



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1032 (as passed by the Senate)
Sponsor: Senator Alan Sanborn
Committee: Judiciary

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RATIONALE

With few exceptions, the Code of Criminal Procedure allows a court to sentence a person convicted of a felony or misdemeanor to probation. Pursuant to case law, a court also may sentence a person to probation for a local ordinance violation that substantially corresponds to a statutory violation. The Code allows a court to delay sentencing, which gives the defendant the opportunity to show that he or she is eligible for probation or other lenient treatment, in a case in which a court may place a person on probation. It follows, then, that delayed sentencing may be used for ordinance violations only if they correspond to statutory violations. Some people believe that there should be statutory authority for courts to impose probation, and have the option of using delayed sentencing, for all ordinance violations.

CONTENT

The bill would amend the Code of Criminal Procedure to allow a sentence of probation and a delayed sentence for ordinance violations.

Under the Code, in all prosecutions for misdemeanors or felonies other than murder, treason, first- or third-degree criminal sexual conduct, armed robbery or major controlled substances offenses, the court may place on probation a defendant who has been found or pleaded guilty if "the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law".

In an action in which the court may place a defendant on probation, it also may delay sentencing him or her for up to one year "to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation, such as participation in a drug treatment court". When sentencing is delayed, the court must enter an order stating the reason for the delay, and the court has jurisdiction to sentence the defendant at any time during the period of delay.

The bill specifies that "misdemeanors" would include ordinance violations.

MCL 771.1

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Local ordinances often are substantially similar to provisions of State statute. Although the Code of Criminal Procedure does not specifically authorize a court to place a person on probation for a local ordinance violation, case law permits placing such a person on probation if the ordinance violation also is a statutory violation. Michigan courts long have held that "the violation of an ordinance is a criminal act, and where the violation of an ordinance is also the violation of a statute, upon conviction of the violation of such an

ordinance the court has power to place the defendant on probation" (*People v Sarnoff*, 302 Mich 266 (1942)). Since the Code allows a court to impose a delayed sentence in cases for which it may place a defendant on probation, and case law allows a court to impose probation on some ordinance violators, a State Court Administrative Office (SCAO) manual provides that courts may use "delayed sentencing...for an ordinance violation that is also a statutory violation", but courts "should not delay sentence for an ordinance violation which does not substantially correspond to a statute violation" (SCAO Manual for District Court Probation Officers, Section 6, Subsection 2, Page 1).

All ordinance violations, not just those replicating statutory violations, should be eligible for imposition of a delayed sentence. This would allow courts greater sentencing flexibility and give defendants an incentive to "stay clean" so their charges may be dropped. By including ordinance violations in the misdemeanors for which probation may be ordered, the bill would allow judges to impose probation and use delayed sentencing for all ordinance violators.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders are convicted of ordinance violations. To the extent that offenders convicted of ordinance violations would be sentenced to probation instead of incarceration under the bill, local governments would incur decreased costs of incarceration in local facilities, and increased costs of misdemeanor probation, both of which vary by county.

Fiscal Analyst: Lindsay Hollander
Stephanie Yu

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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.