

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

SFA



BILL ANALYSIS

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

Senate Bills 825, 826, and 827 (as introduced 12-2-97)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 12-4-97

CONTENT

Senate Bills 825, 826, and 827 would amend, respectively, the Code of Criminal Procedure, the prison code, and the Department of Corrections (DOC) law to establish statutory sentencing guidelines and provide for the effectiveness of provisions enacted in 1994 and commonly referred to as "truth-in-sentencing".

Senate Bills 826 and 827 are tie-bared to each other and to Senate Bill 825.

(Senate Bill 825 essentially would establish in statute the recommendations of the Michigan Sentencing Commission, although the bill apparently includes approximately 30 crimes that were not in the Commission's recommendations. The Commission was created by Public Act 445 of 1994 and charged with developing and recommending sentencing guidelines that will become mandatory upon enactment and replace the judicially imposed guidelines currently in effect in Michigan's judicial system.)

Senate Bill 825

The bill would add Chapter IXA to the Code of Criminal Procedure to do all of the following:

- Classify over 700 criminal offenses into nine crime classes and six categories.
- Provide for the classification of some attempted crimes.
- Include instructions for scoring sentencing guidelines, including the application of 19 different offense variables and seven different prior record variables.
- Outline sentencing grids, with various recommended minimum sentence ranges, for each of the nine crime classifications.
- Require the imposition of statutory mandatory minimum sentences, regardless

of a sentencing guidelines-recommended minimum sentence.

- Set the longest allowable minimum sentence at two-thirds of the statutory maximum sentence (which would codify the "Tanner Rule").
- Provide for intermediate sanctions when a person's recommended minimum sentence range did not exceed 18 months.
- Provide for the Sentencing Commission to make recommended modifications to the sentencing guidelines.

Crime Classification

The bill would classify over 700 crimes in the Michigan Compiled Laws into nine different classes of descending severity. According to the Sentencing Commission's report, Class M2 is a separate classification for the offense of second-degree murder; and Classes A through H include crimes for which the following maximum sentences may be appropriate:

<u>Class</u>	<u>Sentence</u>
A	Life imprisonment
B	20 years' imprisonment
C	15 years' imprisonment
D	10 years' imprisonment
E	5 years' imprisonment
F	4 years' imprisonment
G	2 years' imprisonment
H	jail or other intermediate sanctions

The crimes to which the bill's sentencing guidelines would apply also are divided into six categories: crimes against a person; crimes against property; crimes involving a controlled substance; crimes against public order; crimes against public trust; and crimes against public safety. The bill specifies, however, that the offense descriptions would be for

assistance only, and that the listed statutes would govern the application of the sentencing guidelines.

Attempted Crimes

The bill's sentencing guidelines would apply to an attempt to commit an offense listed in Chapter IXA only if the attempted violation were a felony. The sentencing guidelines structure would not apply, however, to an attempt to commit a Class H offense.

For an attempted offense listed in Chapter IXA, the offense category (e.g., crime against a person) would be the same as the attempted offense. An attempt to commit an offense listed in Chapter IXA would be classified as follows:

- Class E, if the attempted offense were in Class A, B, C, or D.
- Class H, if the attempted offense were in Class E, F, or G.

Scoring

General. The bill includes instructions for scoring sentencing guidelines. For an offense listed in Chapter IXA, a judge would have to determine the recommended minimum sentence range by finding the offense category for the offense listed in Chapter IXA. From the variables spelled out in the bill, the judge then would have to determine the offense variables to be scored for that offense category and score and total only those offense variables. The judge also would have to score and total all prior record variables for the offense, as provided in the bill. Then, using the offense class, the judge would have to use the sentencing grid included in the bill to determine the recommended minimum sentence range from the grid's intersection of the offender's offense variable level and prior record variable level. The bill shows the recommended minimum sentence within a sentencing grid as a range of months or life imprisonment.

Multiple Offenses. If the defendant were convicted of multiple offenses, only the applicable offense variables for the offense with the highest statutory maximum sentence would be scored. If the highest statutory maximum applied to two or more of the multiple offenses, the offense variables for any one of those offenses could be scored. If a consecutive sentence were required or allowed for one or more of the multiple offenses, the offense variables for each offense to be sentenced consecutively would have to be scored.

