had not previously been convicted of a felony or an assaultive crime and had not been convicted of another felony or assaultive crime arising from the same transaction as the drug violation.

#### Public Acts 314 and 319 of 1998

Public Act 314 of 1998 amended the Department of Corrections law (now known as the Corrections Code) to provide for parole eligibility for people previously sentenced to imprisonment for life without possibility of parole for manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine. Under Public Act 314, such a person comes under the parole board's jurisdiction after serving 20 years, if he or she has another conviction for a serious crime, or after serving 17½ years, if he or she does not have another conviction for a serious crime. Also, a prisoner may be released on parole 2½ years earlier than otherwise allowed, if the sentencing judge or the judge's successor determines on the record that the prisoner has cooperated with law enforcement.

Public Act 319 of 1998 amended the Public Health Code to delete the mandatory life sentence for manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a Schedule 1 or 2 narcotic or cocaine. The Act specified, instead, a punishment of imprisonment for life or any term of years, but not less than 20 years. Public Act 319 deleted the 25-year alternative sentence for a juvenile tried as an adult that was enacted in 1996. It also retained the mandatory minimum sentences for violations involving less than 650 grams.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

##### **House Bill 5394**

The bill will have an indeterminate fiscal impact on State and local government. To the extent that the bill decreases average sentence lengths by eliminating "mandatory" minimum terms of imprisonment and by raising the controlled substance threshold amounts by which various sentences are distinguished, the bill might decrease State and local criminal justice costs. The extent to which these changes actually will affect sentencing is unclear because current statute does allow judicial departure from mandatory minimums if there are substantial and compelling reasons or if the offender has no prior convictions for a felony or an assaultive

crime. The impact also may be diminished if the changes affect prosecutorial charging practices, such as the use of plea agreements.

The bill also may decrease average sentence lengths by allowing rather than requiring consecutive sentencing for affected drug offenders. According to the Department of Corrections (DOC), this might reduce prison bed space needs by as many as 286 beds after five years and 465 after 40 years. This impact may be offset to the degree that consecutive sentencing continues to be used as an option.

In addition, the bill will decrease criminal justice costs by eliminating the possibility of lifetime probation and allowing those currently serving lifetime probation the possibility of release after having served five years. The DOC estimates that between 4,000 and 4,500 offenders are currently serving lifetime probation, although there are no available data that would distinguish how many of them already have served longer than five years.

To the extent that the bill allows fines to be imposed for all or part of a sentence, it will increase penal fine revenues and increase funds available to public libraries.

### **House Bill 5395**

The bill will have an indeterminate fiscal impact on State and local government. To the extent that the bill increases average sentence lengths by increasing the potential points received under offense variables 13 and 15, the bill may increase State and local criminal justice costs. Data provided by the DOC suggest that these changes might gradually increase bed space needs by approximately 100 beds after five years.

By eliminating lifetime probation as a sentencing option and replacing it with the five-year maximum probation sentence, the bill will decrease criminal justice costs.

### **House Bill 6510**

The bill will have an indeterminate fiscal impact on State and local government. By providing for earlier parole eligibility for controlled substance offenders sentenced under mandatory minimums before the bill's effective date, the bill may potentially decrease the length of time offenders will serve, thereby decreasing criminal justice costs.

To the extent that the bill increases available prison capacity, it will increase potential operating costs for the Department of Corrections.

Fiscal Analyst: Bethany Wicksall

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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.