

Legislative Analysis



SENTENCING COMMISSION

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House Bill 5078 without amendment

Sponsor: Rep. Joe Haveman

Committee: Criminal Justice

Complete to 12-4-13

A SUMMARY OF HOUSE BILL 5078 AS REPORTED BY COMMITTEE 12-4-13

Briefly, the bill would:

- Create a Sentencing Guidelines Commission in the Legislative Council.
- Establish Commission membership.
- Require meetings and writings to comply with the Open Meetings Act and Freedom of Information Act, respectively.
- Establish Commission duties.
- Establish a structure and a schedule by which modifications to the guidelines recommended by the Commission would be enacted into law.

House Bill 5078 would amend the Code of Criminal Procedure to create a 19-member Sentencing Commission in the Legislative Council. Membership would include four members of the State Senate, two from each caucus; four members of the House of Representatives, two from each caucus; two circuit court judges; two representative of the general public; and one representative for each of the following: prosecuting attorneys, criminal defense attorneys, law enforcement, the Department of Corrections, advocates of alternatives to incarceration, crime victims, and the Department of Technology, Management and Budget.

Members would serve for four years (except for legislators, who would serve two-year terms), with the bill providing for filling vacancies. Members would serve without a salary, but would be reimbursed for reasonable, actual, and necessary expenses incurred in the performance of Commission duties. All Commission business would be conducted at public meetings in compliance with the Open Meetings Act. A quorum, which would be a majority of the members, would be needed in order to conduct business. A writing prepared, owned, used, in the possession of, or retained by the Commission in the performance of official functions would be made public in compliance with the Freedom of Information Act.

Commission obligations would include the following:

- ❖ Collect, analyze, and disseminate information regarding state and local sentencing practices for felonies and the use of prisons and jails. Data regarding sentencing practices would continue to be collected by the State Court Administrator (SCAO), which would provide data necessary to the Commission.

- ❖ Conduct ongoing research regarding the impact of the current sentencing guidelines.
- ❖ Collect, analyze, and compile data and make projections regarding the populations and capacities of state and local correctional facilities and the impact of the sentencing guidelines on those populations and capacities.
- ❖ In cooperation with SCAO, collect, analyze, and compile data regarding the effect of sentencing guidelines on the caseload, docket flow, and case backlog of the state trial and appellate courts.
- ❖ Develop modifications to the sentencing guidelines as provided in the bill. Modifications must provide for protection of the public; consider a violent offense against a person as more severe than other offenses; be proportionate to the seriousness of the offense and offender's prior criminal record; reduce sentencing disparities and ensure offenders with similar offense and offender characteristics receive substantially similar sentences; specify circumstances under which a term of imprisonment is, or intermediate sanctions are, proper; establish sentence ranges for imprisonment within the lawfully allowed minimum and maximum sentences for the offenses to which the ranges apply; establish sentence ranges that the Commission considers appropriate; and maintain separate sentence ranges for convictions under the habitual offender provisions (which may include – as an aggravating factor – that the accused engaged in a pattern of proven or admitted criminal behavior).

The bill would permit the Commission to recommend modifications to the existing guidelines set forth in Chapter XVII of the Code. In developing modifications, the Commission would have to consider the likelihood that the capacity of state and local correctional facilities will be exceeded. The Commission would have to submit to the Legislature a prison impact report relating to any modifications that include the projected impact on total capacity of state correctional facilities. The modifications would also have to include recommended intermediate sanctions for each case in which the upper limit of the recommended minimum sentence range is 18 months or less.

Recommended modifications would have to be submitted to the Secretary of the Senate and the Clerk of the House. If the Legislature did not enact modifications to the sentencing guidelines within 60 days after introduction of a bill to enact modifications based on the recommendations, the Commission would have to revise the recommended modifications and submit them to the Secretary and Clerk within 90 days. Until such time as the Legislature enacted modifications to the sentencing guidelines into law, the Commission would continue to revise and resubmit the modifications to the Legislature under the schedule provided in this provision.

FISCAL IMPACT:

House Bill 5078 would have an indeterminate fiscal impact on state government. Commission members would be allowed to receive reimbursement for reasonable, actual, and necessary expenses incurred in the performance of their duties. Additionally, the bill requires the legislative council to provide the commission with reasonable office space,

staff, and necessary equipment. At this time, the extent of administrative support required is unknown. Therefore, an administrative fiscal impact cannot be ascertained.

Any fiscal impact on the criminal justice system cannot be determined at this time, as it would depend on the nature of the commission's recommendations and whether they were enacted into law.

POSITIONS:

The following organizations and associations indicated support for the bill on 12-4-13:

Michigan Citizens for Prison Control
Criminal Defense Attorneys of Michigan
ACLU of Michigan
CAPPS (Citizens Alliance on Prisons & Public Spending)
Michigan Prophetic Voice

A representative of the Prosecuting Attorneys Association of Michigan testified the association is neutral on the bill. (12-4-13)

The Michigan Department of Corrections indicated a neutral position on the bill. (12-4-13)

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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.