Habitual Offenders. If the offender were being sentenced under the Code of Criminal Procedure's habitual offender provisions, the judge would have to determine the offense category, offense class, offense variable level, and prior record variable level based on the underlying offense. To determine the recommended minimum sentence range, the upper limit of the range determined under the bill's grid would have to be increased as follows:

- By 25%, if the offender were being sentenced for a second felony.
- By 50%, if the offender were being sentenced for a third felony.
- By 100%, if the offender were being sentenced for a fourth or subsequent felony.

Attempted Offense. If an offender were being sentenced for an attempted felony included in the sentencing guidelines structure, the judge would have to determine the offense variable level based on the underlying attempted offense.

Crime Categories. For all crimes against a person, offense variables 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 19 would have to be scored. Offense variables 5 and 6 would have to be scored for homicide or attempted homicide. Offense variable 16 would have to be scored for a home invasion offense. Offense variables 17 and 18 would have to be scored if an element of the offense or attempted offense involved the operation of a vehicle, vessel, aircraft, or locomotive.

For all crimes against property, offense variables 1, 2, 3, 4, 9, 10, 12, 13, 14, 16, and 19 would have to be scored.

For all crimes involving a controlled substance, offense variables 1, 2, 3, 12, 13, 14, 15, and 19 would have to be scored.

For all crimes against public order and all crimes against public trust, offense variables 1, 3, 4, 9, 10, 12, 13, 14, 16, and 19 would have to be scored.

For all crimes against public safety, offense variables 1, 3, 4, 9, 10, 12, 13, 14, 16, and 19 would have to be scored. If an element of the offense involved the operation of a vehicle, vessel, aircraft, or locomotive, offense variable 18 would have to be scored.

Offense Variables

The bill identifies each of the 19 offense variables

and would assign various points to be scored depending on whether and how the offense variable applied to the particular violation.

Offense variable 1 would be aggravated use of a weapon; offense variable 2 would be lethal potential of the weapon used; offense variable 3 would be physical injury to a victim; offense variable 4 would be psychological injury to a victim; and offense variable 5 would be psychological injury to a member of a victim's family.

Offense variable 6 would be the offender's intent to kill or injure another individual; offense variable 7 would be aggravated physical abuse; offense variable 8 would be asportation or captivity; offense variable 9 would be the number of victims; and offense variable 10 would be exploitation of a vulnerable victim.

Offense variable 11 would be criminal sexual penetration; offense variable 12 would be contemporaneous felonious criminal acts; offense variable 13 would be continuing pattern of criminal behavior; offense variable 14 would be the offender's role; and offense variable 15 would be aggravated controlled substance offenses.

Offense variable 16 would be property obtained, damaged, lost, or destroyed; offense variable 17 would be degree of negligence exhibited; offense variable 18 would be operator ability affected by alcohol or abuse; and offense variable 19 would be threat to the security of a penal institution or court, or interference with the administration of justice.

Prior Record Variables

The bill identifies each of the seven prior record variables and would assign various points to be scored depending on whether and how the prior record variable applied to the particular violation. In scoring prior record variables 1 through 5, a conviction or juvenile adjudication could not be used if it preceded a period of 10 or more years between the discharge date from a conviction or juvenile adjudication and the defendant's commission of the next offense resulting in a conviction or juvenile adjudication.

Prior record variable 1 would be "prior high severity felony convictions", which would mean a conviction for a crime listed in offense class M2, A, B, C, or D. Prior record variable 2 would be "prior low severity felony convictions", which would mean a conviction for a crime listed in offense class E, F, G, or H.

Prior record variable 3 would be "prior high severity juvenile adjudications", which would mean a juvenile adjudication for conduct that would be a crime listed in offense class M2, A, B, C, or D, if committed by an adult. Prior record variable 4 would be "prior low severity juvenile adjudications", which would mean a juvenile adjudication for conduct that would be a crime listed in offense class E, F, G, or H, if committed by an adult.

Prior record variable 5 would be prior misdemeanor convictions or misdemeanor adjudications; prior record variable 6 would be relationship to the criminal justice system; and prior record variable 7 would be subsequent or concurrent felony convictions.

Sentencing Grids

The bill specifies a grid of minimum sentencing ranges for each class of offenses (M2 and A through H). The appropriate minimum sentencing range would be determined by scoring the offense variable point level on one axis of the grid and the prior record variable point level on the other axis, then finding the intersecting cell of the grid.

