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SFA



BILL ANALYSIS

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Senate Bill 373 (as enrolled)
Sponsor: Senator William Van Regenmorter
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections

PUBLIC ACT 279 of 2000

Date Completed: 3-22-01

CONTENT

Senate Bill 373 amended the sentencing guidelines provisions of the Code of Criminal Procedure to do all of the following:

- **Include additional offenses and penalties in the guidelines.**
- **Change the class designation of several felonies.**
- **Revise the scoring of several offense variables and prior record variables.**

The bill also requires a presentence investigative report to show the recommended minimum range for the crime having the highest crime class (rather than the range for each conviction), except in the case of consecutive sentences, and requires a sentencing court to score multiple convictions accordingly.

Additional & Revised Offenses/Penalties

The bill added to the sentencing guidelines graduated penalties that were enacted in 1998 for various larceny and property destruction offenses, as well as new and revised penalties that were enacted in 1998 when arson and explosives offenses, and drunk driving violations, were revised and recodified. In the case of new graduated penalties enacted for existing offenses, the bill reclassified some of the offenses at a higher level within the sentencing guidelines, due to the enactment of longer statutory maximum sentences for those offenses.

The bill also added new offenses and penalties enacted in 1998 for the following:

- Human cloning.
- Unauthorized process to obstruct a public officer or employee.
- Preparation or service of unauthorized process.
- Unauthorized disclosure of information from the Law Enforcement Information Network.

- Assault or gross negligence against a pregnant woman, or operating a vehicle under the influence or while impaired, resulting in miscarriage or stillbirth or serious injury to an embryo or fetus.
- Offenses involving an ignition interlock device.
- Operation of a vehicle without a license causing death or serious impairment.
- Operation of an off-road vehicle (ORV) under the influence causing death or serious impairment.
- Operation of a snowmobile carelessly or negligently causing death, or operation of a snowmobile without regard to safety causing serious impairment.
- Unauthorized disclosure of a Social Security number.
- Delivery of a controlled substance with intent to commit criminal sexual conduct (CSC).
- A controlled substance offense in or near a park.
- Violation of a family court order by a nonparent adult.
- Offenses involving a harmful biological, chemical, or radioactive device, or an irritant or irritant device.
- Impersonating a public officer or employee.

In addition, the bill added felonies that had been enacted but were not included in the guidelines when they were enacted in 1998. These include aggravated stalking; felony violations of the Tobacco Products Tax Act; perjury committed in a prosecutor's investigative hearing; and the manufacture, delivery, possession with intent to deliver, or possession of 225 grams or more, but less than 650 grams, of a Schedule 1 or 2 narcotic or cocaine.

Further, the bill included a repeat offense of operating a vehicle under the influence or while impaired with a minor in the vehicle, which was made a felony in 1999.

The bill also added the following offenses that were enacted or revised in 2000:

- A cervidae producer violation.
- A violation involving adulterated, misbranded, or falsely identified food.
- Embezzlement by a person in a relationship of trust with a vulnerable adult.
- Sale or purchase of paraphernalia for changing the identity of a motor vehicle, or sale or receipt of a vehicle or vehicle part with an altered or missing vehicle identification number.
- Unlawful access to a computer.
- Use of the Internet or a computer to commit a crime.

For offenses involving the use of a computer to commit a crime, the bill requires the court to determine the offense category, offense variable level, and prior record variable level based on the underlying offense.

In addition, the bill changed the class designation of several felonies listed in the sentencing guidelines. (Class designations are used to determine which sentencing grid is used.) First-degree child abuse, and third-degree CSC, moved up from a Class C offense to Class B. Several perjury offenses also moved up in class.

Sentencing

Under the Code, a court may depart from the appropriate sentence range established under the sentencing guidelines if the court has a substantial and compelling reason for the departure. Imposing a mandatory minimum sentence is not a departure from the guidelines, however; if a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the Department of Corrections (DOC), the court must impose a sentence in accordance with that statute. Also, if a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the DOC and the statute authorizes the sentencing judge to depart from the minimum sentence, a sentence that exceeds the recommended sentence range but is less than the mandatory minimum is not a departure.

The bill, in addition, provides that if the Michigan Vehicle Code mandates a minimum sentence for an individual sentenced to the jurisdiction of the DOC and authorizes the sentencing judge to impose a sentence that is less than that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum is not a departure.

Under the Code of Criminal Procedure, before a court sentences a person, a presentence investigation report, containing specific information,

must be prepared. Additional information is required for a person who is to be sentenced under the sentencing guidelines. Previously, this information included, for each conviction entered, the sentence grid containing the recommended minimum sentence range, and the computation that determines the recommended minimum sentence range. Under the bill, the report must include the sentence grid that contains the recommended minimum sentence range for each conviction for which a consecutive sentence is authorized or required. Otherwise, the report must include the sentence grid and the computation for the crime having the highest crime class.

The Code provides that, if the defendant was convicted of multiple offenses, the sentencing court must score each offense. Under the bill, this requirement is subject to the previous provisions.

Offense Variables

The Code identifies 19 offense variables. For each offense variable, the Code assigns a range of points to be scored, depending on the offense being scored (the sentencing offense) and factors that apply to the particular violation.

Offense variables 5 and 6 must be scored for homicide and attempted homicide. (Offense variable 5 is psychological injury to a member of a victim's family; offense variable 6 is the offender's intent to kill or injure another individual.) The bill also requires offense variables 5 and 6 to be scored for assault with intent to commit murder.

