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SFA**BILL ANALYSIS**

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Senate Bill 373 (Substitute S-9 as reported by the Committee of the Whole)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

CONTENT

The bill would amend the Code of Criminal Procedure to revise the sentencing guidelines provisions. The bill would do the following:

- Include additional offenses and penalties in the guidelines.
- Require sentencing judges to score all of the offense variables for each offender.
- Change the class designation of several felonies.
- Require the addition of 50 points to an offender's guidelines score for an offense that was part of a pattern of criminal activity involving two or more sexual penetrations against a child or children under 16.

The bill would add to the sentencing guidelines list: graduated penalties that were enacted in 1998 for various larceny and property destruction offenses; new and revised penalties that were enacted in 1998 for explosives offenses; new offenses and penalties enacted in 1998 for human cloning, unauthorized process to obstruct a public officer or employee, and assault or gross negligence against a pregnant woman resulting in miscarriage or stillbirth; and various offenses enacted or revised in 1999. In the case of new graduated penalties enacted for previously existing offenses, the bill would reclassify some of the offenses as a higher level felony within the sentencing guidelines offense list, due to the enactment of longer statutory maximum sentences for those offenses. The bill also would add felonies that were omitted when the guidelines were enacted by Public Act 317 of 1998. These include aggravated stalking 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.

The offenses in the Code's sentencing guidelines provisions 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, or crimes against public safety. The categories are used to determine which of the 19 offense variables specified by the Code are to be considered and scored by a sentencing judge when determining a recommended minimum sentence range. The bill would eliminate all of the categories except "person" and "property" and repeal the section of the Code that instructs judges on which offense variable to score for a given offense category. The bill would require, instead, that a sentencing judge score *all* of the offense variables for each offender.

The bill would change the class designation of several felonies in the sentencing guidelines list. (Class designations are used to determine which sentencing grid is used.) Causing death to a person due to drunk operation of a motor vehicle, boat, or snowmobile would move up from a Class C offense to Class B. Assault with intent to do great bodily harm less than murder would move from Class D to Class C. First-degree child abuse, and third-degree criminal sexual conduct, would move from Class C to Class B. Several perjury offenses also would move up in class.

The bill would require 50 points to be added to an offender's sentencing guidelines score under offense variable 13 (continuing pattern of criminal activity) if the offense involved two or more sexual penetrations against a person or persons under 16 years of age. The bill also would limit the application of offense variable 5 (psychological injury to a member of a victim's family) to homicide, attempted homicide, or assault with intent to murder. Offense variable 17 (degree of negligence exhibited) could be applied only if an element of the offense involved the operation of a motor vehicle, vessel, off-road vehicle, snowmobile, aircraft, or locomotive.

The bill would take effect 90 days after its enactment.

MCL 769.34 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would 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 nine months since the implementation of legislative guidelines. The report, dated September 1, 1999, 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, are underrepresented. The disposition database maintained by the Department of Corrections (DOC) is unavailable due to technical problems related to the enactment of sentencing guidelines. Other data, such as the impact on the length of sentence, are not currently available.

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 DOC or a local unit. Several factors addressed in the bill that could affect the minimum sentence range are detailed below.

The bill would eliminate language that places requirements on the minimum jail sentence a judge may impose, if jail time is given in connection with an intermediate sanction. There are no data to indicate whether this minimum requirement has affected jail sentences.

The bill would eliminate offense categories, causing all offense variables to be considered in the presentence evaluation. On the sentencing grid, offense variable points are contrasted with offender variable points to determine minimum sentence range. Under current law, of the 19 offense variables, a maximum of 13 offense variables are considered for each offense (or 15, if the offense involves the operation of a vehicle, vessel, aircraft, or locomotive). There are no data to indicate if scoring all 19 offense variables for every crime would result in higher offense variable points that would increase the length of minimum sentence.

Also, certain changes to the offense variables wording and scoring would provide additional points for offenders who match the criteria. There are no data to indicate how many offenders would qualify for additional points or whether the additional points would make a difference in the disposition and sentence length of the conviction.

Date Completed: 11-30-99

Fiscal Analyst: K. Firestone

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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.