For each offense class, the bill specifies the lowest minimum sentence cell range and the highest minimum sentence cell range, as follows:

<u>Offense Class</u>	<u>Lowest Range (months)</u>	<u>Highest Range (months)</u>
M2	90-150	365-600, or life
A	21-35	270-450, or life

B	0-18	117-160
C	0-12	78-120
D	0-6	54-80
E	0-3	30-40
F	0-3	21-32
G	0-3	9-24
H	0-1	6-18

Sentencing

Mandatory Minimums. The bill specifies that if a statute mandated a minimum sentence, the court would have to impose sentence in accordance with that statute, and that imposing a statutory mandatory minimum sentence would not be considered a departure from the sentencing guidelines' minimum sentence range.

"Tanner Rule". The bill would prohibit a court from imposing a minimum sentence, including a departure from the sentencing guidelines' minimum sentence range, that exceeded two-thirds of the statutory maximum sentence. (This would codify the "Tanner Rule", established by case law, which sets two-thirds of a maximum sentence as the longest minimum sentence allowed in Michigan's indeterminate sentencing system.)

Intermediate Sanctions. Under the Code, if the upper limit of the minimum sentence under statutory sentencing guidelines enacted after the Sentencing Commission submits its recommendations is 18 months or less, the court must impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the Department of Corrections. (The Code defines "intermediate sanction" as probation or any sanction, other than imprisonment in a State prison or State reformatory, that may lawfully be imposed; including, for example, drug treatment, mental health treatment, jail, community service, or electronic monitoring.) The bill specifies that an intermediate sanction could include a jail term that did not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever was less.

The bill also provides that if the offense were for manufacturing, delivering, possessing with intent to deliver, or possessing a mixture that contained less than 50 grams of a Schedule 1 or 2 narcotic or cocaine, and the upper limit of the recommended minimum sentence range were 18 months or less, the court would have to impose a sentence of life probation, absent a departure from the sentencing guidelines' minimum sentence range.

In addition, if an attempt to commit a Class H felony were punishable by imprisonment for more than one year, the court would have to impose an intermediate sanction upon conviction of that offense, absent a departure from the sentencing guidelines' minimum sentence range.

If the upper limit of the sentencing guidelines' recommended minimum sentence exceeded 18 months and the lower limit of the minimum sentence range were 12 months or less, the court would have to sentence the offender, absent a departure from sentencing guidelines' minimum sentence range, to either imprisonment with a minimum term within that range or an intermediate sanction that included a term of imprisonment of not less than the minimum range or more than 12 months.

Sentencing Commission

The bill would revise provisions of the Code that created the Michigan Sentencing Commission and specify its responsibilities. The bill would charge the Commission with developing recommended modifications to the sentencing guidelines, rather than developing the recommended guidelines themselves.

The bill also would delete the Code's schedules for the Commission to develop and submit recommended sentencing guidelines, to submit revised guidelines if the Legislature failed to enact the recommended guidelines within a specified period, and to submit subsequent modifications to enacted guidelines. The bill also would reenact, however, the schedule for the Commission to submit any recommended modifications to enacted sentencing guidelines. The Commission would have to submit recommended modifications to the Secretary of the Senate and the Clerk of the House of Representatives. If the Legislature failed to enact the modifications within 60 days after introduction of a bill to enact them, the Commission would have to revise the recommended modifications and resubmit them to the Secretary and the Clerk within 90 days. Until the Legislature enacted modifications, the Sentencing Commission would have to continue to revise and resubmit the modifications under this schedule.

Senate Bill 826

The prison code includes provisions for the addition of disciplinary time to the minimum sentence of a "prisoner subject to disciplinary time" for each major misconduct for which he or she is found

guilty. Accumulated disciplinary time is to be added to a prisoner's minimum sentence in order to determine his or her parole eligibility date.

Under the code, "prisoner subject to disciplinary time" means a prisoner sentenced for certain offenses on or after the effective date of the disciplinary time provision. (The disciplinary time provisions were enacted in 1994 as part of the legislation commonly referred to as "truth-in-sentencing", but the effective date of the provisions was delayed until sentencing guidelines are enacted into law after the Sentencing Commission submits recommended guidelines.) The bill would change that definition to apply to prisoners sentenced for those offenses under the sentencing guidelines set forth in Senate Bill 825.