Offense variables 17 and 18 must be scored if an element of an offense against a person involves the operation of a vehicle, vessel, aircraft, or locomotive. (Offense variable 17 is degree of negligence exhibited; offense variable 18 is operator ability affected by alcohol or drugs.) The bill also requires offense variables 17 and 18 to be scored if an element of an offense involves the operation of an ORV or snowmobile.

Offense variable 18 also must be scored if an element of an offense against public safety involves the operation of a vehicle, vessel, aircraft, locomotive, or, under the bill, an ORV or snowmobile. The bill also refers to an offense or attempted offense.

Offense variable 3 is physical injury to a victim. The range of points to be assigned depends on whether the victim was killed or how severely the victim was injured. If death results from the commission of a crime and homicide is not the sentencing offense, 100 points must be scored. The bill also provides that 35 points must be scored if death results from the commission of a crime and the elements of the

offense or attempted offense involve the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive under the influence or while impaired causing death.

Offense variable 13 is continuing pattern of criminal behavior. The bill requires 50 points to be scored under this offense variable if the offense was first-degree CSC and was part of a pattern of felonious criminal activity involving three or more sexual penetrations against a person or persons less than 13 years of age.

Prior Record Variables

The Code identifies seven prior record variables and assigns points to be scored depending on whether and how a prior record variable applies to a particular violation. Prior record variable 4 is "prior low severity juvenile adjudications". The number of points that may be assigned ranges from zero, for no prior low severity juvenile adjudications, to 20, for six more such adjudications. Previously, five points were assigned if the offender had two or three adjudications, and 10 points were assigned if the offender had four or five. Under the bill, five points must be assigned if the offender has two adjudications, and 10 must be assigned if the offender has three or four. If the offender has five prior low severity juvenile adjudications, 15 points must be assigned.

("Prior low severity juveniles adjudications" include juvenile adjudications for conduct that would be a crime listed in offense class E, F, G, or H, if committed by an adult. Offense class H is for crimes punishable by jail or other intermediate sanctions, and offense classes G, F, and E are for crimes punishable by up to two, four, or five years' imprisonment, respectively.)

Prior record variable 5 is prior misdemeanor convictions or prior misdemeanor juvenile adjudications. In scoring prior record variable 5, the court must count all prior misdemeanor convictions or adjudications for operating a vehicle, vessel, aircraft, or locomotive while under the influence or impaired by alcohol and/or drugs. Under the bill, the court also must count misdemeanor convictions or adjudications for operating an ORV or snowmobile while under the influence or impaired, as well as convictions or adjudications for attempting to operate a vehicle, vessel, aircraft, locomotive, ORV, or snowmobile while under the influence or impaired.

BACKGROUND

Except when a mandatory sentence for a particular offense is prescribed by law, Michigan's criminal justice system uses an indeterminate sentencing

policy. Maximum sentences for criminal offenses are specified in statute and a judge imposes a minimum sentence (which may not exceed two-thirds of the statutory maximum). From 1984 through 1998, Michigan courts operated under sentencing guidelines that were issued by the Michigan Supreme Court. During that time, Public Act 445 of 1994 established the Michigan Sentencing Commission and charged it with designing and recommending to the Legislature a new sentencing guidelines system. In October 1997, the Commission adopted a set of recommendations that included the classification of numerous crimes, based on the nature of the crime and the maximum punishment imposed by statute. Legislation enacted in 1998 then established statutory sentencing guidelines that apply to felonies committed on or after January 1, 1999.

In particular, Public Act 317 of 1998 added Chapter XVII to the Code of Criminal Procedure to classify over 700 criminal offenses into nine crime classes (which range from Class A, for crimes punishable by life imprisonment, to Class H, for crimes punishable by jail or other intermediate sanctions), and six categories (crimes against a person, property, public order, public trust, or public safety, and crimes involving a controlled substance). Public Act 317 also added instructions for scoring the sentencing guidelines (including the application of 19 offense variables and seven prior record variables), and outlined sentencing grids with recommended minimum sentence ranges for each of the nine crime classifications.

MCL 769.34 et al.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State and local government. A report prepared by Dr. Charles Ostrum using State Court Administrative Office (SCAO) data provides information about the disposition of cases in the first nine months after the implementation of the statutory guidelines. The report, dated July 31, 2000, shows a decrease in the percentage of offenders sentenced to prison and straight probation, and an increase in the percentage sentenced to jail, and probation and jail. The report also points out that the SCAO has received fewer forms than anticipated and that the number of serious felony cases, such as second-degree murder, is underrepresented. The actual impact of sentencing guidelines cannot be ascertained from the data available to date because of variations from [S9900s373es](#)

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historic trends and possible underrepresentation of certain crime classes, counties, or crimes.

Although there are no data currently available that would provide information about the potential fiscal impact of any changes to the guidelines statute, the relationship between the minimum sentence range and the State and local corrections' expenditures is the amount of time that an offender will be under the supervision of the Department of Corrections or a local unit. Several factors addressed in the bill that could affect the minimum sentence range are detailed below.

There are no data to indicate whether the addition of crimes that were omitted from the original sentencing guidelines or that were enacted after sentencing guidelines will increase or decrease the average length of incarcerative sentence. There are also no data currently available to indicate whether changing a crime class will increase or decrease average length of sentence. Offense variable points are contrasted with offender variable points to determine minimum sentence range.

In addition, the bill allows a judge to assign a sentence greater than the mandatory sentence without having to explain a departure. There are no data to indicate whether this will increase the average length of sentence for mandatory minimum crimes. Also, certain changes to the offense variables wording and scoring provide additional points for offenders who match the criteria. There are no data to indicate how many offenders will qualify for additional points or whether the additional points will make a difference in the disposition and sentence length of the conviction.

Fiscal Analyst: K. Firestone