

Legislative Analysis



ELIMINATE MANDATORY MINIMUM SENTENCES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5844 as introduced
Sponsor: Rep. Joseph N. Bellino, Jr.

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5854 as introduced
Sponsor: Rep. Tim Sneller

House Bill 5856 as introduced
Sponsor: Rep. Steven Johnson

House Bill 5855 as introduced
Sponsor: Rep. Tommy Brann

House Bill 5857 as introduced
Sponsor: Rep. Jack O'Malley

Committee: Judiciary
Complete to 9-9-20

SUMMARY:

In general, the bills would amend different acts to eliminate mandatory minimum terms of imprisonment for numerous misdemeanor offenses and also to eliminate prohibitions on suspending sentences for certain misdemeanor offenses. Removal of mandatory minimum sentences would mean that any term of imprisonment up to the statutory maximum specified for an offense, or none at all, could be imposed by a court. Current maximum terms of imprisonment would not be affected, and criminal fines would remain the same.

House Bill 5844 would amend the Public Health Code to eliminate a mandatory minimum sentence of 60 days for using a title regulated by the code without a registration or under a suspended, revoked, or fraudulently obtained registration.

In addition, a mandatory minimum sentence of 90 days for a repeat offense of violating Article 15 (Occupations), or aiding and abetting another to violate Article 15, would be eliminated. The bill would add that this penalty would not apply to a violation of Article 15 for which another criminal penalty is specifically prescribed.

MCL 333.16296 and 333.16299

House Bill 5845 would amend the Michigan Vehicle Code to eliminate mandatory minimum sentences for misdemeanor offenses for a variety of violations. In addition, for the affected provisions, the bill would eliminate language providing that at least 48 hours of the mandatory term of imprisonment must be served consecutively and that the mandatory term of imprisonment cannot be suspended. Mandatory terms of imprisonment required to be imposed for second or subsequent violations that are felony offenses would not be affected. The bill would eliminate the mandatory minimum terms of imprisonment for the offenses described below.

Section 625: Penalties for drunk or drugged driving

- Operating a motor vehicle while impaired (OWI), visibly impaired, or under a controlled substance, or doing so and causing death or serious impairment, while a person less than 16 years of age is in the vehicle. In addition, the bill would allow a

court to suspend the mandatory term of imprisonment for a repeat offense that is a felony if a defendant agrees to participate in a specialty court program and successfully completes the program.

- Operating a vehicle if less than 21 years of age having any bodily alcohol content while a person less than 16 years of age also occupies the vehicle (second violation within seven years or third or subsequent violation).
- Operating a vehicle with any amount of a Schedule 1 controlled substance or cocaine or alcohol-related offenses (second offense). In addition, the bill would allow a court to suspend a term of imprisonment imposed for a second offense within seven years or a subsequent offense that is a felony if a defendant agrees to participate in a specialty court program and successfully completes the program.
- Operating while visibly impaired (second offense). In addition, the bill would allow a court to suspend the term of imprisonment imposed for a second offense within seven years or a subsequent offense that is a felony if a defendant agrees to participate in a specialty court program and successfully completes the program.

Section 904: Vehicle group designation

Operating a commercial motor vehicle on a suspended or revoked vehicle group designation, or having never applied for a designation, or when the application had been denied.

Section 904a: Unlicensed driver

Operating a motor vehicle without a driver license from any state or foreign country within the three years preceding the offense.

Section 905: Driving on suspended or revoked license

Operating a vehicle while driver's or chauffeur's license or registration card is suspended or revoked or knowingly permitting another to operate the vehicle except as permitted.

MCL 257.625 et al.

House Bill 5855 would amend the Revised School Code. The bill would eliminate the mandatory minimum sentence for a parent or other person in parental relation who fails to comply with Part 24 (Compulsory School Attendance). The bill would also eliminate the mandatory minimum jail sentences for the second or subsequent offense of using or attempting to use a teaching certificate, school administrator's certificate, or state board approval knowing it is surrendered, suspended, revoked, nullified, fraudulently obtained, altered, or forged; or using or attempting to use a teaching certificate that was issued to another person. In addition, the mandatory minimum sentence would be eliminated for the second or subsequent offense of using or attempting to use a college or university transcript or a certificate or other credential knowing that is fraudulently obtained, altered, or forged, or using or attempting to use a transcript or credential knowing that it is another person's.