The bill also would repeal the sections of the "truth-in-sentencing" bills (Public Acts 217 and 218 of 1994) that delay the effective date of those provisions until the enactment of sentencing guidelines after the Sentencing Commission submits recommended guidelines.

Senate Bill 827

The bill would delete language in the DOC law specifying that certain provisions pertaining to prisoners subject to disciplinary time take effect on the effective date of Public Act 217 of 1994.

MCL 769.8 et al. (S.B. 825)
800.34 (S.B. 826)
791.234 et al. (S.B. 827)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 825 could have a potential cost saving impact on the State budget. However, Senate Bills 826 and 827 could result in additional cost for the incarceration of additional prisoners within the prison system. The local government impact is indeterminate.

Two consultants, Dr. Charles Olstrom, Michigan State University, and Dr. James Austin, National Council on Crime and Delinquency, were hired by the Sentencing Commission to evaluate the impact on the State prison population of the proposed sentencing guidelines and the provisions that would take effect as a result of Senate Bills 826 and 827 (commonly known as truth-in-sentencing). These population impacts are used in this analysis to estimate the fiscal impact on the State budget (Table 1). Also, to estimate the fiscal impact, the prison population security level mix is assumed to remain constant and the 1997 average annual cost per prisoner by security level was used for the 10-year period.

The consultants have estimated, based on the assumptions approved by the Sentencing Commission, that the sentencing guidelines would reduce the prison population. Over the 10-year period, under current law, accumulated operating expenses are estimated at about \$15.1 billion. The accumulated operating expense under the proposed legislation is about \$14.9 billion, a saving of about \$200 million. However, the consultants estimate that the effects of truth-in-sentencing would increase the prison population. With both the sentencing guidelines and truth-in-sentencing in effect, the accumulated operating costs would increase to approximately \$15.4 billion, or \$300 million more than baseline operating costs over a 10-year period.

These costs do not reflect the additional debt service cost that the State would incur for prison construction. Assuming that the prison system is out of capacity at the end of 1997, and that each additional prison would house about 1,000 prisoners, to incarcerate the prison population projected by the Sentencing Commission's consultants, five additional prisons would have to be built over the 20 prisons needed to incarcerate the baseline population.

It should be noted that 10-year projections based on current trends may not be highly reliable. In fact, the Sentencing Commission has requested that the consultants prepare several alternative scenarios

to forecast the potential population impact for the Legislature. Also, some of the assumptions of the Sentencing Commission should be noted.

- 1) The proposed guideline sentences were applied to new court commitments and parole violators with new sentences, omitting probationers with new sentences.
- 2) Probation admissions (both new sentences and technical violators) were held at the 1994 level, because information about these admissions is not available in the Department of Corrections database.

- 3) The Sentencing Commission assumed that the guidelines would take effect on or after January 1, 1999. However, the truth-in-sentencing provisions would immediately return about 600 prisoners incarcerated in community centers to the prison system.
- 4) Based on a survey of five courts, the consultants concluded that for crimes in categories A, B, and C, crimes with the longest maximum sentence, judges would impose a sentence lower than recommended.
- 5) The Sentencing Commission has assumed that prisoners will serve on average 113% of their minimum sentence under truth-in-sentencing.

Table I Prison Population Projections Under Current Law and the Proposed Guidelines with Truth-in-Sentencing				
Calendar Year	Department of Corrections' Population Projection (Baseline)	Impact of Proposed Guidelines	Impact of Truth-in-Sentencing	Projection of Prison Population (Revised)
1997	45,219	45,219	45,219	45,219
1998	47,659	47,659	47,659	47,659
1999	49,791	49,970	49,898	50,077
2000	51,566	51,355	51,755	51,544
2001	53,278	52,563	53,986	53,271
2002	55,157	53,943	57,150	55,936
2003	57,182	55,949	59,687	58,454
2004	59,094	57,703	62,127	60,736
2005	61,706	60,380	65,586	64,260
2006	63,058	61,920	67,676	66,538
2007	65,040	64,340	70,707	70,007
Accumulated operating expenses	\$15,074,727,397	\$14,882,835,713	\$15,636,856,862	\$15,444,965,178

Source: "Michigan Sentencing Commission Proposed Guidelines/Truth-in-Sentencing Prison Population Impact Assessment", October 16, 1997, Table 6, p. 14.

Fiscal Analyst: K. Firestone

S9798\S825SA

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.