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BILL ANALYSIS

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House Bill 5394 (Substitute H-3 as reported by the Committee of the Whole)
 House Bill 5395 (Substitute H-2 as reported by the Committee of the Whole)
 Sponsor: Representative Bill McConico
 House Committee: Criminal Justice
 Senate Committee: Judiciary

CONTENT

House Bill 5394 (H-3) would amend the Public Health Code to eliminate mandatory minimum sentences for certain controlled substances violations; 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 those violations and another felony; delete provisions prohibiting probation, suspension of sentence, or parole for those violations; and allow a person sentenced to lifetime probation before the bill’s effective date, who served at least five years of that probationary period, to be discharged from probation.

The bill would revise the penalties for manufacturing, creating, delivering, possessing, or possessing with intent to manufacture, create, or deliver a Schedule 1 or 2 narcotic or cocaine, as shown in the following table.

Current Violation	Current Penalty	Proposed Violation	Proposed 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
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 would remain at up to 4 years and/or a maximum fine of \$25,000.			

House Bill 5395 (H-2) would amend the Code of Criminal Procedure to eliminate references to a sentence of probation for life; revise the sentencing guidelines descriptions of drug violations, consistent with House Bill 5394 (H-3); and require a sentencing court to score 10 points for offense variable 13 (continuing pattern of criminal behavior) for violations involving 50 grams or more.

The bill also would require a sentencing court to score 100 points for offense variable 15 (aggravated controlled substance offense) for a violation involving 1,000 or more grams; 75 points for a violation involving 450-999 grams; 50 points for a violation involving 50-449

grams; 25 points for the sale or delivery of a controlled substance other than marihuana by an offender who was at least 18 to a minor who was three or more years younger; and 10 points for a violation involving 50 grams or more that was committed in a minor's home, regardless of whether the minor was present.

House Bills 5394 (H-3) and 5395 (H-2) would take effect on March 1, 2003. They are tied to each other and to House Bill 6510.

MCL 333.7401 & 333.7403 (H.B. 5394)
769.34 et al. (H.B. 5395)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5394 (H-3) would have an indeterminate fiscal impact on State and local government. To the extent that the bill would decrease 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 could decrease State and local criminal justice costs. The extent to which the proposed changes actually would 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 could be diminished if the proposed changes affected prosecutorial charging practices, such as the use of plea agreements.

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

In addition, the bill would 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 currently no available data that would distinguish how many of them already have served longer than five years.

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

House Bill 5395 (H-2) would have an indeterminate fiscal impact on State and local government. To the extent that the bill would increase average sentence lengths by increasing the potential points received under offense variables 13 and 15, the bill could increase State and local criminal justice costs. Data provided by the DOC suggest that the proposed changes could 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 would decrease criminal justice costs.

Date Completed: 12-12-02

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.