MCL 380.1599 and 380.1809

House Bill 5856 would amend the Natural Resources and Environmental Protection Act to eliminate mandatory minimum sentences for various misdemeanor hunting violations and misdemeanor violations pertaining to the operation of motorboats, ORVs, and snowmobiles while under the influence of alcohol, a controlled substance, or a combination of alcohol and a

controlled substance. Criminal fines and maximum terms of imprisonment, and mandatory minimum terms of imprisonment for felony convictions, would not be revised. A brief description of the offenses affected by the bill follows.

Section 40118: Violations regarding the possession or taking of game

- Possession or taking of deer, bear, wild turkey, or wolf.
- Possession or taking of elk or moose.
- Failure to stop vehicle from which lights are used to locate game upon request of uniformed peace officer or marked vehicle with flashing lights or siren.
- Two prior convictions of Part 401 (Wildlife Conservation) within five years preceding current conviction.

Section 41105: Part 411

Taking or killing any fish, game, fur-bearing animal, or game bird contrary to an order issued or rule promulgated under Part 411 (Protection and Preservation of Fish, Game, and Birds) or a violation of Part 411.

Section 47327: Part 473 Commercial Fishing

Violation charged as a second or subsequent offense in the complaint. In addition, the bill would delete a provision that currently requires, if a fine with costs is imposed, the court to sentence the offender to be confined in the county jail until the fine and costs are paid, not to exceed the maximum penalty for the offense.

Section 48738: Part 487 Sport Fishing

Taking or possessing sturgeon in violation of Part 487.

Sections 80177 and 80178b: Part 801 Marine Safety

- Conviction of operating a motorboat while under the influence of alcohol or any amount of a Schedule 1 controlled substance or cocaine occurring within seven years of a prior conviction. Operating a motorboat while under the influence of alcohol or any amount of a Schedule 1 controlled substance or cocaine with a person less than 16 on board.
- A person under 21 operating a motorboat with any bodily alcohol content with a person less than 16 on board.

In addition, the bill would delete provisions prohibiting a term of imprisonment imposed for any of the above violations to be suspended.

Section 81134: Part 801 ORVs

- Operating an ORV under the influence of alcohol, a controlled substance, or combination of the two or with a 0.08 BAC or more, or doing so with a person less than 16 years occupying the ORV.
- Person less than 21 years of age operating ORV with another person who is less than 16 occupying the ORV while under the influence of alcohol, a controlled substance, or a combination (for subsequent violations). The bill would delete a provision prohibiting a term of imprisonment imposed to be suspended.

Sections 82128, 82129b: Part 821 Snowmobiles

- Operating a snowmobile under the influence of alcohol, a controlled substance, or combination of the two or with a 0.08 BAC or more within seven years of a prior conviction. The bill would delete a prohibition on a term of imprisonment imposed for a violation being suspended.
- Operating a snowmobile while under the influence with a person less than 16 years of age occupying the snowmobile or person under 21 years of age operating a snowmobile while under the influence with a person under 16 occupying the snowmobile (second offense within seven years or two or more prior convictions).

MCL 324.40118 et al.

House Bill 5857 would amend the Railroad Code to eliminate the mandatory minimum sentence for the following crimes:

- Throwing a stone, brick, or other missile at a train or track vehicle.
- Destroying, removing, changing, extinguishing, or tampering with any light or banner attached to or connected with any switch or derauling device maintained by a railroad company (unless authorized to do so by a railroad company).

MCL 462.257 and 462.267

FISCAL IMPACT:

House Bill 5844 would eliminate mandatory jail minimums, included in the Public Health Code, for second offense of unauthorized use of a health professional title and for second offense of health occupation rule violations. Eliminating required minimum jail times would give judges more discretion to sentence offenders to any amount of jail time that is less than the maximum, or to sentence offenders to no jail time at all. Judges would have discretion to impose fines, community service, or other alternative sanctions instead. This would free up jail resources. Depending on the number of offenders that would receive less jail time or no jail time at all, and an alternative sentence instead, the bill would result in a decrease in costs for local units of government. Costs of local incarceration in county jails vary by jurisdiction, so the savings to local units is indeterminate. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Also, if fines were imposed as an alternative to jail time, there would be an increase in penal fine revenue for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5854 would eliminate mandatory jail minimums, included in the Michigan Vehicle Code, for the following: operating while intoxicated with controlled substance – occupant less than 16; second offense of minor operating with any BAC – occupant less than 16; second offense of operating while intoxicated with controlled substance; second offense of operating while impaired; operating with suspended/revoked commercial vehicle group designation; second offense of operating without valid license in previous three years; and operating while suspended for failure to prove financial responsibility. Eliminating required minimum jail times would give judges more discretion to sentence offenders to any amount of jail time that is less than the maximum, or to sentence offenders to no jail time at all. Judges would have discretion to impose fines, community service, or other alternative sanctions instead. This

would free up jail resources. Depending on the number of offenders that would receive less jail time or no jail time at all, and an alternative sentence instead, the bill would result in a decrease in costs for local units of government. Costs of local incarceration in county jails vary by jurisdiction, so the savings to local units is indeterminate. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. If fines were imposed as an alternative to jail time, there would be an increase in penal fine revenue for public and county law libraries, which are the constitutionally designated recipients of those revenues. Also, under section 907(13) of the Michigan Vehicle Code, for any fines ordered to be paid, the judge or district court magistrate is required to order the defendant to pay a justice system assessment of \$40 for each infraction determination, except for parking violations. This would result in an increase in revenue for the state. Revenue deposited into the state's Justice System Fund supports various justice-related endeavors in the judicial branch, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and the Legislative Retirement System.

House Bill 5855 would eliminate mandatory jail minimums, included in The Revised School Code, for the following: truancy; second offenses of invalid use of teaching certificate; second offense of invalid use of school administrator certificate; second offense of invalid use of state school board approval; and second offense of invalid use of college credentials. Eliminating required minimum jail times would give judges more discretion to sentence offenders to any amount of jail time that is less than the maximum, or to sentence offenders to no jail time at all. Judges would have discretion to impose fines, community service, or other alternative sanctions instead. This would free up jail resources. Depending on the number of offenders that would receive less jail time or no jail time at all, and an alternative sentence instead, the bill would result in a decrease in costs for local units of government. Costs of local incarceration in county jails vary by jurisdiction, so the savings to local units is indeterminate. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Also, if fines were imposed as an alternative to jail time, there would be an increase in penal fine revenue for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5856 would eliminate mandatory jail minimums, included in the Natural Resources and Environmental Protection Act, including for various hunting and fishing offenses and for operating a boat, off-road vehicle, or snowmobile while intoxicated. Eliminating required minimum jail times would give judges more discretion to sentence offenders to any amount of jail time that is less than the maximum, or to sentence offenders to no jail time at all. Judges would have discretion to impose fines, community service, or other alternative sanctions instead. This would free up jail resources. Depending on the number of offenders that would receive less jail time or no jail time at all, and an alternative sentence instead, the bill would result in a decrease in costs for local units of government. Costs of local incarceration in county jails vary by jurisdiction, so the savings to local units is indeterminate. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. If fines were imposed as an alternative to jail time, there would be an increase in penal fine revenue for public and county law libraries, which are the constitutionally designated recipients of those revenues. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be deposited into the state's Justice System Fund, so revenue to the state would be increased. Justice System Fund revenue supports various justice-related endeavors in the judicial branch, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and the Legislative Retirement System.

House Bill 5857 would eliminate mandatory jail minimums, included in the Railroad Code of 1993, for throwing projectile at a train and for removing or tampering with railroad switches or derauling devices. Eliminating required minimum jail times would give judges more discretion to sentence offenders to any amount of jail time that is less than the maximum, or to sentence offenders to no jail time at all. Judges would have discretion to impose fines, community service, or other alternative sanctions instead. This would free up jail resources. Depending on the number of offenders that would receive less jail time or no jail time at all, and an alternative sentence instead, the bill would result in a decrease in costs for local units of government. Costs of local incarceration in county jails vary by jurisdiction, so the savings to local units is indeterminate. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Also, if fines were imposed as an alternative to jail time, there would be an increase in penal fine revenue for public and county law libraries, which are the constitutionally designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.